

# NOTES

## THE CAMPAIGN FOR UNIVERSAL BIRTH REGISTRATION IN LATIN AMERICA: ENSURING ALL LATIN AMERICAN CHILDREN'S INHERENT RIGHT TO LIFE AND SURVIVAL BY FIRST GUARANTEEING THEIR RIGHT TO A LEGAL IDENTITY

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## I. INTRODUCTION

In Cuzco, Peru, two parents seek emergency medical care for their eight-month-old daughter, Isabel. However, neither parent possesses an identity document. As a result, little Isabel, who also lacks a birth certificate or any other form of identification, is denied the medical attention she urgently needs.<sup>1</sup> In Colombia, a mother, who cannot produce her son's birth registration, cannot enroll her child in school.<sup>2</sup> Beyond not being able to attend school, he also does not have access to free health care.<sup>3</sup> In the Dominican Republic, a boy successfully completes the eighth grade but cannot enroll in high school because he does not have a birth certificate.<sup>4</sup> The school director eventually allows him to enroll provisionally until he can obtain the proper documents.<sup>5</sup> In each instance, a child's well-being is compromised for lack of a simple birth certificate.

These illustrations provide a brief insight into the difficulties Latin American children and their parents face when the child, or the parent, lacks an identity document. There may be many reasons why Latin American parents fail to register the birth of their children, including education and economics. However, registration of a child's birth is vital to her full participation in society.<sup>6</sup>

The problem of birth under-registration, as it is called, is not specific to the Latin American region. Birth under-registration is a worldwide issue and is most prevalent in the developing world: in developing countries worldwide, approximately 51 million births are not registered each year.<sup>7</sup> The problem in

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<sup>1</sup> Plan International, *A New Name, and a New Identity for Baby Isabel*, <http://www.plan-international.org/wherework/americas/peru/testimonyperu/> (last visited Apr. 2, 2009).

<sup>2</sup> Marisol Quintero, *Alliance Aims for Universal Birth Registration in Latin America and Caribbean*, UNICEF, Aug. 8, 2006, [http://www.unicef.org/infobycountry/colombia\\_35261.html](http://www.unicef.org/infobycountry/colombia_35261.html).

<sup>3</sup> *Id.*

<sup>4</sup> Plan International, *A Right Without Borders*, <http://www.plan-international.org/wherework/americas/dominicanrepublic/rightnoborders> (last visited Apr. 2, 2009).

<sup>5</sup> *Id.*

<sup>6</sup> See Suzanne Duryea et al., *The Under-Registration of Births in Latin America*, 5 (Inter-Am. Dev. Bank, Research Dep't, Working Paper No. 551, 2006), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=844554> (noting that a "lack of proper documentation has a direct bearing on an individual's ability to fully participate in society"); see also UNICEF, *The 'Rights' Start to Life: A Statistical Analysis of Birth Registration 24*, available at <http://www.unicef.org/publications/files/R55BirthReg10a.pdf> (last visited June 1, 2009) (noting several connections between under-registered populations and those populations that are "disadvantaged in terms of socio-economic status, education, health care and protection").

<sup>7</sup> UNICEF, *Child Protection from Violence, Exploitation and Abuse: Birth Registration*,

Latin America is acute: roughly one in six children are not registered at birth and therefore lack birth certificates.<sup>8</sup> Consequently, nearly two million Latin American children born every year lack a formal legal identity and are not recognized as citizens in their country of birth.<sup>9</sup> This reality places children at an increased risk of being exploited, denied legal rights, and barred from basic social services.<sup>10</sup> As presented in the anecdotal accounts above, basic services like medical attention and education are often contingent upon birth certificates.

