

# **Extracts of selected General Comments and Recommendations of the United Nations Human Rights Treaty Bodies relating to nationality and statelessness**

## **HUMAN RIGHTS COMMITTEE**

### **General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004)**

- Read the General Comment in full-text in [English](#) in Refworld.

10. States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. As indicated in General Comment 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.

### **General Comment No. 28: Equality of rights Between Men and Women (Article 3 of the International Covenant on Civil and Political Rights) (2000)**

- Read the General Comment in full-text in [English](#) in Refworld.

25. To fulfil their obligations under article 23, paragraph 4, States parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to the custody and care of children, the children's religious and moral education, the capacity to transmit to children the parent's nationality, and the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States parties should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary. Also, States parties should ensure that no sex-based discrimination occurs in respect of the acquisition or loss of nationality by reason of marriage, of residence rights, and of the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name. Equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.

**General Comment No. 27: Freedom of movement (Art. 12 of the International Covenant on Civil and Political Rights) (1999)**

- Read the General Comment in full-text in [English](#) in Refworld.

*The right to enter one's own country (para. 4)*

19. The right of a person to enter his or her own country recognizes the special relationship of a person to that country. The right has various facets. It implies the right to remain in one's own country. It includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality). The right to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries.

20. The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country".<sup>9</sup> The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence. Since other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country, States parties should include in their reports information on the rights of permanent residents to return to their country of residence.

21. In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.

[9] See communication No. 538/1993, *Stewart v. Canada*.

**General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (1996)**

Read the General Comment in full-text in [English](#) in Refworld

3. In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), article 25 protects the rights of “every citizen”. State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25. State reports should indicate whether any groups, such as permanent residents, enjoy these rights on a limited basis, for example, by having the right to vote in local elections or to hold particular public service positions.

**General Comment No. 19: The Family (Article 23 of the International Covenant on Civil and Political Rights) (1990)**

- Read the General Comment in full-text in [English](#) in Refworld.

7. With regard to equality as to marriage, the Committee wishes to note in particular that no sex-based discrimination should occur in respect of the acquisition or loss of nationality by reason of marriage. Likewise, the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name should be safeguarded.

**General Comment No. 17: The Rights of the Child (Art. 24 of the International Covenant on Civil and Political Rights) (1989)**

- Read the General Comment in full-text in [English](#) in Refworld.

7. Under article 24, paragraph 2, every child has the right to be registered immediately after birth and to have a name. In the Committee’s opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child’s legal personality. Providing for the right to have a name is of special importance in the case of children born out of wedlock. The main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant. Reports by States parties should indicate in detail the measures that ensure the immediate registration of children born in their territory.

8. Special attention should also be paid, in the context of the protection to be granted to children, to the right of every child to acquire a nationality, as provided for in article 24, paragraph 3. While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States 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 is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents. The measures adopted to ensure that children have a nationality should always be referred to in reports by States parties.

### **General Comment No. 15: The Position of Aliens Under the Covenant (1986)**

- Read the General Comment in full-text in [English](#) in Refworld.

1. Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to “all individuals within its territory and subject to its jurisdiction” (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.

2. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens. Aliens receive the benefit of the general requirement of non-discrimination in respect of the rights guaranteed in the Covenant, as provided for in article 2 thereof. This guarantee applies to aliens and citizens alike. Exceptionally, some of the rights recognized in the Covenant are expressly applicable only to citizens (art. 25), while article 13 applies only to aliens. However, the Committee’s experience in examining reports shows that in a number of countries other rights that aliens should enjoy under the Covenant are denied to them or are subject to limitations that cannot always be justified under the Covenant.

3. A few constitutions provide for equality of aliens with citizens. Some constitutions adopted more recently carefully distinguish fundamental rights that apply to all and those granted to citizens only, and deal with each in detail. In many States, however, the constitutions are drafted in terms of citizens only when granting relevant rights. Legislation and case law may also play an important part in providing for the rights of aliens. The Committee has been informed that in some States fundamental rights, though not guaranteed to aliens by the Constitution or other legislation, will also be extended to them as required by the Covenant. In certain cases, however, there has clearly been a failure to implement Covenant rights without discrimination in respect of aliens.

[...]

