

UN CRC COMMITTEE EXPERT CONSULTATION ON GENERAL COMMENT 27
ACCESS TO JUSTICE AND EFFECTIVE REMEDIES FOR CHILDREN MISSING IDENTITY

On Saturday 18 May 2024, approximately 30 experts convened in Geneva, Switzerland under the theme “Access to Justice and Effective Remedies” in the context of children’s identity rights. The meeting was organised by the Identity Rights Working Group¹, which is co-chaired by Child Identity Protection (CHIP) and the Institute on Statelessness and Inclusion (ISI). The meeting brought together several members of the Committee on the Rights of the Child (CRC Committee), representatives of UN agencies, non-governmental organizations, academics and persons with lived experience.²

The central focus of the meeting was to explore the various challenges that arise when Articles 7 and 8 of the Convention on the Rights of the Child (CRC) are violated and the consequences for access to justice. The child’s right to identity is an independent right (Arts.7-8, CRC) and is also the gateway for accessing other rights, such as education and healthcare. When children lack some or all elements of their identity, they are rendered legally invisible making them susceptible to severe forms of human rights violations and unable to enjoy basic rights such as education and healthcare. Relatedly, their ability to access justice and remedies is severely undermined, because their ‘lack of (legal) existence’ makes it impossible from them to establish legal personality, a basic concept that underscores access to justice.

This expert meeting provided an enabling environment for the CRC Committee’s consultative process to develop General Comment 27 on Access to Justice and Effective Remedies for all contraventions in the CRC. The meeting served as a critical space for the exchange of knowledge, sharing of best practices, and formulation of effective strategies. This document summarises the extensive recommendations and potential solutions identified in four sessions focused on Articles 7, 8 and 8(2) of the CRC Convention. It should be read with the forthcoming Working Group’s submission and is complemented by the upcoming submissions of members of this group.

I. SESSION 1: No justice without identity (birth registration & nationality) Arts. 7-8 CRC

Speakers: Valeriia Cherednichenko, UNHCR; Kirsten Di Martino, UNICEF; Terry Kiairie, ATD 4th World; Armando Augello Cupi, Unione Italiana Apolidi; Aleksandra Semerjak, European Network on Statelessness; Velina Todorova, CRC Committee member.

This opening session focused on the profound implications imposed on children lacking birth registration, documentation, and access to nationality without discrimination, which came via direct testimony from persons with lived experience.

Promising practices and recommendations to improve access to justice for children not registered at birth

Efforts should prioritise improving access to birth registration for all children immediately after birth such as removing financial and legal barriers, which can be facilitated by encouraging:

- Decentralisation
- standardised birth registration and certification procedures that are automatic, immediate, accessible, simple, free, and responsive to needs irrespective of their parents’ documentation, residence or other status (i.e. gender, marital status, ethnicity)³

¹ The Identity Rights Working Group is comprised of several civil society organizations, UN agencies and grass roots organizations working on a plethora of identity rights issues affecting children including birth registration, documentation, nationality, statelessness, and family relations.

² See Annex for list of participants

³ UNHCR and UNICEF: Background Note on Sex Discrimination in Birth Registration (2021)
<https://www.refworld.org/policy/opguidance/unhcr/2021/en/123888>

Expert Meeting on Access to Justice and Effective Remedies
Geneva Hostel, 18 May 2024

- registrars should engage with communities to build trust and understand the challenges parents face to register children to identify suitable solutions. This can include allowing key community figures such as religious leaders, community health workers, volunteers, village headmen, midwives to register births
- birth registration documents should be recognised by authorities even without biometric data
- Interoperability within health systems⁴ - children should be registered where they are born such as medical institutions and all mandatory reporting requirements that deter people from accessing healthcare and civil registration should be removed (e.g. links with immigration enforcement)
- Digitalisation of CRVS should be encouraged as part of wider E-reforms to ensure interconnectivity, proper financing and a holistic nationwide approach.

Targeted efforts should prioritise children at particular risk of not being registered immediately after birth such as those living in remote areas, minority groups, lower-economic backgrounds and in emergency zones.