The under-registration of births, however, undermines not only the well-being of children but also the effectiveness of governments: a government lacking accurate census information regarding its children cannot adequately provide services and programs to them.<sup>11</sup>

The low rate of birth registration in Latin America is also worrisome because the rights to an identity and a nationality have been recognized as fundamental rights that must be "guaranteed immediately."<sup>12</sup> Since coming into force in 1990, the Convention on the Rights of the Child<sup>13</sup> has guaranteed the right to a name and nationality, but despite its ratification by all the Latin

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[http://www.unicef.org/protection/index\\_birthregistration.html](http://www.unicef.org/protection/index_birthregistration.html) (last visited June 1, 2009); Unity Dow, *Birth Registration: The 'First' Right*, in UNICEF, THE PROGRESS OF NATIONS 5, 10 (1998), available at <http://www.unicef.org/pon98/pon98.pdf>. Some sources provide a more conservative figure, pinning the annual number of unregistered births at approximately 40 million. This constitutes about one third of all births. *Id.*

<sup>8</sup> Press Release, Plan Int'l, Plan: Latin Am. Home to Millions of "Invisible" Children (Aug. 29, 2007), <http://www.plan-international.org/news/07/invisiblechildren/> [hereinafter Plan Int'l Press Release]; Duryea et al., *supra* note 6, at 8 (percentages of unregistered children vary among the Latin American countries, ranging from 8.4%–25.8%, with under-registration being the highest in the Dominican Republic).

<sup>9</sup> Press Release, UNICEF, Latin Am. Region Unites for Millions of "Invisible" Children (Aug. 28, 2007), [http://www.unicef.org/infobycountry/media\\_40731.html](http://www.unicef.org/infobycountry/media_40731.html) [hereinafter UNICEF Press Release].

<sup>10</sup> *Id.*; see Plan Int'l Press Release, *supra* note 8 (noting that such children are excluded from basic services and that children given access to such services grow to be "fully participating citizens").

<sup>11</sup> See UNICEF Press Release, *supra* note 9 (noting that "registration provides governments with specific information on their populations and lets them make better use of increasingly limited resources").

<sup>12</sup> Plan International, Basic Information: 1st Latin American Regional Conference on Birth Registration and Right to Identity I, <http://www.plan-international.org/pdfs/ubroobasic.pdf> (last visited Apr. 2, 2009).

<sup>13</sup> The Convention on the Rights of the Child, Nov. 20, 1989, adopted 1577 U.N.T.S. 3 [hereinafter CRC].

American governments,<sup>14</sup> countries in the region are still unable to completely guarantee these rights.<sup>15</sup>

In light of these concerns and international obligations, governmental and non-governmental organizations have made efforts to improve birth registration rates. In February 2005, Plan International, a prominent non-governmental organization dedicated to children's issues, launched its global campaign for universal birth registration.<sup>16</sup> This global campaign has been supported by the United Nations Children's Fund (UNICEF).<sup>17</sup> Similarly, the Organization of American States (OAS), the Inter-American Development Bank (IDB), and UNICEF formed an alliance in August of 2006 to achieve "free, timely, [and] universal" registration of all Latin American births by 2015.<sup>18</sup> Most noticeably in 2007, the first Latin American Regional Conference on Birth Registration and the Right to Identity was held.<sup>19</sup>

On August 28, 2007, representatives from Latin American governments, civil society organizations, and the United Nations convened in Asunción, Paraguay for the Regional Conference.<sup>20</sup> Indicative of its importance, the conference was attended by prominent political and government officials, directors and experts from civil registries, representatives of under-represented groups from the respective countries, as well as representatives from

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<sup>14</sup> See Dow, *supra* note 7, at 7 (noting that the CRC has been ratified by all countries except the United States and Somalia).

<sup>15</sup> See Plan Int'l Press Release, *supra* note 8 (noting that one in six children born in Latin America are not registered and have no official identity).

<sup>16</sup> PLAN USA, COUNT ME IN! THE GLOBAL CAMPAIGN FOR UNIVERSAL BIRTH REGISTRATION 8 (2005-06), available at <http://www.planusa.org/who/research.php#ubr> (scroll down and follow "Count Me In!" hyperlink) [hereinafter COUNT ME IN].

