

THE CHILD'S RIGHT TO A NATIONALITY AND CHILDHOOD STATELESSNESS

A Toolkit for Child Rights Actors

“Making a submission to the CRC Committee helped us fulfil our mandate to effect legislative change in South Africa and raise awareness on the subject”.

ATTORNEY, LIESL MULLER



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Childhood is finite, but its legacy lasts a lifetime, and the legacy of denial, disenfranchisement and disadvantage which often accompanies childhood statelessness is extremely difficult if not impossible to shake off. Ever. The child's right to acquire a nationality has a wider importance beyond the child's identity - significant as this may be. It also serves as an enabling right through which the child's access to and enjoyment of a range of other rights is strengthened, including education, healthcare, family life, an adequate standard of living, movement, liberty, equality, and non-discrimination.

BENYAM DAWIT MEZMUR,
MEMBER OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

“

Every child has a right to a legal identity, to birth registration and a nationality. But a quarter born today – almost 100,000 babies – may never have an official birth certificate or qualify for a passport. If your parents are stateless, from a persecuted or marginalized community, or simply if you live in a poor remote region, you may never be given an identity or birth certificate. You may even be denied citizenship or have your citizenship stripped from you. This lack of formal recognition by any state means you may be denied health care, education and other government services. Later in life, the lack of official identification can mean you enter into marriage, dangerous work, or get conscripted into the armed forces before the legal age. As an unregistered or 'stateless' child, you are invisible to the authorities – it's as if you never existed [...] UNICEF urges Member States to fulfil their responsibilities to protect everyone under the age of 18 in line with the Convention on the Rights of the Child.”

EXCERPT FROM “AN OPEN LETTER TO THE WORLD'S CHILDREN” BY HENRIETTA H. FORE,
FORMER UNICEF EXECUTIVE DIRECTOR

INTRODUCTION

This Toolkit is designed to promote efforts to ensure that States fulfil their obligations under Articles 7 and 8 of the Convention on the Rights of the Child (“the CRC”) to promote, respect and fulfil every child’s right to acquire a nationality, and to ensure that no child is stateless. It is comprised of six sections that guide the user on how to engage with the Committee on the Rights of the Child. It provides an overview of the reporting stages to the Committee, a Checklist and Template to aide in drafting submissions and details of how to use the ISI Statelessness and Human Rights Database.

Who is this toolkit for? This Toolkit is designed to help civil society organisations (“CSOs”), including non-governmental organizations, national human rights institutions, ombudspersons and UN agencies, promote the fulfilment of the child’s right to a nationality by leveraging the CRC framework’s full potential.

Why nationality? The right to nationality is an ‘enabling’ or ‘gateway’ right, without which it is often impossible to exercise many other rights. Denying children a nationality can have a significant impact on all other rights, including their access to education, healthcare, free movement, and family life. It is a less tangible concept that other rights issues, such as education or protection from child labour. Childhood statelessness is also a largely invisible problem: it remains unidentified in many countries and there is very little data available on who is affected. The very nature of statelessness as an extreme form of exclusion pushes stateless children to the very margins of society, from where it is very difficult to make their voices heard. Preventing and resolving childhood statelessness by ensuring the right to nationality is central to any holistic approach to the promotion, protection, and fulfilment of children’s rights.

Why a children’s rights approach? Each year, increasing numbers of children are being born stateless. The longer children are left without nationality, the more entrenched the impact of being stateless becomes. Addressing childhood statelessness is instrumental to tackling statelessness in general. Inherited statelessness is the greatest source of new cases of statelessness, but it is easier to resolve statelessness immediately at birth or during early childhood than later in life. As such, it is essential to tackle childhood statelessness to remedy statelessness more broadly.

