

Foreword

Jaap E. Doek

Chairperson UN Committee
on the Rights of the Child

Citizen Child: A Struggle for Recognition

'The fundamental right to citizenship is still denied to some nine million persons' (Sokoloff, 2005: 5). These figures refer to the nine million stateless persons (UNHCR, 2006: 9). Contrary to what this statement suggests there is no provision in any international human rights treaty conferring on an individual the right to citizenship. Indeed, many may associate citizenship with being a national of a State, that is: you are the citizen of a State of which you are a national. But again: there is no right to the nationality of the State in which you are born. Human rights treaties do not contain a 'right to a nationality' (let alone to a nationality of choice). However, in the context of this volume it is important to note that 'every child has the right to acquire a nationality' (Article 24 (3) ICCPR; Article 7 (1) UNCRC (emphasis added)). To quote from the proposal of this book and as various contributions in this volume reflect, 'citizenship eludes definition (except in the [. . .] sense used in the field of nationality and immigration) and is variable, contextual and often contested. It is closely linked to but not synonymous with rights and implicitly confers on children the status of subjects. This links the issue of children's citizenship to that of "children's participation."''

It is tempting to engage in a discussion on the concept of citizenship and its constituting elements: Nationality? Right to reside permanently on the territory of a State? The right to be protected by the State? The right to vote, to hold office and to participate in decision making? The right to social action and to economic rights?

But I will limit myself to some observations about the citizenship of children in the context of the UN Convention on the Rights of the Child (UNCRC). Just as a starter: the citizenship of the child should not be dealt with only as a nationality issue. Nationality is undoubtedly an important element of citizenship. But I like to take a broader approach from the perspective of the child as a rights holder. Citizen Child may not vote or run for a public office, but is entitled to the enjoyment of all the rights enshrined in the UNCRC without discrimination of any kind. I don't pretend that the following observations are covering all aspects of the child's citizenship but they are fundamental.

Key Elements for the Recognition of Citizen Child

Birth Registration (Article 7 UNCRC)

Article 7 UNCRC contains an important rule in very strong language: 'The child *shall* be registered at birth'. It affirms that registration of a child is a key condition for the recognition of her or his existence. Without a registration (at birth or as soon as possible thereafter) the child is most likely not acknowledged as a person before the law and in many countries it means no or very limited access to health care, education or social services. The Committee on the Rights of the Child (the UN Committee) has noted that lack of registration 'can impact negatively on a child's sense of personal identity and children may be denied entitlements to basic health, education and social welfare' (2005: para. 25). The UN Committee systematically recommends State Parties to the UNCRC to promote and facilitate proper registration of all children born on their territories, including children born to illegal immigrants, refugees and asylum-seeking people. In addition, it is important that all children arriving in a country as refugees or migrants are registered.

There are often different barriers to full implementation of the right to be registered at birth: political barriers (e.g. non-registration of some ethnic minority children), financial (charging of fees) or geographical barriers. It goes beyond the scope of this introduction to elaborate more in detail on the various aspects of birth registration: these are documented elsewhere (see UNICEF, 2002). But it is clear that Citizen Child will face serious problems in being recognized as such if he/she is not properly registered. That is even more so because in many countries there is a link between registration and nationality, as any person without a registration has no nationality.

The Right to Acquire a Nationality (Article 7 UNCRC)

The matter of nationality is a complex one and often politically sensitive. In principle the rules on nationality fall within the scope of domestic jurisdiction and therefore within the domain of national law. The different rules for granting or losing nationality have given rise to problems such as statelessness.

But Article 7 UNCRC is very clear: the child shall have the right to acquire a nationality and States Parties shall ensure the implementation of this right [. . .] in particular where the child would otherwise be stateless.