<sup>17</sup> See *id.* at 8 (noting that twenty-nine Plan offices work in partnership with UNICEF).

<sup>18</sup> Press Release, Org. of Am. States, The Inter-Am. Dev. Bank, the Organization of American States and UNICEF Launch Initiative to Grant Official Identity to Millions of Unregistered Children (Aug. 8, 2006), [http://www.oas.org/OASpage/press\\_releases/press\\_release.asp?sCodigo=E-IDOASUNI](http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=E-IDOASUNI) [hereinafter Launch Initiative]. To achieve its end of universal birth registration, the alliance seeks to focus on the following initiatives: (1) improving the collection and distribution of birth registration data; (2) modernizing the region's civil registry systems; and (3) establishing links between birth registration on one hand, and other social services and citizen participation on the other. *Id.*

<sup>19</sup> UNICEF Press Release, *supra* note 9. The three-day conference, entitled "Write Me Down, Make Me Visible," was organized by the United Nations Children's Fund (UNICEF), the Organization of American States, and Plan International in conjunction with the Government of Paraguay. *Id.* Delegations represented the following eighteen countries: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela. *Id.*

<sup>20</sup> *Id.*

international and regional non-governmental organizations.<sup>21</sup> The focus of the Regional Conference was to reinforce political commitment and strengthen cooperation between the countries, raise public awareness, and generate consensus to develop action plans at the national and regional levels that will ensure that universal birth registration becomes a reality.<sup>22</sup> The Regional Conference was lauded as “a great first step to guaranteeing the rights of every child in Latin America.”<sup>23</sup>

These affirmative steps are seen as a timely approach to a problem that is likely to worsen if sustainable solutions are not developed.<sup>24</sup> Despite the high acclamations and hopes for the future, there are several barriers that need to be addressed before significant changes can be implemented. Specifically, while Latin American countries have enacted laws that require birth registration, lack of resources, awareness, and enforcement prevent universal birth registration from becoming a reality.<sup>25</sup>

This Note analyzes the challenges posed to children and governments in Latin America by birth under-registration. In developed countries, birth registration occurs automatically and so seamlessly that it is taken for granted. It is in observing this phenomenon (or the lack of it) in developing countries that one realizes the deep impact of “a small little paper.”<sup>26</sup> This Note will focus on the Latin American region as a whole, while also drawing on illustrations and anecdotes from specific countries.

Part II of this Note defines birth registration, explains its legal significance, and details the risks associated with its absence. Part III of this Note provides a description of the international legal framework for the child’s right to birth registration and a nationality, the United Nations Convention on the Rights of the Child (CRC).<sup>27</sup> Part IV surveys specific actions taken by Latin American countries in their efforts to comply with the CRC. Since the adoption of the CRC in 1989, non-governmental organizations, such as Plan International,

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<sup>21</sup> See Plan International, Basic Information, *supra* note 12 (listing attendees).

<sup>22</sup> *Id.*; UNICEF Press Release, *supra* note 9.

<sup>23</sup> UNICEF Press Release, *supra* note 9 (quoting Plan’s Regional Director for the Americas, Pia Stavas-Meier).

<sup>24</sup> See Plan Int’l Press Release, *supra* note 8. A Plan official explains that birth registration is essential in a complex society: “As urban migration and limited resources increase, the need for clear and precise population information will become even more valuable.” *Id.*

<sup>25</sup> See *infra* Parts II.B and V.

<sup>26</sup> COUNT ME IN, *supra* note 16, at 4. Archbishop Desmond Tutu, while launching Plan’s global birth registration campaign, used these words to refer to a birth certificate. *Id.*

<sup>27</sup> CRC, *supra* note 13.

have exerted significant pressure on governments around the globe to adopt new legislation and administrative measures.<sup>28</sup> This Part examines such government responses. Part V identifies some barriers to full implementation of universal birth registration in Latin America. Finally, Part VI provides some recommendations and approaches that will help improve birth registration rates in Latin America.

