



## Access to justice and effective remedies for children whose identity rights have been contravened (Arts. 7-8 CRC)

The Working Group on Identity Rights is pleased to make this submission for input to the CRC Committee’s General Comment 27 on Access to Justice and Effective Remedies (AJER). This submission is linked to the expert consultative meeting held on 18 May 2024<sup>1</sup> and should be read with the summary of that meeting<sup>2</sup> as well as individual submissions made by endorsing organisations. The submission is structured by highlighting promising practices in response to observed challenges in AJER for rights violations. Our recommendations call for scaling up of these practices in a sustainable manner.

**Observation and recommendation 1 (OR1):** Having a legal identity is both a stand-alone right and a precondition for accessing justice and remedies for all CRC rights violations. States should therefore prioritise initiatives that accelerate legal identity including universal birth registration (SDG 16.9).

- At least 167 million children are not registered at birth<sup>3</sup> resulting in a lack of legal identity which requires at a minimum, that name, sex, place and date of birth are recorded. Birth registration and legal identity are also key elements to help establish nationality and prevent statelessness (see OR2). Even when children are registered at birth, information may be incorrectly recorded such as the child’s parent(s) and/or their nationality (status) - if at all documented - which can lead to irresolvable questions about one’s origins.
- States should create a broad “supply” of robust, immediate, free, accessible and equitable birth registration systems<sup>4</sup> by:
  - enabling interoperability between Civil Registration and Vital Statistic (CRVS) systems and other sectors including health, education and social protection;
  - prioritising decentralisation of services to ensure that CRVS systems reach all communities;

UNICEF notes that “children without birth certificates face uncertain futures. They can be cut off from routine vaccinations and other health care. They may be prevented from receiving social assistance, inheriting property, attending school or registering for exams.” (FN 3)

<sup>1</sup> <https://www.child-identity.org/expert-meeting-with-crc-committee-on-childs-right-to-identity-and-access-to-remedies/>

<sup>2</sup> See 18 May 2024 Expert meeting summary [https://www.child-identity.org/wp-content/uploads/2024/05/CRC-Expert-Consultation-summary-notes-11-June-2024.Final\\_.pdf](https://www.child-identity.org/wp-content/uploads/2024/05/CRC-Expert-Consultation-summary-notes-11-June-2024.Final_.pdf)

<sup>3</sup> <https://data.unicef.org/resources/birth-registration-for-every-child-by-2030>.

<sup>4</sup> See promising practices in [18 May 2024 Expert meeting summary](#), UNHCR (2017) [Good Practices Paper - Action 7: Ensuring birth registration for the prevention of statelessness](#); and [Birth Registration UNHCR Global Field Survey on Policies and Practices](#)

- ensuring digitalisation initiatives occur as part of wider E-governance country reforms that are government-led and compliant with human rights standards. They should be developed in a way that simplifies procedures, and be made available to all populations including those facing obstacles in accessing E-systems (e.g.: those living in poverty, rural and conflict zones, including those without documentation and/or who may be stateless); and
- introducing specific procedures in case of conflict (OR4).
- States should prioritise creating “demand” for birth registration by ensuring that all :
  - actors especially parents are aware of the importance of birth registration including through targeted public information;
  - administrative barriers (restrictive reporting deadlines, burdensome documentation, fees, geographical etc.) are removed;
  - parents have an equal right to register the child’s birth (without discrimination based on sex, nationality, documentation, marital status etc.); and
  - children can access services without discrimination.
- When children have not been registered, they should have AJER and not be excluded from basic services such as education and health:
  - States should simplify procedures for late registration, including removal of fees, simplified administrative procedures and flexibility when requirements cannot be met (e.g. Norway and Switzerland);
  - Catch-up birth registration (e.g. identification, notification and registration procedures) including through schools and social protection should be prioritised;<sup>5</sup>
  - Children should be able to apply for birth certificates independently of their parents. To illustrate, the great majority of EU member States “do not regulate the issue of children under 18 years applying on their own for their birth registration, if parents fail to do so.”<sup>6</sup> Belgium, France, Luxembourg, Poland and Romania provide for late registration for other interested parties such as relatives and professionals.<sup>7</sup>
  - Consortium for Street Children has developed a Legal Atlas which provides an outline of laws that will enable children to establish their legal identity. European Network on Statelessness (ENS) have a Statelessness Index, which is a comparative tool that assesses 32 European countries’ on the protection of stateless people and the prevention and reduction of statelessness.