What is in the toolkit? The toolkit includes information about international obligations in relation to the child’s right to a nationality, and data on the CRC Committee’s engagement with this issue in its Concluding Observations. It provides a summary of the key themes referenced in CRC the Committee’s recommendations, and outlines opportunities for CSOs to engage in both the Standard and Simplified Reporting Procedures of the CRC Committee. A Checklist and Template are provided to guide CSOs in submitting reports on State parties to the CRC Committee, as well as instructions on how to use ISI’s database of recommendations from treaty bodies on issues relating to nationality and statelessness.

This toolkit is accompanied by the following ISI/UNICEF tools and resources:

- ✓ *Factsheet on Childhood Statelessness and the Committee on the Rights of the Child*, which provides a statistical overview of the CRC Committee’s engagement on right to nationality and statelessness
- ✓ *Text and Materials: “A Child’s Right to Nationality and Childhood Statelessness*, which contains various excerpts of relevant materials on the topic
- ✓ Podcast series on *“What’s Best for Children’s Nationality”*

Links to these tools and other resources cited can be found in the Further Resources chapter of this document.

I. ABOUT THE RIGHT OF EVERY CHILD TO NATIONALITY

What does the CRC say about the right to nationality?

The CRC is an autonomous instrument which sits within the broader body of international and regional standards. The norms and principles contained in the CRC inform other human rights standards and recommendations made by UN treaty bodies. Clarification and expansion on the rights contained in the Convention can positively influence the work of other mechanisms. Conversely, developments in other areas of international law can be used by the Committee to assist in the normative development of the right to nationality and avoidance of childhood statelessness.

Article 7:

- 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
- 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

There are multiple elements to article 7; the right to have one's birth registered, the right to a name and the right to acquire a nationality. Together, these "identity rights" positively contribute to ensuring no child is left stateless, however article 7 further stipulates that where the child does not acquire a nationality at birth, it is incumbent on States to ensure the child acquires a nationality. Thus, while in principle States are still able to regulate criteria for nationality, in implementing this provision, no child should be left stateless. As an enabling right, the realisation of article 7 is essential to ensuring children are able to access *all* rights contained in the CRC.

Article 8:

- 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*
- 2. 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.*

Article 8 ensures that a child's right to preserve their identity, including their nationality, name and family relations, must be protected. Not only should these be protected, but where a child has not obtained nationality, or has had any aspect of their identity taken away from them, the State must make efforts to remedy this.

What key principles inform the right of every child to a nationality?

In interpreting the content of the rights protected under the CRC, the Committee gives particular consideration to the guiding principles that inform the implementation of all rights in the Convention.

- ✓ **Article 2:** The right to non-discrimination - every child has the right to acquire a nationality regardless of race, gender, ethnicity or other status.
- ✓ **Article 3:** The best interests of the child – in all actions concerning children, including legislative and administrative decisions in the context of nationality, the best interests of the child shall be the primary consideration.
- ✓ **Article 6:** The right to life, survival and development – every child has an inherent right to life, and state parties shall ensure the survival and development of the child to the maximum extent possible.
- ✓ **Article 12:** The right to respect for the views of the child – the child has a right to be heard, and have due weight afforded to those views based on age and maturity.

What other international norms address every child's right to a nationality?

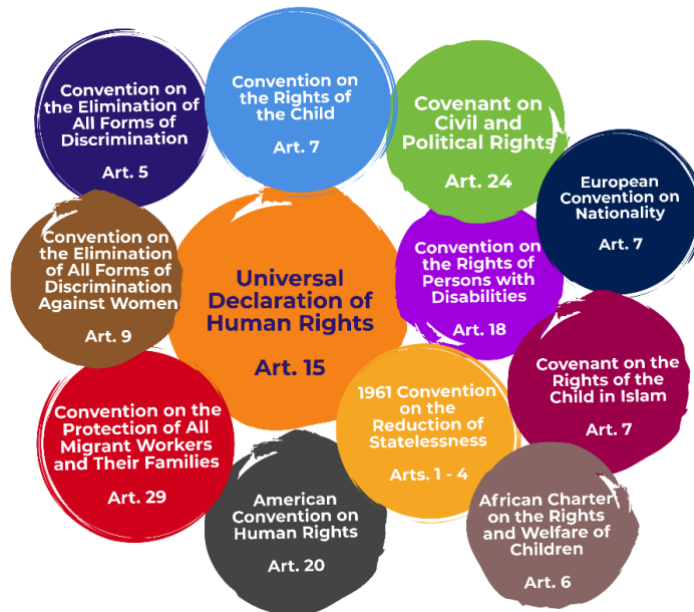
In addition to the CRC, various other international instruments have provisions relating to the child's right to nationality. Articles 1- 4 of the 1961 Convention on the Reduction of Statelessness are central sources of international law relating to the avoidance of statelessness amongst children. Other international sources include:

Core UN Treaties

- ✓ International Covenant on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW): Article 29
- ✓ Convention on the Rights of Persons with Disabilities (CRPD): Article 18
- ✓ Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW): Article 9
- ✓ International Covenant on Civil, Political and Cultural Rights (ICCPR): Article 24
- ✓ Convention on the Elimination of All Forms of Racial Discrimination (CERD): Article 5

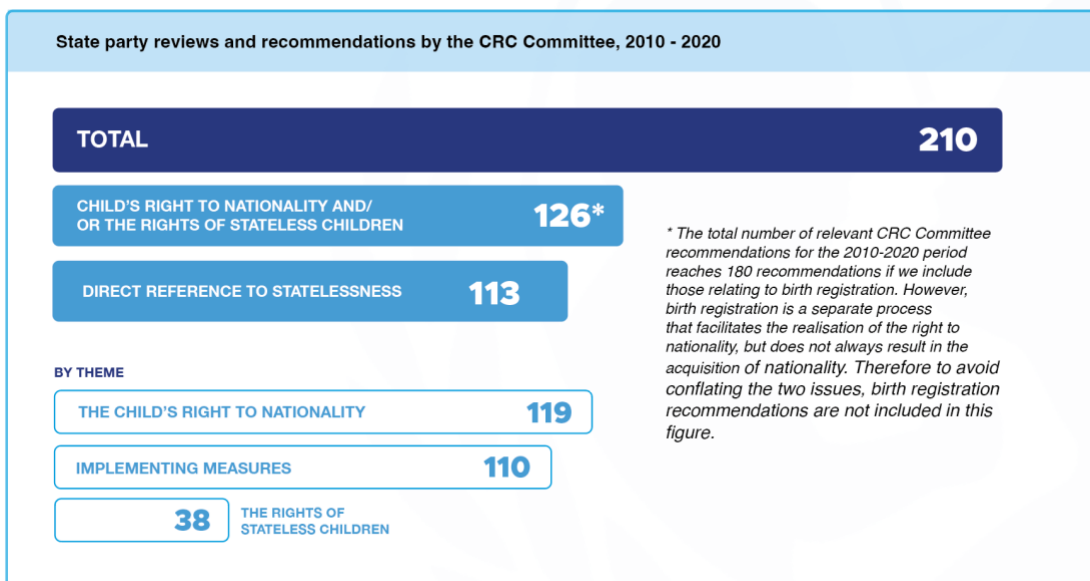
Regional Conventions

- ✓ African Charter on the Rights and Welfare of the Child (ACRWC): Article 6
- ✓ Covenant on the Rights of the Child in Islam: Article 7
- ✓ European Convention on Nationality: Article 7