## II. BIRTH REGISTRATION

### A. *Its Definition and Significance*

Birth registration refers to a governmental agency's process of officially documenting a child's birth in a civil register.<sup>29</sup> This official birth record is typically required for the issuance of a birth certificate,<sup>30</sup> which also opens the door to other forms of government-issued identification, such as a passport or identity card.<sup>31</sup> The birth record or birth certificate will contain and establish the child's name. Thus, a child's fundamental right to a name may be threatened without it.<sup>32</sup> The birth record also usually contains details such as the place of birth, as well as the names and nationalities of the parents, thus helping to prove the nationality and citizenship of the child.<sup>33</sup> A child whose nationality or citizenship is not established is at risk of statelessness.<sup>34</sup>

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<sup>28</sup> *Count Me In! Campaign Registers Over 5 Million Children*, PLANUSA.ORG, Nov. 20, 2006, <https://www.planusa.org/contentmgr/showdetails.php/id/108816>.

<sup>29</sup> Johnathan Todres, *Birth Registration: An Essential First Step Toward Ensuring the Rights of All Children*, HUM. RTS. BRIEF, Spring 2003, at 32, 32.

<sup>30</sup> *Id.*

<sup>31</sup> *Lack of Birth Certificates Deny Millions of Latin American Children Services*, U.N. NEWS CTR., Aug. 29, 2007, <http://www.un.org/apps/news/story.asp?NewsID=23630&cr=Latin&Cr1=America>; see Plan International, *supra* note 1 (stating that a birth certificate allows "all access to private and government services"); Duryea et al., *supra* note 6, at 5 ("The lack of a birth certificate is often the first step of a lifelong struggle with a lack of documentation.")

<sup>32</sup> See COUNT ME IN, *supra* note 16, at 4 (stating that an unregistered child can be denied his right to a family or name); GERALDINE VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 117 (1998) ("[T]he right . . . to a name is fundamental, as a name is the first point of reference both for the child and society as a means of identifying the child and the child's family.")

<sup>33</sup> Todres, *supra* note 29, at 33.

<sup>34</sup> *Id.*

In essence, birth registration establishes the child's identity.<sup>35</sup> Thus, the significance of a reliable system of birth registration cannot be overstated: as the formal mechanism by which the legal existence of the child is established, it constitutes "one of the most important events in a child's life."<sup>36</sup> The registration of a child's birth is vital to his place in the world and to his ability to access legal, social, and political rights.<sup>37</sup>

A birth certificate cannot by itself guarantee the protection of a child's rights; however, it significantly increases the child's ability to access and enforce these rights.<sup>38</sup> Children who have lived without birth certificates find it easy to recount the difficulties they have faced: in the words of one Colombian boy, "Without a birth certificate you are nobody[;] you are anonymous[;] you don't appear anywhere."<sup>39</sup>

The absence of birth registration effectively creates a barrier to meaningful involvement in society. Unregistered Latin American children are often denied access to basic social services, as many programs require proof of identity.<sup>40</sup> A child without identification may be unable to enroll in school or receive necessary medical needs like vaccinations or health care.<sup>41</sup> Also, a child's right to know his or her parents, and to be cared for by them, may be jeopardized in the absence of proper registration.<sup>42</sup> For example, an

<sup>35</sup> See VAN BUEREN, *supra* note 32, at 117 (noting that an identity "is that which makes a person visible to society").

<sup>36</sup> Todres, *supra* note 29, at 32; Plan International, Birth Registration, <http://www.planusa.org/contentmgr/showdetails.php/id/591> (last visited June 1, 2009) (recognizing that the effect of having a birth certificate is "far-reaching").

<sup>37</sup> COUNT ME IN, *supra* note 16, at 3; see Launch Initiative, *supra* note 18 (describing lack of proper documentation as a type of "economic, political, and social exclusion"); VAN BUEREN, *supra* note 32, at 117 ("An identity transforms the biological entity into a legal being and confirms the existence of a specific legal personality capable of bearing rights and duties.").