- Mobile units and satellite systems should be used for rural and for hard-to-reach areas
- For families living in vulnerable situations, CRVS systems should be interoperable with social protection. For example, when applying for support, social workers could support with birth registration.⁵
- CRVS systems should be adapted to specific humanitarian contexts including guidance notes, MOUs, Standard operating procedures, coordination mechanisms and plans for restoring service delivery.⁶
- Data on birth registration should be improved at the local, national, and regional level

Promising practices and recommendations to ensure every child acquires a nationality and prevent statelessness:⁷

- States should implement safeguards in nationality laws that ensure that all otherwise stateless children born on the territory acquire nationality at birth, as is the case for example in Spain,⁸ where Spanish nationality is automatically acquired at birth in cases where both parents lack a nationality or if the legislation of both of their countries of origin does not attribute a nationality to the child.
- States should ensure the implementation of procedures to determine the child's nationality and identify statelessness even in countries with relatively small stateless populations: Moldova has been heralded for good practices, where the law makes special consideration for children.⁹
- Ensure all nationality laws and related policies uphold gender equality, including citizens' rights to confer nationality on their child without discrimination on the basis of gender or other protected grounds.¹⁰
- Promote accession to international and regional instruments on nationality, and encourage retroactive application of legal safeguards to prevent and reduce statelessness.
- States should establish common standards for nationality and statelessness determination procedures, and should emphasise and ensure that these are child-sensitive.

⁴ <https://iris.who.int/handle/10665/341911>

⁵ UNICEF, 'Reaching children with a holistic approach: Enhancing synergies between social protection and civil registration systems for an inclusive and equitable society', September 2023, <https://www.unicef.org/reports/reaching-children-holistic-approach>

⁶ <https://www.unicef.org/wca/media/8976/file/CRVS%20Humanitarian%20final.pdf>

⁷ For information on good state practice in Europe, see the European Network on Statelessness's Statelessness Index (<https://index.statelessness.eu/>) and in particular, the list of norms and good practices against which each State's performance is assessed (<https://index.statelessness.eu/about/methodology>). See also [ENS's Statelessness Caselaw Database](#), [ENS Report on addressing the risks of statelessness among children in migration in Europe](#); [ENS Thematic Briefing on birth registration and the prevention of statelessness in Europe](#), and [ENS Policy Briefing on ensuring the right to a nationality for children in migration in Europe](#)

⁸ <https://index.statelessness.eu/country/spain>

⁹ UN High Commissioner for Refugees (UNHCR), Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons, July 2020, <https://www.refworld.org/policy/opguidance/unhcr/2020/en/123292>

¹⁰ Presently twenty-four countries deny female citizens the right to confer nationality on their children on an equal basis with male citizens and two countries deny male citizens' right to confer nationality on children born outside of legal marriage on an equal basis with women: <https://www.equalnationalityrights.org/the-problem/>

II. SESSION 2: Speedily re-establishing missing elements of children's identity Art.8(2)

Speakers: Deneisha Moss, ISI; Bhaskar Mishra, UNICEF; Neha Gurung, Citizenship Affected People's Network Nepal; Areej Alshammiry, activist and academic; Mikiko Otani, CRC Committee member

The second session outlined specific challenges associated with establishing and re-establishing identity, when children are undocumented (e.g. lack legal identity) or deprived of nationality resulting in statelessness. Discussions revolved around examples in place to facilitate late birth registration and documentation, as well as the key tenets necessary to ensure fair, accessible, child-friendly procedures to access justice.

There were general reflections on how States could be encouraged to comply with Art 8(2) including:

- Adopting language in law around “speedy or expeditious” establishment or reestablishment of identity
- Removing reservations to international instruments related to nationality rights
- Providing clear timelines for naturalisation where a child has been deprived of their nationality
- Implementing institutional measures to oversee continuous training of civil registration officials
- Better accountability from civil registration officials when they fail to issue required documentation

Promising practices and recommendations related to facilitating late birth registration

- Promotion of catch up birth registration through schools to identify unregistered children and facilitate their regularisation in their community as has been done for example in Bangladesh, India and Senegal¹¹
- Waiver of birth registration fees and implementing minimal waiting times as in parts of India
- Use of health workers to act as declarants to facilitate the work of civil registration authorities
- Addressing the specific situations of children on the move and born in transit and giving visibility to the risk of statelessness arising as a result.