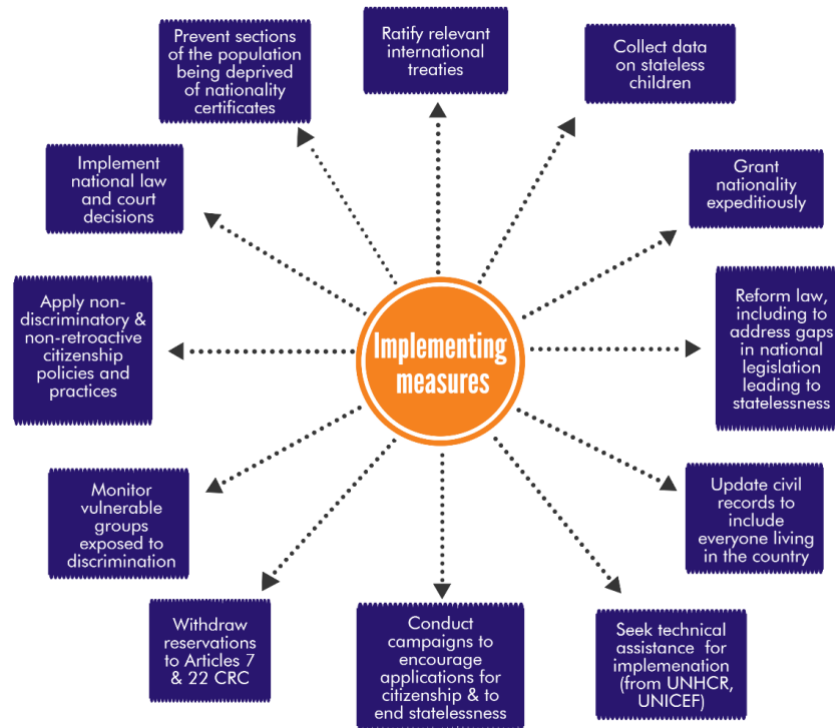
II. ABOUT ENGAGING WITH THE COMMITTEE ON THE RIGHTS OF THE CHILD

The CRC has achieved near universal ratification, and with 196 countries State Parties, it is the most widely ratified international treaty. The Committee works closely with CSOs, State Parties and UN Agencies, to monitor the implementation of the Convention. Specifically, on the child's right to acquire a nationality and the rights of stateless children, Committee has increasingly engaged on this issue, and between 2010-2020 has issued 126 recommendations directly related nationality and statelessness.



Implementing Measures

Pursuant to article 4 of the Convention, States are required to adopt general measures of implementation to give effect to the rights enshrined in the CRC. As such, the Committee will often issue recommendations to States based on article 4 outlining concrete steps to be taken to align laws or policies with the provisions of the CRC. Implementing measures are usually issued around directives such as reform legislation, data collection or accession to international instruments.



Key themes in reporting to the Committee

The Committee has made recommendations specifically on the child's right to acquire a nationality across a number of themes, clarifying the nature of the State Parties' obligation. The following themes have been most commonly discussed by the Committee.

Nationality for stateless children born on the state party territory

Article 7 does not oblige State parties to grant nationality to every child born on their territory. It does, however, oblige States to grant nationality where a child would otherwise be stateless. The Committee therefore assesses and comments on lack of safeguards in national law to prevent statelessness for otherwise stateless children born in the territory, or where such safeguards exist, the Committee may assess the legal requirements for the grant of nationality to otherwise stateless children in order to scrutinize their compatibility with the provisions and principles of the CRC. For example, access to nationality for stateless children conditioned on factors such as the parent or child's legal status, the parent's sex, age, race, religion or ethnicity, social origin or other status, the parent's past activities or opinions, whether the child is from a minority group or has been born to irregular migrants or former refugees, will be inconsistent with the scope of article 7.

Prohibition of discrimination

The Committee frequently analyses whether there are discriminatory aspects to national laws that prevent access to nationality based on race, gender, ethnicity, or the marital status of parents.

Birth registration

Birth registration plays a key role in preventing statelessness, since the registration process itself records data imperative to establish nationality (place of birth and parentage). The Committee therefore scrutinizes and assesses State practice related to birth registration procedures, often focused on the importance of removing structural barriers in the birth registration process. Key indicators the CRC Committee may assess (or recommend) include free and accessible registration regardless of the parent's status, place of origin or other status (including undocumented or stateless).

