1961 CONVENTION ANNIVERSARY SYMPOSIUM

MAKING THEIR DAYS COUNT: THE 1961 *CONVENTION ON THE REDUCTION OF STATELESSNESS* AND THE *CONVENTION ON THE RIGHTS OF THE CHILD*

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The *Convention on the Rights of the Child* ('*CRC*') is definitely informed by many documents — binding and non-binding — that actually predate it. Of course, these include the *International Covenant on Civil and Political Rights* ('*ICCPR*'),[1] the *International Covenant on Economic, Social and Cultural Rights*, the *Universal Declaration of Human Rights* and the *Convention on the Elimination of Discrimination Against Women* ('*CEDAW*').[2] There are also instruments that are not per se 'human rights instruments' but that actually inform the *CRC*. For example, the *Hague Convention on the Civil Aspects of International Child Abduction* or the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* can be mentioned.[3]

Now, one would be hard pressed to find many binding instruments that have had as much influence and predates the *CRC* by 28 years or more than the *Convention on the Reduction of Statelessness* ('*1961 Convention*').[4] When the *CRC* was being drafted, there was already understanding of the added value that the *1961 Convention* would bring on board. In fact, if you go and look at the *travaux préparatoires*, Germany, for example, as early as 1981, said that there was a reluctance by member states of the United Nations to meet the minimum requirements imposed by the rules of the *1961 Convention*. This is shown by the small number of states that had accepted the instrument, but still urged the members of the United Nations to accept the *1961 Convention* or to take into account the principles in their internal law. There was even a recommendation that this very *Convention* could be specifically mentioned under art 7 of the *CRC*.[5] These were discussions that were raised by countries such as Malawi, Russia and

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1 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('*CRC*').

2 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Covenant of Economic, Social and Cultural Rights*, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976); *Universal Declaration of Human Rights*, UNGA Res 217A (III) (10 December 1948); *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('*CEDAW*').

3 *Hague Convention on the Civil Aspects of International Child Abduction*, opened for signature 20 November 1989, HCCH 28 (entered into force 2 September 1990); *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, opened for signature 29 May 1993, HCCH 33 (entered into force 1 May 1995).

4 *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975) ('*1961 Convention*').

5 *CRC* (n 1) art 7.

so forth, and this was done as late as the second reading of the draft *CRC*. As a result, inevitably, the content of the *1961 Convention* has actually significantly informed the provision that we have under the *CRC* and, in particular, art 7.[6] Notably, the *1961 Convention* continues to inform the jurisprudence that comes from the UN Committee on the Rights of the Child ('Committee').

Now, a reading of the provisions of the *1961 Convention* must be made in light of subsequent developments in international law and, in particular, international human rights law — obviously the *CRC*, the *ICCPR* and so forth have some relevance. But we also should not miss the added value that regional human rights instruments actually bring on board.

So, if you want to look at, and appropriately understand, arts 1–4 of the *1961 Convention*, you also need to reflect on what the best interests of the child would entail.[7] There are also a number of countries that talk about doing child rights impact assessments on their laws, including on nationality legislation, and such an approach requires a reflection in reference to the *CRC*. If it is an African country, such a state would then need to rely, to some degree, on the *African Charter on the Rights and Welfare of the Child*.[8]

There are multiple examples of where children's nationality issues are not getting the necessary attention that they deserve, even though a number of states are quick to assert that children's rights, including issues related to nationality, are a priority within their jurisdiction. If a state is saying that it has the legislation in parliament but it has been pending for too long, or a nationality legislation that would help us to push the boundaries on children's nationality and eradicating statelessness that is in a similar situation, or otherwise any other related law that has unnecessarily waited too long to see the light of day, how do you actually substantiate the argument that children's issues are a priority within your government? It is critical to walk the talk.

Moreover, appreciating the value of children's rights principles to interpret nationality-related issues is important. If you are talking about understanding and interpreting arts 1–4 of the *1961 Convention*, there is definitely the need to rely on the provisions of the *CRC* (bests interest, non-discrimination etc) and some other regional instruments.[9]

Furthermore, the obligations, for example, imposed by the *CRC* are not only directed to the country of birth of a child, but to all countries where a child has a link, for example, as a result of parentage. We have had cases of state succession, such as the situation in South Sudan and Sudan, where a new country was created, where predecessor and successor states may also have obligations. State succession has led to a number of individuals, including children, being stateless and, again, the understanding of arts 1–4 of the *1961 Convention* needs to be able to rely on a number of provisions within the human rights framework.[10]

Now let me go one step back and underscore that statelessness is the antithesis to childhood and children's rights. I am still waiting to see anyone produce any

6 ibid.

7 *1961 Convention* (n 4) arts 1–4.

8 Organisation of African Unity, *African Charter on the Rights and Welfare of the Child*, opened for signature 11 July 1990, OAU Doc CAB/LEG/24.9/49 (entered into force 29 November 1999).

9 *1961 Convention* (n 4) arts 1–4.