Access to procedures, courts and other effective remedies for children deprived of their nationality

- Ensuring formal statelessness determination procedures are accessible to children and take into account their specific needs: In France for example a legal representative is available during interviews
- Ensuring legal aid and other due process guarantees are in place such as child-friendly information on the process, interpretation and a clear understanding of the proceedings
- Shifting the burden of proof to states where unaccompanied minors are concerned, and ensuring (in cases where personal details such as name and age of the minor is assumed), simplified procedures are in place to facilitate the retroactive amending of any documentation with a reduced timeframe
- For children recognised as stateless, States should ensure facilitated naturalisation is processed on a priority basis so as to ensure nationality is acquired in the shortest possible time, in accordance with the principle of the best interest of the child – in Greece¹² for example stateless people acquire the right to apply for naturalisation after three years' legal stay, on the same basis as recognised refugees, which reduces the risk of prolonged statelessness for children.
- Promoting the use of interim measures to ensure access to services (e.g., education and healthcare) for children while awaiting the outcome of court proceedings

¹¹ <https://child-identity.org/strengthening-birth-registration-to-improve-access-to-education/>

¹² <https://index.statelessness.eu/country/greece>

III. SESSION 3: Speedily re-establishing missing elements of children's identity in emergency situations (Art. 8(2) CRC)

Speakers: Bina Ramanand, Family Frontiers Malaysia; Danaé van der Straten, Global Survivors Fund; Benoit Van Keirsbilck, CRC Committee member

Discussions and recommendations centred on challenges around destroyed or inaccessible civil registries and registry officials, births in territories under control of non-state actors, unaccompanied children in migratory contexts, etc. Solutions were focused on robust CRVS systems and international cooperation.

Promising practices and recommendations to comply with Art 8(2) in emergency situations

- **Shock and disaster resistant and responsive CRVS systems:**¹³
 - Systems have the capacity to convert temporary documents (e.g., handwritten birth certificates) to documents that can be recognised at a later stage
 - Implementation of temporary and emergency measures (e.g., extended birth registration, simplified procedures, decreased evidentiary requirements, flexibility regarding presence of parents required for registration process)
 - Simplified registration procedures for children born in non-government-controlled areas
 - Promotion of mobile registration units in conflict or emergencies situations, including rural areas
 - Robust back-ups of data in copy or a server to preserve records during times of conflict or crisis
- **International Cooperation**
 - Enhanced integration between government and UN systems with easily retrievable data and cloud services, where registration leads at a minimum to access to services
 - Promoting the ratification of International Commission on Civil Status Convention No.34 which facilitates the issuance of multilingual and coded extracts/certificates from civil-status records.
 - Promoting the development of bilateral and multilateral agreements on the acceptance of alternative documents between countries during conflict or crisis periods
 - Increased ratification and implementation of the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children
 - Identification and engagement of special procedures for whose mandate the issue of children's identity in humanitarian situations is relevant, such as the Special Rapporteur on Transitional Justice.
 - Engaging the use of international committees of inquiry to complement the work of the CRC Committee that has the requisite capacity to deal with individual legal identity complaints arising from warzones.
 - Addressing the specific situations of children on the move and born in transit and giving visibility to the risk of statelessness
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IV. SESSION 4: "Other" justice and remedies issues linked to identity.

Speakers: Mia Dambach (CHIP); Lynelle Long (InterCountry Adoptee Voices); Boonyoung Han, Danishkorean adoptees; Peter Møller, Danishkorean adoptees; Arthur Kermalvezen, Origines Association; Audrey Kermalvezen, Origines Association; Ann Skelton, CRC Committee Member

The final session focused on the right to family relations against the backdrop of less regulated and emerging developments such as alternative care, adoption, assisted reproductive technologies and surrogacy. To prevent the need for access to justice for violations of right to identity in family relations, there was consensus

¹³ <https://www.unicef.org/wca/media/8976/file/CRVS%20Humanitarian%20final.pdf>

on the need to prohibit anonymous practices leading to gaps in information about origins – biological, gestational, legal and social. This requires systematic recording of all relevant elements of the child’s identity.