Other common themes

Foundlings: States should put in place specific safeguards and necessary measures to ensure no child found abandoned in the territory is left stateless.

Children born abroad: States should remove obstacles to accessing nationality for children born to nationals abroad.

Adoption: States should regulate acquisition and loss of nationality in cases of international adoption such that statelessness is avoided.

Deprivation and loss of nationality: States should not deprive any child of his/her nationality on any ground; regardless of the status of the child's parents and any loss or deprivation of their nationality.

Right to a remedy: States should ensure access to legal remedies for the restoration of nationality in cases of arbitrary deprivation, and for adequate and fair compensation to be paid.

III. CHECKLIST FOR IDENTIFYING ISSUES RELATING TO THE CHILD'S RIGHT TO A NATIONALITY

The following checklist is a tool for child rights actors and other users to assess issues, legal gaps, and conditions where childhood statelessness could arise, to determine if and how they could engage with the CRC process. The checklist also guides users to develop focused content in their submissions to the CRC Committee.

1. Are there adequate safeguards in place to ensure that all children born in the territory can acquire nationality if they would otherwise be stateless? Are these implemented in a non-discriminatory and non-arbitrary way, allowing access to nationality as soon as possible after birth?
2. Are there gaps in law or practice which undermine the child's right to acquire a nationality, for children in the following contexts:
 - a. Abandonment / foundlings
 - b. Birth abroad
 - c. Birth out of wedlock
 - d. International adoption
 - e. Surrogacy
3. Does the national legal framework contain discriminatory provisions which arbitrarily deny the child's right to acquire nationality? For example, based on the child or their parent/guardian's race, colour, sex, language, religion, political or other opinion, national ethnic or social origin, property, disability, birth or other status.
4. Does the national legal framework allow for loss or deprivation of nationality of children? Does the loss or deprivation of nationality of a parent result in the derivative loss or deprivation of nationality of the child?
5. Is birth registration or another form of registration/documentation required for a child to acquire a nationality? How does this work in law, policy and in practice?
6. Are there legal, political, social, geographic or economic factors which undermine access to birth registration for:
 - a. minorities
 - b. indigenous groups
 - c. undocumented persons
 - d. (irregular) migrants
 - e. asylum seekers
 - f. refugees
 - g. stateless persons
 - h. rural communities
 - i. children born out of wedlock or out of hospitals
 - j. girl children
 - k. disabled children
7. Is there a large habitually resident, intergenerational stateless population, or a large refugee or irregular migrant population that is stateless or at risk of statelessness? Are the children in such communities at risk of inheriting the statelessness of their parents?