<sup>38</sup> Todres, *supra* note 29, at 32; UNICEF Press Release, *supra* note 9 (noting that while not a guarantee by itself, a birth certificate helps identify vulnerable children).

<sup>39</sup> Quintero, *supra* note 2.

<sup>40</sup> See Dow, *supra* note 7, at 9 (providing a chart indicating which programs require a birth certificate); Plan International, A New Name, and a New Identity for Baby Isabel, *supra* note 1 ("[M]any in Peru lack identity documents and thus have no access or entitlement to basic services.").

<sup>41</sup> UNICEF Fact Sheet: Birth Registration, <http://www.unicef.org/newsline/2003/03fsbirthregistration.htm> (last visited June 1, 2009) (listing rights and needs for which birth registration is necessary). These concerns vary by country. See Dow, *supra* note 7, at 9 (identifying whether countries require a birth certificate for immunization, health care, education, or marriage). In Brazil and Argentina, a birth certificate is not required for immunization or other healthcare needs, but in Mexico and Colombia, it is required. *Id.*

<sup>42</sup> Plan International, He Is My Father—Recognise This Right!, <http://www.plan-international>



undocumented child's right to his or her inheritance is threatened.<sup>43</sup> In addition, a mother cannot seek child support from the father of her child if his name does not appear on the birth certificate.<sup>44</sup> Thus, the child is placed at a heightened risk of not having his economic needs met because she has no birth certificate. However, the converse is also true: a father in such a situation who actually wants to legally recognize the child may not be able to do so in the absence of documentation.<sup>45</sup>

Because it is easier to falsify the age and identity of an unregistered child, the absence of birth registration renders children more vulnerable to exploitation.<sup>46</sup> Without proper identification, a boy cannot prove his ineligibility for military service.<sup>47</sup> Similarly, a young girl who cannot prove her age may be forced into early marriage.<sup>48</sup> Child labor, prostitution, and trafficking also tend to be present in places where rates of birth registration are low.<sup>49</sup> The influence of birth registration is even felt in the juvenile justice system.<sup>50</sup> Certain protections that may be available to a minor are contingent upon his ability to prove his age.<sup>51</sup> Thus, birth registration may help to ensure that a child will not be prosecuted as an adult.<sup>52</sup>

The consequences of the absence of birth registration reach into adulthood. Individuals without birth certificates may be unable to vote or run for office

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al.org/wherewework/americas/brazil/brazilfather/ (last visited Apr. 2, 2009).

<sup>43</sup> COUNT ME IN, *supra* note 16, at 5.

<sup>44</sup> See Plan International, He Is My Father—Recognise This Right!, *supra* note 42 (“A mother cannot ask for child support if the child’s father is not registered.”).

<sup>45</sup> See, e.g., Plan International, Flexibility for Leticia, <http://www.plan-international.org/wherewework/americas/bolivia/flexibilityleticiabol/> (last visited Apr. 2, 2009) (discussing a father, whose child lacks a birth certificate, and who is unable to legally recognize his child).

<sup>46</sup> See Todres, *supra* note 29, at 33 (stating that because it is harder to detect falsified ages among unregistered children, illicit trafficking thrives in areas with low birth registrations).

<sup>47</sup> See Dow, *supra* note 7, at 5 (noting that proof of birth can verify a boy’s ineligibility for military service).

<sup>48</sup> See Quintero, *supra* note 2 (noting that birth registration provides crucial protection from abuse and exploitation, which includes early marriage).