I suggest that I can not do my ID and that I will not be able to write my matric. I suggest that the court should the minister of home Affairs that they must help us me and my sister to have birth Certificate and to get social grants like other children.

This month I went to home Affairs to check my birth certificate and I was told that they can not see my file and I have to start again and I applied for another birth Certificate. filed we don't have money to start again because I need to get document from school and hospital. filed felt very sad because I am going to have to do the things I have done and it was like they are bringing to me because I can not do the things I have done in the past years. They lost my file documents that's not our problem what they must do is to give me the birth certificate I have done the past years.

07/07/2023  
ZMT MRN

all my friends were going to school also were enjoying their grants at time I had no grant

I remember when I was Grade 5 at Ndlovini Primary School many learners were getting school uniforms and I was the one who couldn't have it and I felt very sad

I applied my birth certificate this year at Home Affairs and I was very happy to apply for it. When I went back I was not able to get the birth certificate because the manger was not at the office

I want the court to tell the minister to give us over birth certificate (like) because children like my self without birth certificate struggle to go to school and also to get social grants without birth certificate.

07/07/2023  
ZMT MRN

**Mazibuko & others v  
Minister of Home  
Affairs  
Centre for Child Law  
as Amicus Curiae**

**Child Rights  
Compliant Approach  
to Strategic Litigation**  
<https://www.acrisl.org/>

**g/  
Child participation  
The child’s right to be  
heard**

<sup>5</sup> See promising practices in [18 May 2024 Expert meeting summary](#)

<sup>6</sup> <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/applying-birth-registration>

<sup>7</sup> *Ibid*

**Observation and recommendation 2 (OR2) :** Having a nationality is both a stand-alone right and often a prerequisite for accessing justice and remedies for all CRC rights violations. States should therefore prioritise initiatives that prevent statelessness and accelerate the achievement of nationality for all without discrimination.

UNHCR observes that “stateless children are born into a world in which they will face a lifetime of discrimination; their status profoundly affects their ability to learn and grow, and to fulfil their ambitions and dreams for the future.”

- States should have a safeguard in law for children born in the territory who would otherwise be stateless to automatically acquire nationality at birth. In addition, there should be safeguards (e.g. Iraq and Philippines) to ensure abandoned children found in the territory (“foundlings”) are presumed to be born there to parents who are nationals, where there is no evidence to the contrary. A child’s right to acquire a nationality on the grounds of being otherwise stateless should not be dependent on the status of the parents and should be assessed separately. The examination of whether the child would otherwise be stateless should be carried out by a competent authority with the necessary expertise, and nationality of the child should be considered ‘unknown’, ‘undetermined’ or ‘under investigation’ for as short a period as possible and never longer than five years.
- Where stateless populations or populations of undetermined nationality reside in the country in which they were born – in particular where previous generations were denied nationality – child friendly nationality processes or verification exercises are required.
- Efforts should be made to prevent situations that can inadvertently lead to statelessness. Conditions on acquisition of nationality by *ius sanguinis* should not be discriminatory in nature (e.g. based on gender or marital status). Any loss of nationality must be conditional upon possession or acquisition of another nationality, including in adoption proceedings. Safeguards to prevent derivative loss of nationality where a parent has been deprived of that nationality are indispensable.
- States should facilitate the naturalisation of stateless children born outside of their territory and exempt them from requirements such as legal residence, citizenship or integration tests, language testing, application fees, or minimum income requirements. Several countries in Europe have reduced the nationality application fees for minors (such as Bulgaria, Czechia, Germany, UK) or sometimes exempt (e.g. for all children in Norway and Belgium and for children in care in Latvia and UK).
- Statelessness determination procedures (SDPs) are essential to identify stateless children among migrant populations.<sup>8</sup> In countries with an SDP, the authorities should be able to initiate the procedure *ex officio* and ensure there is cooperation between agencies, to ensure that children and other vulnerable groups are not disadvantaged in accessing the SDP. For child applicants, there should be child-rights-based adaptations and procedural safeguards, including the State assuming a greater share of the burden of proof, adhering to the best interests of the child principle, prioritisation in processing claims, and provision of adequately trained legal representatives, interviewers, guardians, and interpreters who are trained (see [UNHCR Handbook](#)).
- Promising European examples<sup>9</sup> include France, Hungary and Moldova, which have a dedicated SDP and ensure that unaccompanied children are provided with a guardian or granted legal aid. In Moldova, the procedure can be initiated orally or in writing, by the applicant or *ex officio*, and minors may be assisted by a representative, parent, or guardian. In Bulgaria, France, Ukraine, and the United Kingdom, a child applicant will only be interviewed if their legal representative or guardian is present. In Ukraine, the State Migration Service (SMS) should immediately contact the local child protection service if a child does not have a legal representative. In the UK, guidance states that decision-makers are required to assist child applicants “in the determination of statelessness by making enquiries which the child is not in a position to undertake”, although in practice the Home Office does not implement this consistently.
- Children should be included in all decisions affecting them. For example, recommendations from children about supporting their integration while on the move include the following:<sup>10</sup>

