Institute on Statelessness and Inclusion

Submitted by the Institute on Statelessness and Inclusion
www.institutesi.org

Comments relating to issues of nationality and statelessness for children in the context of migration, in response to the draft Joint CMW/CRC General Comment No. 3 (2nd draft, version dated 7 June 2017)

The Institute on Statelessness and Inclusion welcomes the references to the non-discriminatory enjoyment of rights by all children regardless of nationality or statelessness, the importance of the right of every child to a nationality and of addressing the risk of statelessness for migrant children that have been included in the draft JGC. We also strongly support the inclusion of a dedicated section on the "Right to a name, identity and to a nationality" (section III.B.4). We would like to offer the below feedback and suggestions to further strengthen the draft JGC in respect of these important issues. Suggested revisions are shown as track changes, followed by a brief explanation of the reason for the change.

Life, survival and development (section III.A.3)

Paragraph 32, 3rd sentence: "States, especially those of transit and destination, should devote special attention to the protection of undocumented, unaccompanied and separated children, as well as to the protection of children seeking asylum, stateless children and children victims of transnational organized crime, including trafficking in persons, sale of children, child pornography, child prostitution and victims of early forced marriage".

- ⇨ **We suggest the addition of the category of stateless children in the list of vulnerable groups as they may have specific needs which go unaddressed if their situation is not identified and appropriately catered for.**

Paragraph 34, 1st sentence: "The Committees are concerned that policies or practices that deny or restrict basic rights to adult migrants due to their nationality or statelessness, or immigration status, including labour rights, may directly or indirectly impact children's right to life, survival and development".

- ⇨ **We suggest the addition of statelessness as a basis for discrimination or denial of rights against migrants that is detrimental to the situation of their ability to ensure their children's wellbeing.**

Right to liberty and non-detention (section III.B.2)

Paragraph 47: "The Committee on the Rights of the Child has already stated more than a decade ago – in relation to unaccompanied and separated children – that children should not, as a general rule, be deprived of liberty and detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their nationality, migratory or residence status, or lack thereof".

- ⇨ **We suggest the addition of nationality (or lack thereof) as an illegitimate basis for deprivation of liberty and detention, in recognition of the specific vulnerability of stateless migrants – including children – to arbitrary detention. The Committee has a strong track record of emphasizing this through its Concluding Observations and Recommendations.**

Right to a name, identity and to a nationality (section III.B.4)

Paragraph 64, 1st and 2nd sentences: "The Committees urge States parties to take all necessary measures to ensure that all children are immediately registered at birth irrespective of the migration status of their parents and issued a birth certificate. Legal and practical obstacles to birth registration should be removed, including through prohibiting data sharing between civil registration and immigration enforcement, not requiring parents to produce documentation to register a birth and facilitating late registration of birth".

- ⇨ **We suggest amending the text as shown above to emphasise the importance of issuing a birth certificate as a means to provide the child with proof of birth; and move the comment on facilitating late registration to the sentence describing the removal of legal and practical obstacles where it is a better fit.**

Heading b, between paragraphs 64 and 65: "Right to a nationality and safeguards against statelessness"

- ⇨ **We suggest amending the title of this section so that it asserts the positive right of every child to a nationality – as contained within the CRC and CMW – rather than only take the narrower approach of the avoidance of statelessness. This is important because the right to a nationality also contains elements that go beyond the question of avoidance of statelessness to speak to the quality of nationality laws and other aspects of children's nationality rights (such as non-discriminatory enjoyment of the right to a nationality, regardless of whether statelessness results). The proposed formulation keeps the emphasis on right to a nationality, while also drawing attention to the fact that states should protect against statelessness.**

Paragraph 66: "While States are not obliged to grant their nationality to every child born in their territory, they are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born. A key measure is the conferral of nationality to a child born on the territory of the State if the child would otherwise be stateless, at birth or as early as possible after birth. Nationality laws that discriminate in the transmission or acquisition of nationality on the basis of prohibited grounds, including in relation to the child and/or his or her parents' race, ethnicity, religion, gender, disability and migration status, should be repealed. Furthermore, all nationality laws should be implemented in a non-discriminatory manner, to ensure that every child's right to a nationality is respected, protected and fulfilled.

- ⇨ **We suggest amending the text as shown above, which includes the integration of what is currently paragraph 67 in the draft. The content of footnote 49 from paragraph 67 can be added to the footnote the end of the sentence highlighted in yellow as it refers to the same set of obligations. In view of restricting the overall length of the JGC, we suggest that the first sentence of paragraph 66 could be removed as shown here, without losing important content. We also suggest adding a sentence about implementation, as in many cases, even where the law is on the face of it not discriminatory, it is implemented in a discriminatory manner.**

Paragraph 67: "Children who do not acquire a nationality should be ensured equal enjoyment of their human rights, including education, healthcare and freedom of movement."

⇨ **If the content of paragraph 67 is integrated within paragraph 66 as suggested above, we suggest replacing this with a sentence reiterating the importance of ensuring that statelessness does not become a ground for restricting the enjoyment of human rights by children.**

Protection from all forms of exploitation… (section III.B.6)

Paragraph 80, 1st sentence: "Migrant children, in particular, those who are undocumented, stateless, unaccompanied or separated from their family and who are away from their country of origin are particularly vulnerable to different forms of violence and abuse, including trafficking and exploitation, child labour, sexual exploitation or the involvement in criminal and illegal activities in the transit country but also at their destination countries."

⇨ **We suggest the addition of the categories of undocumented and stateless to the list of children requiring specific attention in terms of the protection from all forms of exploitation, given the vulnerability of such children to exploitative practices, including trafficking.**