<sup>49</sup> Todres, *supra* note 29, at 33. The Human Rights Committee has recognized that the registration of children aids in preventing all forms of abduction, sale, and trafficking of children. VAN BUEREN, *supra* note 32, at 118. Van Bueren also notes that birth registration is of particular importance in the cases of refugees and mass exodus, where parents and children are more likely to become separated. *Id.*

<sup>50</sup> Todres, *supra* note 29, at 33.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

when they reach the appropriate age.<sup>53</sup> Proof of official identity may be important in securing employment or social security.<sup>54</sup> Opening a bank account, getting access to credit, owning land, or obtaining a marriage license may also be difficult.<sup>55</sup> Further, a parent who lacks proper documentation may be unable to secure services for her young child.<sup>56</sup>

An ineffective system of birth registration not only harms children's well-being, it also undermines a country's development and the strength of its government.<sup>57</sup> Not having identity documents, such as birth certificates and national identification cards, hinders individual participation in economic and productive activities.<sup>58</sup> Lack of birth registration also undermines the democratic political process,<sup>59</sup> as children who are accorded "full and legal access to . . . services grow up into fully participating citizens."<sup>60</sup>

Further, registration allows governments to keep track of demographics and assess the needs of their populations. Particular needs of children—immunization needs, for example—can be tracked.<sup>61</sup> This enables governments to accurately plan policies and programs, secure international aid, and make more efficient use of limited resources.<sup>62</sup> An ineffective system of registration will undercut a government's ability to take these actions.

For these reasons, birth registration is important to Latin American children and to the countries in which they live. Not only is it vital to securing their rights accorded to children as citizens under national laws, it is essential to the protection of their human rights as recognized by various treaties and customary international law.

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 34.

<sup>55</sup> Dow, *supra* note 7, at 5; UNICEF Fact Sheet: Birth Registration, *supra* note 41.

<sup>56</sup> See, e.g., Plan International, A New Name, and a New Identity for Baby Isabel, *supra* note 1 (reporting an instance where an eight-month old was "refused specialised medical attention because neither parent had an identity document").

<sup>57</sup> See UNICEF Press Release, *supra* note 9 (discussing how accurate population information allows governments to use resources more accurately and efficiently).

<sup>58</sup> Quintero, *supra* note 2.

<sup>59</sup> See UNICEF Press Release, *supra* note 9 ("Citizenship implies the exercising of rights and constitutes one of the pillars of democratic governability.").

<sup>60</sup> *Id.*

<sup>61</sup> See COUNT ME IN, *supra* note 16, at 5 (discussing the need to track vital information for children generally).

<sup>62</sup> *Id.*; UNICEF Press Release, *supra* note 9; see also Todres, *supra* note 29, at 34 (noting that when governments fail to obtain accurate population statistics and allocate budgets toward child programs efficiently, even those children who are registered are harmed).

### B. Barriers to Birth Registration

There can be many reasons why children are not registered at birth. For example, children born in rural areas are frequently born at home with the help of a midwife rather than in a medical facility, where registration commonly takes place.<sup>63</sup> Registration systems often do not extend to rural areas, as civil registry offices are usually centralized in capital cities and other urban areas.<sup>64</sup> Transportation and other costs associated with long distance travel hinder parents from getting to a civil registry office to register a birth, even though the registration process itself is usually free.<sup>65</sup> As a result, birth registration in Latin America tends to be more erratic in rural areas.<sup>66</sup>

The barriers to birth registration are especially great for the poor. The financial penalties associated with failing to register a child before a certain age also provide a deterrent. For example, in Nicaragua, the process of registering a child over one year old is more complicated and more expensive than registering a child under one year of age.<sup>67</sup>

Very often poor communities are comprised of indigenous peoples, migrant workers, and ethnic minorities. The Committee on the Rights of the Child has expressed particular concern over the position of indigenous children in Chile,

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<sup>63</sup> UNICEF, Child Protection from Violence, Exploitation and Abuse, *supra* note 7.

<sup>64</sup> Plan International, The Right To Have Rights, <http://www.plan-international.org/wherework/americas/paraguay/righttohaveights/> (last visited Apr. 2, 2009); see Dow, *supra* note 7, at 9 (noting that registration systems are not “fully implemented” especially outside cities).