For all children deprived of their identity in family relations (including biological parents and siblings)

- State-funded services to support with access to origins¹⁴. This should include access to DNA tests on platforms such as ancestry.com¹⁵ which should be legalised and regulated.
- Promote the creation of an international DNA registry or at least communication between databases
- Facilitate actions under the Optional Protocol on a communications procedure for children/former children on the right to know their origins through Individual communications or inquiry processes
- Clearly separate the right to know one’s biological parents from the right to establish one’s parentage
- Where confidential births are permitted, record the identity of the biological parents to be kept secret for a limited period of time, which can be made available to the child according to their maturity (e.g. from 14 years of age with support available)
- When it’s possible and known, ensure the transmission of information about siblings and medical history (personal and familial) to the child
- Remove the possibility for biological parents to remain anonymous after their death if they have donated their human reproductive material or given birth in secrecy¹⁶

Promising practices and recommendations in alternative care and adoption

- Combat institutional and social maltreatment suffered by parents and children in alternative care by rights training aimed at social workers, judges, and lawyers¹⁷
- The practice of registering parents or children under “false names” should be discontinued, as these can prevent biological connections from being known and have an impact on the ability of children to establish his/her identity, know their origins and acquire nationality by descent.
- In cases of illegal practices such as adoption, establishment of survivor friendly reconciliation processes with lower standards of proof and financial compensation, such as Royal Commission in Australia.¹⁸

Promising practices and recommendations in assisted reproductive technologies and surrogacy

- Add ethical standards in the use of gametes in line with human dignity. E.g.: prohibit use of gametes or embryos after 10 years from the day of donation as well as the use of the post-humous gametes
- Ensure the transmission of non-identifying data of donor to intending parents and to the child to allow child to have access, especially medical information¹⁹
- Regulations on international surrogacy to establish minimum safeguards on recording and preserving the child’s origins, prevention of sale of children and ensuring right to a nationality

Cross cutting considerations:

Throughout the sessions, there was a recurrent theme around the importance of invoking existing guidance (e.g., laws, UN resolutions²⁰ and frameworks), cooperation and capacity building of all stakeholders. Specific recommendations included:

¹⁴ www.afstammingscentrum.be

¹⁵ For example, Guatemala has started offering free DNA tests in ICA matters

¹⁶ In France, children born through naissance sous X can have access to their biological mother’s details without her consent upon her death

¹⁷ <https://www.atd-quartmonde.org/wp-content/uploads/2019/12/Hidden-Dimensions-of-Poverty-20-11-2019.pdf>

¹⁸ <https://www.childabuseroyalcommission.gov.au/>

¹⁹ Mia Dambach and Nigel Cantwell, Child’s right to identity in surrogacy in Research Handbook on Surrogacy (eds. Katarina Trimmings, Sharon Shakargy & Claire Achmad; Edward Elgar Publishing Ltd), 2023

²⁰ For example HRC resolutions on birth registration see A/HRC/RES/52/25, ‘Birth registration and the right of everyone to recognition everywhere as a person before the law’, 4 April 2023, https://digitallibrary.un.org/record/4009924/files/A_HRC_RES_52_25-EN.pdf and A/HRC/RES/37/20, Rights of the child: Protection of the rights of the child in humanitarian situations, 23 March 2018 <https://undocs.org/A/HRC/RES/37/20>

Expert Meeting on Access to Justice and Effective Remedies
Geneva Hostel, 18 May 2024

- Targeted capacity building of legal and judicial professionals on the critical need for legal aid, access to courts, legal representation, and simplified and due process guarantees for unaccompanied minors must also be ongoing and prioritised
- Training to authorities, NGOs, and other stakeholders involved in this registration process, particularly on the imposition of nationality. Specific training directed at border officials to register correctly the name, nationality or (indications of) statelessness, and age of the child.
- Increased understanding and capacity building within UN agencies on the cross-cutting nature of identity rights and its intersection across mandates
- Increased use and implementation at country level of the SDG 16.9 and the definition of legal identity as created by the UN Legal Identity Taskforce and adopted by the ECOSOC Committee²¹
- Addressing the specific situations of children on the move and born in transit and giving visibility to the risk of statelessness