10 ibid.

convincing evidence that says that 'there may be exceptional reasons why statelessness would promote children's best interests'. Absolutely not!

What statelessness and its severe consequences for children involve would probably require days to discuss, books to write and so forth and, as a result, only the surface can be scratched here. The reasons that lead to childhood statelessness are actually multitudinous. We are talking about discrimination based on, for example, race, religion, minority status and gender. The right of non-discrimination, the right to education, the right to the highest attainable standard of health, the right to identity, the right to be protected from abuse and neglect and the right to freedom of movement (and currently in the context of COVID-19 too) are indeed some of the rights that are often at stake when children are left stateless. It is also important, and it is actually something we emphasise as the Committee on the Rights of the Child, that the right to acquire a nationality is actually an enabling right that is similar to the right to education. This is because it has implications for a whole range of rights that are provided by the *CRC*. Being stateless has lifelong and intergenerational negative impacts — and, as a result, it is possible to compare its effects to intergenerational poverty, stunting or wasting.

Quite a number of things that those of us with a nationality take for granted (some people even have dual nationality) are things that children as well as adults who are stateless struggle to enjoy. Make no mistake about it, the statelessness situation that we currently face at the global level is a child rights crisis. We often say that 'there is no second chance to make a first impression' and unfortunately, the first impression that these children born into statelessness experience is that of a world that shamelessly labels them as 'illegal', 'non-belonger', 'Bidoon', 'unwelcome', 'unwanted' and so forth.

Now, as a Committee, what is it that we have actually tried to reflect and give guidance on? I will come to that in a moment with the limited time that I have.

Let me first spend a couple of minutes and build on what the previous speaker has kindly and clearly articulated in relation to arts 1–4 of the *1961 Convention*.[11] As a Committee, we need to pay very close attention, for example, to art 1(3) of the *1961 Convention*, which provides for safeguards.[12] It would have limited importance if states took the major steps that are required under both the *CRC* and the *CEDAW*. It makes reference, for example, to 'mothers', but, as the Committee on the Rights of the Child, we want to expand it to say that it should not only be about mothers, but also include fathers. The concept that says 'otherwise stateless' also requires evaluating the nationality of the child and not simply examining whether a child's parents are stateless. This argument reinforces the point that was made earlier that the child is absolutely central to the work that we do on the basis of the *CRC*.

The notion of 'undetermined nationality' deserves attention here: for how long should children be labelled with such a status? We have often emphasised the point that the one thing that children do not have is time. One year in the life of a child is 6% of his or her childhood. There are a number of countries where children are categorised under the notion of 'undetermined nationality' for a long period of time. For the application of arts 1 and 4 of the *1961 Convention*, such a period actually should not exceed five years, which is the maximum period of residence

11 ibid.

12 ibid art 1(3).

that may be required under art 1(2)(b) of the *1961 Convention*.[13] So this is an important issue even for us as the Committee on the Rights of the Child that we need to continue to emphasise. Clearly, when children are designated as having 'undetermined nationality', they should have access to all social services on equal terms with citizen children. It is an absolutely critical issue that needs to be complied with because the right to an adequate standard of living would also depend on this.

Let me now progress to highlighting what we have done in the last 28 years in terms of the jurisprudence that we have provided as the Committee on the Rights of the Child. We have emphasised the need to ratify both the 1954 *Convention relating to the Status of Stateless Persons* and the *1961 Convention*.[14] As a Committee, we have serious concerns about some of the reservations that have been entered into in relation to arts 7 and 22 of the *CRC* and art 9 of the *CEDAW* but also a number of reservations that have been lodged in relation to the *1961 Convention*.[15] The prevention of statelessness among children born on the territory has drawn the attention of the Committee on many occasions. In this respect, questions have been raised as to whether the Committee prescribes universal *jus soli*. The answer is 'no we don't!' We are aware that that the drafters of the *ICCPR* said that a state could not accept an unqualified obligation to give its nationality to every child born on its territory, regardless of the circumstances. But when the child would otherwise be stateless, as a Committee, we try to push the boundaries in our conversations with states so that such a child would not be left stateless. Of course, one of the keys to an effective implementation of the right to acquire nationality is that a child is registered immediately after birth. In fact, the issue about birth registration is pretty much our 'bread and butter'. You have to be counted in order to count, and, as a result, children have to be registered immediately after birth.

The *1961 Convention* does not require birth registration for the operation of its provisions. But birth registration is a critical element that could help with the acquisition, as well as proof, of nationality. It could help with establishing facts about birth, such as the identity of parents and place and time of birth. We have reviewed many countries that have unnecessarily cumbersome procedures for birth registration or those that make it cumbersome because they argue that since birth registration is proof of nationality, non-nationals cannot have their births registered. The Committee does not hold the position that birth registration is proof of nationality. But it is an important element of establishing nationality. In fact, the importance of birth registration in every jurisdiction is one of the reasons why we have it within the Sustainable Development Goals. Measures should be taken to facilitate and/or expedite procedures for birth registrations that could, among other things, assist with the acquisition of nationality. I have already emphasised the point that children often do not have time and one year in the life of a child is 6% of his or her childhood.