With regard to this article the UN Committee has expressed its concerns, in particular regarding children who are considered as non-citizens or who are stateless according to the national law of the country in which they live. From information submitted to the UN Committee it is clear that these children often suffer from serious discrimination and that they, by virtue of their lack of legal status, are unable to fully participate in their community/society and face many problems in integrating themselves in

the society. To take just one example, Syrian-born Kurdish children are considered as foreigners or as 'maktoumeen' (unregistered) by the Syrian authorities. They have no nationality at birth and face serious problems in acquiring Syrian nationality. Many remain stateless (UN Committee on the Rights of the Child, 2003: para. 32, 33).

The UN Committee has issued various country-specific recommendations. The core message was and is:

Prevent children from becoming stateless – for example as a result of their lack of a legal status at birth which is regularly a problem for children belonging to ethnic minorities, refugee and (im)migrant children. Measures recommended in this regard should aim at providing the child with a nationality either of the country of origin or of the country they are born in. This is not without legal complications if State A wants to provide a child with the nationality of State B because State B is considered to be the country of origin. It requires bilateral negotiations and agreements but the CRC Committee expects States Parties to undertake efforts in this regard and to include the possibility of providing the child, if no other options are available, with the nationality of the State in which the child is living.

It is also important that States, where necessary, take measures to ensure that children born out of wedlock do *ex lege* acquire the nationality of the mother. The Committee has also recommended States to introduce legal provisions allowing the child to acquire the nationality of both her/his father and mother. In the event of the parents' divorce or *de facto* separation, this may prevent the child from becoming stateless in the country where she/he continues to live with the mother. This also addresses a matter of non-discrimination between the mother and the father: accordingly the Committee on the Elimination of All Forms of Discrimination against Women regularly makes similar recommendations.

Equally important are measures to reduce statelessness of children, which may require amending existing nationality laws/regulations allowing children to acquire the nationality of the country they are living in. The UN Committee has recommended States to ratify the Convention on the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

All children on the territory of the State Party must be ensured the enjoyment of all their rights under the UNCRC irrespective of their citizenship or the lack thereof. Finally the child has not only the right to acquire a nationality but also the right to preserve her/his nationality. Article 8 UNCRC contains the unique provision in the field of human rights that the child has the right to preserve his or her identity which includes nationality, name and family relationship. Paragraph 2 of this Article requires that States Parties, in case the child is illegally deprived of, for example, her/his nationality, shall provide appropriate assistance and protection with a view to speedily re-establishing her/his nationality. This may be particularly important for children in conflict areas who are victims of cross-border displacements or of (forced) disappearances (see Doek, 2006; for more

details on the recommendations made by the UN Committee in respect of the implementation of Article 7 see UN Committee on the Rights of the Child, 2006).

Citizen Child as a Rights Holder

Registration at birth (or later) and a nationality are indeed key elements for the recognition of the child as a citizen. But this recognition must not only depend on these formalities, but also and perhaps even more important, on the opportunities the child is given to become a full and active member of her/his community and society.

It should be noted that these opportunities should be provided to every child on the territory of the State Party to the UNCRC regardless of whether he/she is registered at birth or has a nationality. This is in line with what I would call one of the characteristic features (or: goals if you want) of the UNCRC: the full and harmonious development of the child's personality, not only with a view to becoming an individual with her/his own personality, but also with a view to become a full member of her/his community and/or society (see the Preamble to the UNCRC and also Article 29).

The Preamble to the UNCRC states the *conviction* that a child should be afforded the necessary protection and assistance so that he/she can fully assume his/her responsibilities within the community.

This role as an active member of the community is not only something exclusively meant for mainstream children with a birth certificate and a nationality. It is meant for all children and, to underscore this, Article 23 UNCRC states that a child with disabilities should enjoy a full and decent life in conditions which [. . .] facilitate the child's active participation in the community. A similar provision in Article 40 UNCRC dealing with the not so popular group of children in conflict with the penal law, also known as juvenile delinquents. These children have the right 'to be treated in a manner consistent with the child's sense of dignity and worth which [. . .] takes into account [. . .] the desirability of promoting the child's re-integration and the child's assuming a constructive role in society' (Article 40 (1) UNCRC).