ANNEX 1 – PARTICIPANTS

List of CRC Committee members and appointed participants (remote)**

1. Suzanne Aho **
2. Hynd Ayoubi-Idrissi
3. Bragi Gudbrandsson
4. Faith Marshall-Harris **
5. Mikiko Otani
6. Luis Pedernera
7. Ann Skelton
8. Velina Todorova
9. Benoit Van Keirsbilck
10. Michael (Ha Ryong) Jung, Human Rights Officer, Human Rights Treaties Branch, OHCHR
11. Marta Benitez Brañas, intern
12. Katherine Castro Londoño, intern
13. Audrey-Anna Descampe, Researcher and Assistant to CRC Committee member
14. Ana Luisa de Campos

List of participants (* lived experience, ** remote)

1. Areej Alshammiry, MENA (scholar and activist)*
2. Iris Amaldi, ATD Fourth World
3. Armando Augello Cupi, Italy (Unione Italiana Apolidi)*
4. Christina Baglieto (CHIP) **
5. Zoé Bertrand (Global Survivors Fund) **
6. Laurence Bordier (Child Identity Protection)
7. Valeriia Cherednichenko (UNHCR)
8. Susanna Collins (Institute on Statelessness and Inclusion)
9. Siena Demetriou (Child Identity Protection)
10. Mia Dambach (Child Identity Protection)
11. Yuko Doi (UNHCR)
12. Helen Griffiths (OHCHR)
13. Neha Gurung, Nepal (Citizenship Affected People's Network)*
14. Catherine Harrington (Global Campaign on Equal Nationality Rights)
15. Boonyoung Han (Danishkorean adoptees)
16. Arthur Kermalvezen (Origines)*

²¹ E/CN.3/2020/15), 'Introduction of the UN Legal Identity Agenda – a Holistic Approach to Civil Registration, Vital Statistics and Identity Management, 18 December 2019

Expert Meeting on Access to Justice and Effective Remedies
Geneva Hostel, 18 May 2024

17. Audrey Kermalvezen (Origines)*
18. Terry Kiarie, Kenya (ATD 4th World)*
19. Lynelle Long (Intercountry Adoptee Voices)**
20. Kirsten di Martino (UNICEF)
21. Bhaskar Mishra (UNICEF)
22. Peter Møller (danishkorean adoptees)
23. Deneisha Moss (Institute of Statelessness and Inclusion)
24. Bina Ramanand, Malaysia (Family Frontiers, Global Campaign on Equal Nationality Rights)
25. Aleksandra Semeriak, Europe (European network on Statelessness)*
26. Rachel Sloth-Nielson (Oxford University)
27. Gisela Sin Gomiz (Child Identity Protection) –
28. Danaé van der Straten Ponthoz (Global Survivors Fund)

ANNEX 2 – AGENDA

SATURDAY 18 MAY: EXPERT CONSULTATION WITH CRC COMMITTEE ON ACCESS TO JUSTICE AND EFFECTIVE REMEDIES ON IDENTITY RIGHTS

8h15-8h30: Registration and setting up

8h30: Welcome and roundtable introductions

8h40: Housekeeping

8h45-10h45: Session 1 No justice without identity (birth reg & nationality) Arts. 7-8 CRC

8h45 Session Introduction: Valeriia Cherednichenko, UNHCR

8h50 Keynote speaker: Kirsten Di Martino, UNICEF

9h05 Lived experience: Terry, ATD 4th World; Armando, Unione Italiana Apolidi; and Aleksandra, ENS

9h35 Group discussions to identify solutions to challenges

10h15 Group presentation and Roundtable discussions

10h35-10h45 Closing: Velina Todorova, CRC Committee member

Issues to be covered :