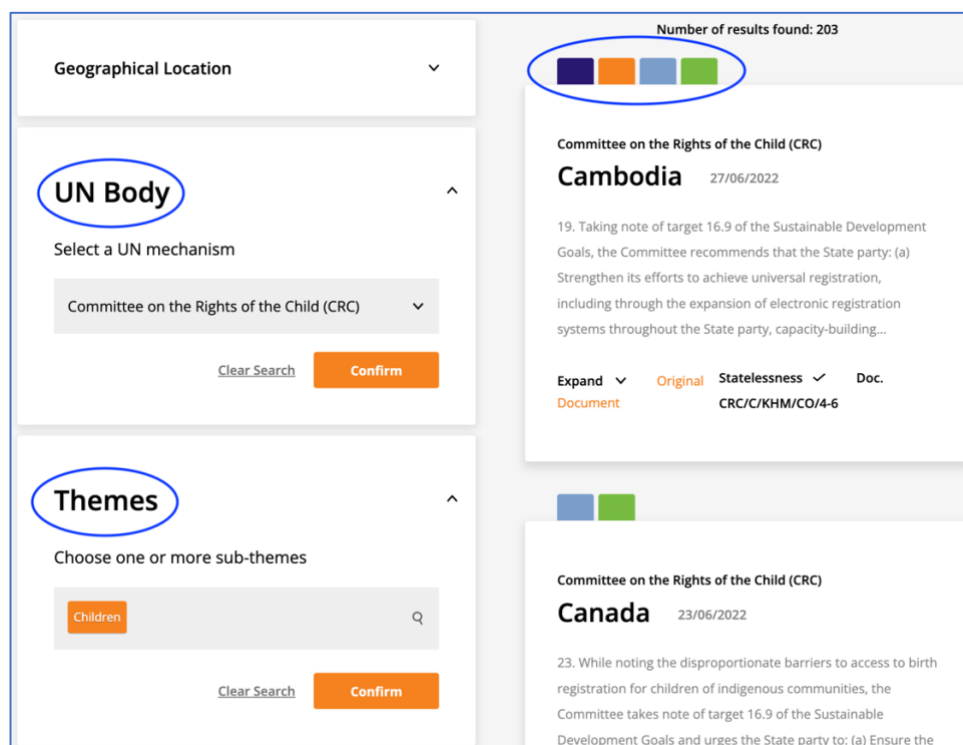
8. Do stateless children in the country benefit from the protection and enjoyment of other human rights enshrined in the CRC?
9. Do children who have been arbitrarily denied or deprived of a nationality have access to legal recourse and a fair remedy? Does this access guarantee all procedural and substantive safeguards under international law in place? Are the guiding principles of the CRC adhered to?
10. What other treaty obligations relating to the right to nationality and childhood statelessness is the State party bound by? Has it made any relevant declarations or reservations under those treaties? How are these treaties implemented?
11. Has the State accepted Universal Periodic Review or Treaty Body recommendations or made pledges relating to the statelessness or the child's right to nationality?
12. Does the State collect systematic and disaggregated data on statelessness, children's acquisition of nationality, the operation of safeguards against statelessness, and the deprivation of nationality and statelessness?

IV. INSTRUCTIONS FOR USING THE ISI DATABASE ON STATELESSNESS AND HUMAN RIGHTS

ISI has developed a [comprehensive analytical database](#) of recommendations made by UN Treaty Bodies to State Party reports. The database reproduces raw data derived from Concluding Observations and Recommendations without any further interpretation made by the Institute. A wide array of new insights into the interpretation of Article 7 CRC can therefore be observed and is easily accessible through the database. Users may filter searches per country, region, year and topic. This section explains the key features of the database, which allows information to be disaggregated by country, region, general or specific themes, year or by the UN body publishing the recommendations. There is also an option to search by specific key words.

The database can be accessed [here](#) and full instructions can be found [here](#).

Image below depicts user's ability to search by UN treaty body and specific colour coded themes. Themes addressed in concluding observations and recommendations are easily identifiable using the key.



V. THE CONVENTION ON THE RIGHTS OF THE CHILD REPORTING CYCLE AND OPPORTUNITIES FOR CIVIL SOCIETY ENGAGEMENT

Civil Society Organisations

CSOs play a crucial role in local-level implementation of children's rights, and human rights more generally. They have a unique insight into specific issues affecting children and are well positioned to provide valuable insight to the Committee to support well-informed dialogue with State Party.

The CRC Committee is part of an ecosystem of UN treaty bodies. In carrying out their functions, each treaty body must account for and compliment the work of the other bodies. The complimentary nature of treaty bodies' functions can support the development of the child's right to acquire a nationality.

The Committee is reliant on CSOs, NHRIs and other stakeholders for credible and independent information, standards and interpretations across different mechanisms.

Since 2014, the Committee has introduced a simplified reporting procedure. This procedure is beneficial for CSOs because the Committee relies on their engagement and the information they provide about specific children's rights. The diagram below shows the stages for both the Standard Reporting Procedure and the Simplified Reporting Procedure. Child Right's Connect have produced detailed resources which provide further information about how to engage in the reporting process, which can be found [here](#).