This characteristic feature or goal of the UNCRC requires that the child is fully recognized as a rights holder who shall be allowed to exercise her/his rights. But in doing so, the parents have the responsibilities, rights and duties to provide the child in a manner consistent with her/his evolving capacities with appropriate direction and guidance (Articles 5 and 14 UNCRC).

In the recognition of Citizen Child as a rights holder the concept of evolving capacities is crucial. It is impossible to discuss the many aspects of this concept in this introduction (see Lansdown, 2005 for an excellent elaboration of the various aspects of this concept). This concept represents a recognition of the growing autonomy of the child and the need to respect the gradual acquisition of independent exercise of the rights enshrined in the UNCRC such as the right to freedom of expression, the right to

freedom of thought, conscience and religion and freedom of association (see Articles 12–17 UNCRC).

But as Lansdown (2005) observes, the concept of evolving capacities has implications for all rights in the UNCRC and demands significant changes at all levels of society. It represents a fundamental challenge to conventional attitudes towards children, questioning some of our deeply held assumptions about children's needs, children's development, protection of children and children's agency. As discussed in a number of the contributions to this volume, many lessons can be found in the real experience and practice of children. In societies throughout the world more could and should be done to create environments in which children achieve their optimum capacities and greater respect is given to children's potential for participation in and responsibility for decision making in their own lives – within the family, in school, in respect to their own health care, education, in courts, in local communities and in local and national political forums.

Some Concluding Observations

The recognition of the child as a citizen requires some concrete measures such as an immediate registration at birth and the provision of a nationality. But from the UNCRC perspective a broader approach is needed. Every child, and not only those with a birth certificate and a nationality, should be treated as a citizen. This means inter alia the full respect for and implementation of the rights of every child in order to allow her/him to live an individual and decent life in society and to facilitate her/his active and constructive participation in the community.

It requires that we acknowledge the child's growing autonomy and that we respect the gradual acquisition of independent exercise of rights.

Quite often children are presented as the citizens of tomorrow. It is undoubtedly important that we invest to the maximum extent of our available resources in the implementation of the rights of the child in order – to quote Article 29 UNCRC – to prepare the child for a responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples ethnic, national and religious groups and persons of indigenous people.

But that citizenship starts today and from birth. The Citizen Child is a citizen of today and the full recognition of this fact is one of the fundamental requirements of the UNCRC.

References

- Doek, J.E. (2006) 'The CRC and the right to acquire and to preserve a nationality', *Refugee Survey Quarterly*, 25(3): 26–32.
- Lansdown, G. (2005) *The Evolving Capacities of the Child*. Innocenti Insight, Florence: UNICEF/Innocenti Research Centre.

- Sokoloff, C. (2005) 'Denial of Citizenship: A Challenge to Human Security', Report prepared for the Advisory Board on Human Security, February 2005.
- UN Committee on the Rights of the Child (2003) *Concluding Observations on the Syrian Arab Republic*, CRC/C/15/Add. 212, 10 July 2003.
- UN Committee on the Rights of the Child (2005) *General comment No. 7 on Implementing Children's Rights in Early Childhood*, CRC/CGC/7, 1 November 2005.
- UN Committee on the Rights of the Child (2006) *Compilation of the practice of the Committee on the Rights of the Child as related to the Prevention and Reduction of Statelessness and the Treatment of Stateless Children, January 2003 – January 2006*, prepared by Protection Policy and Legal Advice Section, Department of International Protection of the UNHCR (February 2006, Geneva).
- UNHCR (2006) *Refugees by Numbers*, Geneva: UNHCR.
- UNICEF Innocenti Research Centre (2002) *Innocenti Digest N. 9: Birth Registration: Right from the Start*, March 2002, Florence: UNICEF.