9. Many reports have given insufficient information on matters relevant to article 13. That article is applicable to all procedures aimed at the obligatory departure of an alien, whether described in national law as expulsion or otherwise. If such procedures entail arrest, the safeguards of the Covenant relating to deprivation of liberty (arts. 9 and 10) may also be applicable. If the arrest is for the particular purpose of extradition, other provisions of national and international law may apply. Normally an alien who is expelled must be allowed to leave for any country that agrees to take him. The particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party. This means that national law concerning the requirements for entry and stay must

be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow, in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13. It is for the competent authorities of the State party, in good faith and in the exercise of their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (art. 26).

10. Article 13 directly regulates only the procedure and not the substantive grounds for expulsion. However, by allowing only those carried out "in pursuance of a decision reached in accordance with law", its purpose is clearly to prevent arbitrary expulsions. On the other hand, it entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions. This understanding, in the opinion of the Committee, is confirmed by further provisions concerning the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. An alien must be given full facilities for pursuing his remedy against expulsion so that this right will in all the circumstances of his case be an effective one. The principles of article 13 relating to appeal against expulsion and the entitlement to review by a competent authority may only be departed from when "compelling reasons of national security" so require. Discrimination may not be made between different categories of aliens in the application of article 13.

## **COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN**

### **General Recommendation No. 21: Equality in Marriage and Family Relations (1994)**

- Read the General Comment in full-text in [English](#) in Refworld.

6. Nationality is critical to full participation in society. In general, States confer nationality on those who are born in that country. Nationality can also be acquired by reason of settlement or granted for humanitarian reasons such as statelessness. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence. Nationality should be capable of change by an adult woman and should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.

## COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

### General Recommendation No. 30: Discrimination Against Non-Citizens (2004)

- Read the General Comment in full-text in [English](#) in Refworld.

#### *I. Responsibilities of States parties to the Convention*

1. Article 1, paragraph 1, of the Convention defines racial discrimination. Article 1, paragraph 2 provides for the possibility of differentiating between citizens and non-citizens. Article 1, paragraph 3 declares that, concerning nationality, citizenship or naturalization, the legal provisions of States parties must not discriminate against any particular nationality;

2. Article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;

3. Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law;

4. Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. Differentiation within the scope of article 1, paragraph 4, of the Convention relating to special measures is not considered discriminatory;

[...]

#### *IV. Access to citizenship*

13. Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;

14. Recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations to ensure non-discriminatory enjoyment of the right to nationality;

15. Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to

employment and social benefits, in violation of the Convention's anti-discrimination principles;

16. Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children;

17. Regularize the status of former citizens of predecessor States who now reside within the jurisdiction of the State party;

### **General Recommendation No. 27: Discrimination Against Roma (2000)**

- Read the General Comment in full-text in [English](#) in Refworld.

#### **1. Measures of a general nature**

[...]

4. To ensure that legislation regarding citizenship and naturalization does not discriminate against members of Roma communities.

### **COMMITTEE ON THE RIGHTS OF THE CHILD**

#### **General Comment No. 11: Indigenous children and their rights under the Convention (2009)**

- Read the General Comment in full-text in [English](#) in Refworld.

41. States parties are obliged to ensure that all children are registered immediately after birth and that they acquire a nationality. Birth registration should be free and universally accessible. The Committee is concerned that indigenous children, to a greater extent than non-indigenous children, remain without birth registration and at a higher risk of being stateless.

42. Therefore, States parties should take special measures in order to ensure that indigenous children, including those living in remote areas, are duly registered. Such special measures, to be agreed following consultation with the communities concerned, may include mobile units, periodic birth registration campaigns or the designation of birth registration offices within indigenous communities to ensure accessibility.

43. States parties should ensure that indigenous communities are informed about the importance of birth registration and of the negative implications of its absence on the enjoyment of other rights for non-registered children. States parties should ensure that information to this effect is available to indigenous communities in their own languages and that public awareness campaigns are undertaken in consultation with the communities concerned.<sup>1</sup>

---

<sup>1</sup> UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 9.



72. Articles 34 and 35 of the Convention with consideration to the provisions of article 20, call on States to ensure that children are protected against sexual exploitation and abuse as well as the abduction, sale or traffic of children for any purposes. The Committee is concerned that indigenous children whose communities are affected by poverty and urban migration are at a high risk of becoming victims of sexual exploitation and trafficking. Young girls, particularly those not registered at birth, are especially vulnerable. In order to improve the protection of all children, including indigenous, States parties are encouraged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography.