Simplified Reporting Procedure



Standard Reporting Procedure

VI. TEMPLATE FOR SUBMISSIONS ON THE CHILD'S RIGHT TO NATIONALITY

The following provides a brief template for civil society organizations and other stakeholders who are drafting a thematic submission on article 7 of the CRC. The template is not meant to be strictly followed, but instead is meant to provide inspiration and be adapted to suit the users' context. This is a brief version of the full template, which can be downloaded [here](#) together with an explanatory guide [here](#). There are four main sections to the submissions, which are seen below:

1. Introduction

The introduction should provide an overview of what is included in the submission, and the relevant articles of the CRC. It is recommended to include the relevant paragraphs of the current LOIPR and the State party report, as well as information regarding when the State last reported to the Committee and the recommendations received. Other international obligations on the State Party should also be summarised.

2. Statelessness in the state party

This section should provide an overview of the key problems for stateless children and the child's right to a nationality in the State Party. The checklist in the previous section provides guidance on how to determine the issues that are relevant.

3. Issues of concern

The key issues and concerns should be explained in a dedicated section. Each issue should be considered in terms of the domestic legal framework and the impact it has on stateless children and the right to acquire a nationality as provided in international law. You could also consider recommending questions for the Committee at the end of each section, based on the analysis of the issue. For example:

“In light of the context outlined above, the Committee is urged to ask the Netherlands:

- *How does the Netherlands justify that the new Draft Law maintains the requirement of ‘stable residence’, including the requirement of parents’ cooperation with the authorities, and further extends the period of such residence from five to ten years, despite the explicit recommendation made by the CRC?*
- *What steps, in line with the Netherlands’ international obligations, is the Dutch Government taking to ensure that all stateless children can access Dutch citizenship and enjoy their full CRC rights without discrimination?”*

4. Suggested questions or recommendations

You may suggest to the Committee, questions or recommendations you wish for them to direct to the State Party as a way to have the issues raised in your submission addressed.

Key points to consider when drafting a submission:

- ✓ **Purpose:** Consider and prioritise issues you are trying to raise with the Committee (the checklist can be helpful in determining such issues). Submissions should be drafted in a way that highlights these issues.
- ✓ **Content:** Remember that the purpose of the submission is to inform the Committee in a clear and straightforward way by providing information and perspectives that the Committee will not have received from the State or other actors.
- ✓ **Structure and Format:** Try and keep the submission easy to follow and refer to and avoid being too technical. Use numbers for pages, highlight key text and provide recommendations at the end of each section.

FURTHER RESOURCES

- ISI and UNICEF, [Factsheet on Childhood Statelessness and the Committee on the Rights of the Child](#), which provides a statistical overview of the CRC Committee’s engagement on right to nationality and statelessness.
- ISI and UNICEF, [Text and Materials: A Child’s Right to Nationality and Childhood Statelessness](#), which contains various excerpts of relevant materials on the topic.
- ISI and UNICEF, Podcast series on [What’s Best for Children’s Nationality](#)
- [ISI Database on Statelessness and Human Rights](#) and [Instructions on using ISI Database on Human Rights](#)
- Child Rights Connect, [CRC Reporting Cycle](#)
- [Website of the CRC Committee](#), providing up-to-date information about Committee membership, sessions and other documentation
- [CRC Reporting Template](#)
- [Guidance Note on CRC Reporting Template](#)
- Case studies on SRP reporting:
[How to Engage with the Simplified Reporting Procedure: A case study from Zambia | Save the Children’s Resource Centre](#)
[How to Prepare a Child-led Report for the Simplified Reporting Procedure: A case study from South Africa | Save the Children’s Resource Centre](#)
- Guidance on SDG reporting [How to use the Voluntary National Review to Advance Children’s Rights | Save the Children’s Resource Centre](#)
- Guidance on follow-up to recommendations [How to Advance Children’s Rights using Recommendations from United Nations and Regional Human Rights Monitoring and Review Processes | Save the Children’s Resource Centre](#)