- × Most affected (poverty, children on the move, UASC, conflict, minority groups, etc.)
- × Causes (poverty, discrimination, birth circumstances such as born out of wedlock, etc.)
- ✓ Legislative reforms (gender equality in birth registration and nationality laws,
- ✓ Access to birth registration (free, accessible, gender equal)
- ✓ Family relations (who and what is registered at birth)
- ✓ Establishing when the child would otherwise be stateless to access safeguards (i.e. citizenship determination) and/or child-friendly SDPs
- ✓ Mobile units that facilitate birth registration and/or SDPs
- ✓ Role of partnerships between governments and CSOs (including stateless-led organizations) in addressing the unique legal challenges faced by stateless children.
- ✓ No access to reparation without identity

10h50-11h15: Morning pause

11h15-13h00: Session 2 Speedily re-establishing missing elements of children's identity Art.8(2)

11h15 Session intro : Deneisha Moss, ISI

11h25 Keynote speaker: Bhaskar Mishra, UNICEF

11h40 Lived experience: Neha, ISI; and Areej Alshammiry, activist and academic

12h00 Group discussions to identify solutions to challenges

12h35 Group presentation and roundtable discussions

12h50-13h00 Closing: Mikiko Otani, CRC Committee member

Issues to be covered

- × Catch-up birth registration systems that are not accessible, free and effective
- × Deprivation of nationality and derivative loss of nationality (e.g. NE Syria, adoptions)
- ✓ Legislative reforms (e.g. safeguards to preserve nationality)
- ✓ Inter-operability of civil registration with other sectors such as health, education and social services
- ✓ Independent body that can review identity decisions (e.g. administrative appeals tribunal)
- ✓ Build capacity and raise awareness among officials responsible for identifying and recording nationality status, as well as among civil society, refugees and migrants

14h15-15h30 : Session 3 Speedily re-establishing missing elements of children's identity in emergency situations (Art. 8(2) CRC)

- 14h15 Session intro moderator : Bina Ramanand
14h20 Keynote speaker: Danaé van der Straten Ponthoz, Global Survivors Fund
14h35 Group discussions to identify solutions to challenges
15h00 Group presentation/roundtable discussions
15h20-15h30 Closing: Benoit Van Keirsbilck, CRC Committee member

Issues to be covered

- × Children wo/imposed nationality due to internal conflict (e.g. NE Syria, Myanmar, Ukraine)
- × Children born of conflict related sexual violence (and access to legal identity as a form of reparation)
- × Inappropriate procedures applied to children (e.g. invasive age determination procedures, detention of children)
- × Forcefully displaced children with no legal identity due to displacement in emergency situations, including refugee children born in home country and have not been registered or couldn't register in the host country; and children who face barriers in accessing registration due to their status, nationality, places of birth or late registration.
- ✓ Duty to record all relevant information about identity related to all periods of the child's life
- ✓ Obtention and recognition of identity documents in cross-border situations
- ✓ Promotion of family reunification/kinship care including considering third country options

15h30-16h00: Afternoon pause

16h00-17h30 : Session 4 "Other" justice and remedies issues linked to identity

- 16h00 Session intro moderator, Mia Dambach, Child Identity Protection
16h10 Lived experience: Lynelle Long (ICAV), Boonyoung Han and Peter Møller (danishkorean adoptees),
Arthur and Audrey Kermalvezen (Origines)
16h35 Group discussions to identify solutions to challenges
17h05 Group presentation and round table discussion
17h20-17h30 Closing: Ann Skelton, CRC Committee member

Issues to be covered

- × Statutes of limitations, adults deprived of identity as children, etc.
- × Loss of identity in alternative care including for indigenous groups
- × Family relations (alternative care, adoptions and assisted reproductive technologies)
- × Access to justice and reparation for stateless children in relation to other cases (not linked with establishing nationality or identity), such as criminal cases (family abuse, rape etc.) or other administrative cases.
- ✓ Cultural identity
- ✓ Truth and reconciliation, Justice (retributive and restorative)
- ✓ Reparation: restitution, compensation, rehabilitation (e.g. education, livelihood opportunities, legal, medical, psychological and social services), satisfaction (apologies, memorialisation, etc) and guarantees of non-recurrence (institutional reforms, sensitisation campaigns, etc)

17h30 : Conclusions and moving forward