### **General Comment No. 9: The rights of children with disabilities (2006)**

- Read the General Comment in full-text in [English](#) in Refworld.

35. Children with disabilities are disproportionately vulnerable to non-registration at birth. Without birth registration they are not recognized by law and become invisible in government statistics. Non-registration has profound consequences for the enjoyment of their human rights, including the lack of citizenship and access to social and health services and to education. Children with disabilities who are not registered at birth are at greater risk of neglect, institutionalization, and even death.

36. In the light of article 7 of the Convention, the Committee recommends that States parties adopt all appropriate measures to ensure the registration of children with disabilities at birth. Such measures should include developing and implementing an effective system of birth registration, waiving registration fees, introducing mobile registration offices and, for children who are not yet registered, providing registration units in schools. In this context, States parties should ensure that the provisions of article 7 are fully enforced in conformity with the principles of non-discrimination (art. 2) and of the best interests of the child (art. 3).

### **General Comment No. 7: Implementing child rights in early childhood (2005)**

- Read the General Comment in full-text in [English](#) in Refworld.

25. Birth registration. Comprehensive services for early childhood begin at birth. The Committee notes that provision for registration of all children at birth is still a major challenge for many countries and regions. This can impact negatively on a child's sense of personal identity and children may be denied entitlements to basic health, education and social welfare. As a first step in ensuring the rights to survival, development and access to quality services for all children (art. 6), the Committee recommends that States parties take all necessary measures to ensure that all children are registered at birth. This can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. An effective system must be flexible and responsive to the circumstances of families, for example by providing mobile registration units where appropriate. The Committee notes that children who are sick or disabled are less likely to be registered in some regions and emphasizes that all children should be registered at birth, without discrimination of any kind (art. 2). The Committee also reminds States parties of the importance of facilitating late registration of birth, and ensuring that children who have not been registered have equal access to health care, protection, education and other social services.



## COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2) (2009)

- Read the General Comment in full-text in [English](#) in Refworld.

5. The preamble, Articles 1(3) and 55 of the UN Charter and Article 2(1) of the Universal Declaration of Human Rights prohibit discrimination in the enjoyment of economic, social and cultural rights. International treaties on racial discrimination, discrimination against women and the rights of refugees, stateless persons, children, migrant workers and members of their families and persons with disabilities include the exercise of economic, social and cultural rights,<sup>2</sup> while other treaties require the elimination of discrimination in specific fields, such as employment and education.<sup>3</sup> In addition to the common provision on equality and non-discrimination in both Covenants, ICESCR and the International Covenant on Civil and Political Rights, Article 26 of ICCPR contains an independent guarantee of equal and effective protection before and of the law.<sup>4</sup>

26. Birth. Discrimination based on birth is prohibited and Article 10(3) specifically states, for example, that special measures should be taken on behalf of children and young persons “without any discrimination for reasons of parentage”. Distinctions must therefore not be made against those who are born out of wedlock, born of stateless parents or are adopted or constitute the families of such persons. The prohibited ground of birth also includes *descent*, especially on the basis of caste and analogous systems of inherited status.<sup>5</sup> States parties should take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against dissemination of ideas of superiority and inferiority on the basis of descent.

30. Nationality. The ground of nationality should not bar access to Covenant rights,<sup>6</sup> e.g., all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-

---

<sup>2</sup> See International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); Convention relating to the Status of Refugees; Convention relating to the Status of Stateless Persons; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of Persons with Disabilities.

<sup>3</sup> ILO Convention No. 111, Discrimination in Respect of Employment and Occupation; UNESCO Convention against Discrimination in Education.

<sup>4</sup> See General Comment No. 18 of the Human Rights Committee.

<sup>5</sup> For a comprehensive overview of State obligations in this regard, see General Comment No. 29 of the Committee on the Elimination of All Forms of Racial Discrimination.

<sup>6</sup> This paragraph is without prejudice to the application of article 2(3) of the Covenant, which states: “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals”.

seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.<sup>7</sup>

*Updated November 2009*

---

<sup>7</sup> See also General Comment No. 30 of the Committee on the Elimination of All Forms of Racial Discrimination on non-citizens (2004).