<sup>8</sup> [CRC, UNHCR, Best Interests Procedure Guidelines](#),

<sup>9</sup> Sources: [Statelessness Index](#); ENS briefing [Statelessness determination and protection in Europe](#)

<sup>10</sup> <https://familyforeverchild.org/wp-content/uploads/2023/12/Supporting-Integration-Toolkit-EN-FINAL.pdf>



**Observation and recommendation 3 (OR3):** Access to justice and effective remedies should be made available to all children whenever

- all relevant elements related to a child's identity in family relations – legal, psychosocial, medical and cultural – are not recorded at birth.
- decisions to modify the child's family relations are not routinely taken in the best interests of the child, including long term considerations.<sup>11</sup>

States should therefore ensure that:

- Laws should be introduced to prohibit anonymous births<sup>12</sup> such as naissance sous X, baby boxes, unknown gamete use and/or lack of recorded information about surrogate mother.
- The use of gametes from a third-party are prohibited post-humous or the donor is aged over 60 and/or after 25 years of freezing.
- Recourse to life story work and books,<sup>13</sup> open adoptions<sup>14</sup> and openness in third party reproduction<sup>15</sup> should be promoted to ensure that children are aware of all potential family relations from birth.
- For past practices that have enabled secrecy and produced missing elements about the child's birth and origins, access to justice includes:
  - procedures to ensure speedily re-establishment of identity (see OR 5);
  - all known medical information about the child's biological origins being automatically made available to the child;

Without "family relations" identity, children lack a fundamental part of their very existence, stunting their psychosocial well-being and compromises their development into adulthood.

<sup>11</sup> See example of situations across the world <https://www.child-identity.org/signature-publication/>

<sup>12</sup> For children born of war, this may not be applicable

<sup>13</sup> <https://journals.sagepub.com/doi/full/10.1177/2516103220985872> and <https://www.celcis.org/knowledge-bank/search-bank/blog/2021/02/how-life-story-work-can-help-care-experienced-children>