<sup>65</sup> See Plan International, The Right To Have Rights, *supra* note 64 (citing the example of two parents who struggled to save up the four dollars (U.S.) required for a one-way fare to the civil registry office); see also Plan International, Guiding the Way Toward the Right to Dignity, <http://www.plan-international.org/wherework/americas/ecuador/guidingtoward/> (last visited Apr. 2, 2009) (noting that the possibility of having to pay for an overnight stay and meals makes parents nervous); Plan International, Dominican Republic: 120 Km to Register a Birth, <http://www.writemedown.org/issues/stories/dominicanrepublic/> (last visited Apr. 2, 2009) (recounting a story about a mother who is unable to gather the money needed to travel to the closest civil registry office).

<sup>66</sup> Duryea et al., *supra* note 6, at 8. The Dominican Republic has the highest incidence of under-registration in rural areas; 33.5% of rural births are unregistered. *Id.*

<sup>67</sup> Plan International, Common Obstacles to Achieving Universal Birth Registration, <http://www.writemedown.org/research/obstacles/> (last visited Apr. 2, 2008). This is because registration of a child over one year cannot be carried out immediately. *Id.* A lawyer is needed to start a legal procedure that entails going to the courts and petitioning a judge for an order of registration. This may take up to one year. *Id.* Further, when a child over the age of two is being registered for the first time in the Dominican Republic, “more information is needed,” thus lengthening the process. Plan International, Dominican Republic: 120 Km to Register a Birth, *supra* note 65.

Ecuador, and Venezuela.<sup>68</sup> Indigenous peoples generally maintain their own language, culture, and social organization, and because they are likely to insist on their right to a separate identity, indigenous children are less likely to be registered at birth.<sup>69</sup> This is partly due to a lack of communication on the issue in indigenous languages.<sup>70</sup> As a result, these communities often remain unaware of the necessity of—and their right to—birth registration.

Additionally, there are occasions where it is apparent that the state deliberately seeks to exclude ethnic minorities and migrant workers.<sup>71</sup> For example, due to a long history of strife between Haitians and Dominicans—who share the same island—children born of Haitian migrant workers in the Dominican Republic are systematically denied birth registration and documentation.<sup>72</sup> In the case of *Yean and Bosico Children*, a Dominican civil registry office deliberately refused to issue birth certificates to two Dominican-born girls because of their Haitian descent.<sup>73</sup> Consequently, the girls were unable to obtain Dominican nationality and remained stateless.<sup>74</sup> Lacking any form of identification, Bosico could not attend school for one year.<sup>75</sup> The Inter-American Court of Human Rights ultimately found that the Dominican Republic's discriminatory denial of birth registration to the

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<sup>68</sup> UNICEF, THE STATE OF THE WORLD'S CHILDREN 2006: EXCLUDED AND INVISIBLE 25 (2005), [http://www.unicef.org/sowc06/pdfs/sowc06\\_fullreport.pdf](http://www.unicef.org/sowc06/pdfs/sowc06_fullreport.pdf).

<sup>69</sup> *Id.* at 24–25. For example, in Ecuador's Amazonian region, only twenty-one percent of children under the age of five have a birth certificate, compared with the national average of eighty-nine percent. *Id.* at 25.

<sup>70</sup> *Id.*

<sup>71</sup> See, e.g., *Yean and Bosico Children v. Dominican Republic*, Case 12.189, 2005 Inter-Am. C.H.R. (2005), available at [http://www.escri-net.org/usr\\_doc/Judgement\\_Sept\\_8\\_05.pdf](http://www.escri-net.org/usr_doc/Judgement_Sept_8_05.pdf) (holding that the right to nationality had been violated by the Dominican Republic when it denied birth certificates to two children of Haitian descent); see also David C. Baluarte, *Inter-American Justice Comes to the Dominican Republic: An Island Shakes as Human Rights and Sovereignty Clash*, HUM. RTS. BRIEF, Winter 2006, at 25 (discussing the *Yean and Bosico Children* decision); Plan International, *Common Obstacles to Achieving Universal Birth Registration*, *supra* note 67 (noting that a lack of political will to register children may be deliberate).