Deprivation and loss of nationality is a topic with which we have continued to engage, including in the context of the war on terror and a whole range of other contexts. Here, art 8 of the *CRC* explicitly addresses the right to preserve a child's identity and we try to emphasise the point about the importance of this provision

13 ibid arts 1, 1(2)(b), 4.

14 *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960); *1961 Convention* (n 4).

15 *CRC* (n 1) arts 7, 22; *CEDAW* (n 2) art 9.

when we are having discussions with states about the deprivation and loss of nationality.[16] The prevention of statelessness amongst children who are born abroad, foundlings (who are also relevant to the *1961 Convention*), international surrogacy and adoptions also requires closer guidance. These are topics that we, as the Committee on the Rights of the Child, have continued to discuss with states and states will need more guidance in moving forward.

Now let me wrap up. There still remains a number of aspects of statelessness to which the Committee needs to pay close attention. The issue of arbitrary deprivation of nationality is one of them. There are a number of areas related to law and practice — especially where the gap between law and practice is absolutely huge — and the Committee needs to systematically engage with this with states that come before it. I will mention a simple example that has been highlighted by the Institute on Statelessness and Inclusion. Article 1 of *Decree No 15 on Lebanese Nationality* clearly states that a person who is born on Lebanese state territory and did not acquire a nationality at birth is Lebanese.[17] However, because this provision of the law is hardly applied, there are a number of births taking place on the Lebanese territory that are resulting in stateless children.

The second point is data collection. We have had occasions where states actually come before the Committee on the Rights of the Child and they say that 'there are no stateless children within our jurisdiction'. They do not want to do that data collection and determination because of political reasons, economic reasons and a whole range of other considerations. What we want, as a Committee, is disaggregated data that looks at statelessness comprehensively on the basis of different criteria so that a state can actually tackle the issue at its root cause. The issue of data collection is an area that we need to continue to discuss with the states that come before the Committee.

As I mentioned, the Committee has assessed and commented on the need for states to overcome structural barriers to achieve universal birth registration and there is still a lot of conversation to be had in this respect. There is a very interesting and useful guidance document that has been produced by the Institute on Statelessness and Inclusion, where some critical questions to consider in assessing nationality frameworks in a country are highlighted. This is something that we need to continue to imbed in our work. For example, questions such as: is an acquisition of nationality by otherwise stateless children born on the territory automatic (meaning at birth)? Alternatively, is it subject to an application procedure? If an application procedure is required, is there a time limit and are there additional requirements, such as legal residence, domicile, language and so forth that need to be taken into consideration? Is there significant discretion granted to administrative bodies in considering such applications?

One of the challenges that we face as a Committee in our engagement with states — for instance, in the context of Kenya — are the instances where the different administrative committees that are involved in determining statelessness and nationality issues are granted a lot of discretion. For example, we know of cases where stateless individuals have been asked to produce their grandparents' ID cards, including in instances where there were no IDs when the grandparents were alive. There are a lot of hoops that they need to jump and, in the process, children fall between the cracks.

16 *CRC* (n 1) art 8.

17 *Decree No 15 on Lebanese Nationality* (19 January 1925) art 1 (Lebanon).

The issue of burden of proof is critical too. Where does the burden of proof stand? How do you actually shift the burden of proof from the state to an individual? In what circumstances does a shared burden of proof exist? There is a bit more guidance that needs to be provided to states in this respect.

Finally, the third *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* ('*Optional Protocol*'), which is already in place, deserves attention.[18] We are already hearing of cases involving the *Dublin Regulations*, age determination and non-refoulment. The issue of having a criminal history due to irregular presence in a state, which links with art 1(2)(c) of the *1961 Convention*, can be further reinforced by some of the cases that are now relying on the *Optional Protocol*. This issue should not be used to disqualify an otherwise stateless individual, particularly, a child, from acquiring nationality.[19] Child protective services' ability to play a prominent role for children (including those that are stateless) in the context of international migration and the need to create a firewall between migrant, refugees and/or stateless children so that they are able to access services without the fear of being reported to law enforcement officials are also two important issues getting coverage. These issues remain absolutely critical for addressing childhood statelessness that we will need to look at very closely in the context of the third *Optional Protocol*.

Finally, this event is about the 60-year anniversary of the *1961 Convention*. I was in Dakar 10 years ago in May 2011 — Laura and a number of colleagues would remember this — when we celebrated the 50th anniversary. Since then, we have made significant progress, but definitely there is still more to do. But rest assured that while the *1961 Convention* is 60 years old, it is not counting its days, but it's making its days count. It needs as much support and advocacy as possible in every jurisdiction where it can add value.

18 United Nations General Assembly, *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, UN Doc A/RES/66/138 (adopted 19 December 2011).

19 *1961 Convention* (n 4) art 1(2)(c).