<sup>14</sup> <https://www.orangatamariki.govt.nz/adoption/adopting-in-nz/>

<sup>15</sup> <https://www.unicef.org/media/115331/file>

- procedures being in place to ask the child’s “biological” parents if they would be open to sharing identifying information; and<sup>16</sup>
- data protection rules prioritising the child’s right to identity (preservation and access to information)<sup>17</sup>
- search activities being regulated in a way that is aligned with international standards.<sup>18</sup>
- States should provide children in alternative care and adoption pathways to:
  - preserve cultural identity (Art.21(3) CRC) including as highlighted by [Tupua Urlich, National Care Experience Lead at VOYCE Whakarongo Mai](#) in this video, who proposes solutions based on his experience of New Zealand's care system.
  - re-establish their identities at birth. This may include opportunities to reconnect with first families and/or re-integration<sup>19</sup> (e.g. kinship care<sup>20</sup> and Prakas in Cambodia).
- State-funded search for origins services to facilitate access origins due to gaps in identity should be widely available (e.g. Adoptee-led Associations Back to the Roots<sup>21</sup> and BARO<sup>22</sup> in Switzerland and independent NGO Afstammingscentrum<sup>23</sup> in Belgium)
- For systemic cases of where children have been inappropriately removed from their families, transitional justice considerations may be appropriate. The CRC Committee’s recommendation stemming from the 2021 Day of General Discussion on Children’s Rights and Alternative Care, should be heeded to in relation to systemic policies of discrimination and historic harm where :

*States should establish mechanisms, including national inquiries, commissions or arbitration or restorative justice processes, to investigate and recognize the current, ongoing, recent and historic harm caused by care systems that were developed on the premise of systemic policies of discrimination, structural violence, marginalization and colonization relating to disability, ethnicity, gender or religion and affecting indigenous communities and others. Such mechanisms should work to acknowledge wrongdoings, reveal the truth, provide access to information, including concerning identity, hold accountable those responsible, provide comprehensive redress, including monetary and non-monetary reparations to survivors, and fundamentally transform systems to prevent future violations.*<sup>24</sup>

**Observation and recommendation 4 (OR4) :** the full enjoyment of identity rights (see OR 1, 2 and 3 above) are compromised even more in emergency settings.<sup>25</sup> Targeted efforts are therefore necessary to ensure not only that children can fully access their identity rights in this context, but importantly can have AJER, when this does not occur.

- Many children face discrimination owing to their ethnic, indigenous, religious, cultural, language, parent’s affiliation, gender, socio-economic status etc. Also, forcibly displaced and stateless children often face significant barriers due to their nationality, displacement and residence status of their parents. These children face additional challenges including administrative to access the justice system in order to acquire an identity and obtain reparations (e.g. victims of armed conflict).
- Forcibly displaced children face specific circumstances and challenges in accessing birth registration including discriminatory laws and policies, weak or centralised civil registry system, physical and financial

<sup>16</sup> See 4:3 minority judgement in Gauvin-Fournis and Silliau v. France <https://www.child-identity.org/december-2023-legal-memorandum-right-to-know-ones-origins-gauvin-fournis-and-silliau-v-france/>

<sup>17</sup> <https://www.child-identity.org/briefing-note-aligning-data-protection-rules-with-international-standards/>

<sup>18</sup> <https://www.child-identity.org/briefing-note-safeguarding-search-for-origins-from-illicit-post-adoption-practices/>

<sup>19</sup> <https://familyforeverychild.org/resources/guidelines-on-childrens-reintegration/>

<sup>20</sup> Global Kinship Care Guidance <https://familyforeverychild.org/resources/new-guidance-out-now-lessons-learnt-from-around-the-world-on-supporting-kinship-care/>

<sup>21</sup> <https://admin.backtotheroots.net/assets/inhalt/rapportannuel-2023.pdf> (see page 5)

<sup>22</sup> <https://lebaro.ch/>

<sup>23</sup> [www.afstammingscentrum.be](http://www.afstammingscentrum.be)

<sup>24</sup> CRC Committee (2022) 2021 Day of General Discussion on Children’s Rights and Alternative Care Outcome Report <https://www.ohchr.org/sites/default/files/2022-06/13Jun2022-DGD-Outcome-report-and-Recommendations.pdf>

<sup>25</sup> See Webinar on Child’s Right to Identity in Emergency Settings <https://www.child-identity.org/22-november-2022-virtual-symposium-childs-right-to-identity-in-emergency-settings/>

inaccessibility, loss of perquisite documents, requirements for legal residency status or other supporting documents, or unavoidable delays due to displacement, requiring flexible and responsive solutions.<sup>26</sup>

- Discriminatory laws and policies, combined with numerous other factors, hinder the right to access justice for children born of conflict-related sexual violence by restricting access to legal and civil documentation.<sup>27</sup> The lack of legal identity should not be a barrier to accessing justice and reparations in these situations.
- Family reunification should be prioritised where children are separated from their families.<sup>28</sup>
- In conflict situations, the crime of genocide includes “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” The Rome Statutes have a specific crime covering children encompassing the forcible transfer of children from their group to another group. Regrettably this has occurred with the forced removal of indigenous children, children from ethnic groups and/or removals during armed conflict. All efforts including through Transitional Justice (truth seeking,<sup>29</sup> justice,<sup>30</sup> reparation including guarantees of non-recurrence) should be explored.

**Observation and recommendation (OR5) :** Having all elements of a child’s identity preserved and restored requires compliance with Art.8 CRC particularly Art.8(2) which notes that “where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”

- States should ensure that there is a broad interpretation and enforcement of Art.8, which prima facie, would only apply to unlawful domestic situations. Yet, there are arguments<sup>31</sup> that it may be applicable in situations that were legal and accepted in the country at the time of deprivation of the child’s identity, but contrary to international standards. This is because Art.7(2) underpins and is connected to Art.8. Given that Art.7(2) concerns implementation of Art.7(1) which sets the scene for name, nationality and family relations (the subjects of Art. 8), it seems logical that international obligations can be inferred for Art. 8. Furthermore, the case of Argentina (the spirit behind and raison d’etre of this provision), shows that the practice of removing children from their families was legally acceptable by the Government at the time, but contrary to international norms. The scope of “illegal” cannot be restricted to solely acts contrary to applicable laws in the country. It is therefore essential that the evaluation of the “illegality” of the act be linked to international norms which are more objective in nature.

Furthermore, the reimagined agenda for access to justice requires that those who bear the greatest brunt of inequalities and systematic discrimination are not left behind and that all can claim rights for any breaches including the right to identity in all judicial and civil proceedings. Child-friendly access to justice and remedies should generally include:

- robust procedures for restitution of all identity elements for children as individual rights holders and not be dependent on the rights and/or status of any adult, including their parent(s);
- fast-tracked procedures given State obligation under Art. 8(2) CRC ;
- child-friendly awareness raising material of how to access the different procedures that are available;
- professionals trained in children’s rights and child-friendly procedures such as judiciary, lawyers, mediators, social workers, civil registry officials, and health workers;
- specialised fora to address such cases such as children’s courts and/or administrative bodies;
- full inclusion of child participation adapted to their age and maturity in any procedures; and

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<sup>26</sup> UN High Commissioner for Refugees (UNHCR), *Child protection Issue Brief : Birth Registration*, August 2013, <https://www.refworld.org/policy/opguidance/unhcr/2013/en/94148> [accessed 23 July 2024], UN High Commissioner for Refugees (UNHCR), *Birth Registration - UNHCR Global Field Survey on Policies and Practices*, 2016, <https://www.refworld.org/reference/themreport/unhcr/2016/en/115462> [accessed 23 July 2024]

<sup>27</sup> Global Survivors Fund paper <https://www.child-identity.org/children-born-of-conflict-related-sexual-violence-and-rights-to-identity/>

<sup>28</sup> Human Rights Council Rights of the child: realizing the rights of the child and family reunification. A/HRC/RES/49/20. 8 April 2022. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHR-C%2FRES%2F49%2F20&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>29</sup> UNICEF (2011) Children and Truth Commissions <https://shop.un.org/books/children-truth-commissions-5177>

<sup>30</sup> Cécile Aptel (2023) <https://www.routledge.com/Atrocity-Crimes-Children-and-International-Criminal-Courts-Killing-Childhood/Aptel/p/book/9781032420554>

<sup>31</sup> See ongoing research outlined in Dambach, M (2024) Chapter 1: Using international frameworks for access to justice and effective remedies for systemic removal of children from their families

- appointment of a person of reference, use of hotlines and free legal representation.