<sup>72</sup> For a brief history of Haitian-Dominican tensions and a description of institutionalized discrimination against Haitians living in the Dominican Republic, see Baluarte, *supra* note 71, at 26.

<sup>73</sup> *Yean and Bosico Children*, 2005 Inter-Am. Ct. H.R. (ser. C) No. 130.

<sup>74</sup> The decision notes the girls remained stateless until September 25, 2001. At that time, Yean was roughly five years old and Bosico had reached the age of sixteen. *Id.* ¶¶ 3, 109(14).

<sup>75</sup> *Id.* ¶ 3.

children deprived them of their rights to a nationality, name, juridical personality, and equal protection.<sup>76</sup>

Another key factor contributing to low birth registration rates is unawareness or lack of motivation: many do not see the importance of registering children until they are school-aged or until they need personal identification cards.<sup>77</sup> Moreover, parents who themselves lack identity documents often have trouble obtaining registration for their children.<sup>78</sup>

Plan International has identified several barriers existing at the national and international levels that also inhibit proper birth registration.<sup>79</sup> At the national scale, the absence of political will and a lack of resources result in weak enforcement of birth registrations.<sup>80</sup> A deficient allocation of funds to registration programs, poorly equipped offices, and inadequate numbers of civil registry personnel, many of whom are improperly trained, also impede birth registration efforts.<sup>81</sup> This also explains the centralized nature of the registry system and why rural residents often do not have access. Legislative barriers also pose difficulties.<sup>82</sup>

At the international level, although there has been a demonstrated interest in achieving universal birth registration, “the issue is still not sufficiently recognised beyond human rights conventions and texts.”<sup>83</sup> The international community is still limited in its appreciation for the importance of birth registration, and consequently, little pressure is placed on states to ensure effective registration systems.<sup>84</sup> It is uncommon for birth registration to be

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<sup>76</sup> *Id.* ¶ 260.

<sup>77</sup> Plan International, Common Obstacles to Achieving Universal Birth Registration, *supra* note 67; see Plan International, The Right To Have Rights, *supra* note 64 (discussing parents in Paraguay); see also Plan International, Providing Access to Birth Registration in El Salvador, <http://www.plan-international.org/wherewework/americas/testimonyelsalvador/> (last visited Apr. 2, 2009) (quoting a mother as saying “[i]t never occurred to me that a piece of paper was so important”).

<sup>78</sup> See Plan International, Dominican Republic: 120 KM to Register a Birth, *supra* note 65. In this particular instance, registration officials required photographs and parents’ certificates, which the mother could not provide. The only way the mother was able to register the child was by borrowing money with which to bribe the officials. *Id.*

<sup>79</sup> See Plan International, Common Obstacles to Achieving Universal Birth Registration, *supra* note 67 (listing several barriers experienced worldwide).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> See *id.* (noting that often laws are not consistent across a country because they often lack clear rules, or are contradicted by other laws).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

made a condition of international aid or partnerships.<sup>85</sup> The issue of birth registration is not satisfactorily incorporated into international programs and policies. Another critique is that the international community does not supply enough resources to governments of developing countries, so that they may implement birth registration programs.<sup>86</sup> It would be relatively easy for the international community to condition aid and partnerships on Latin American countries' progress in registering children at birth, as there is already an international obligation for countries to provide birth registration to all children.

### III. THE INTERNATIONAL LEGAL FRAMEWORK BEHIND THE RIGHT TO BIRTH REGISTRATION AND IDENTITY

Birth registration is essential to securing the child's right to a name, identity, and nationality, which are all rights of deep importance recognized by international law.<sup>87</sup>

Article 15 of the Universal Declaration of Human Rights recognizes that "[e]veryone has the right to a nationality [and that] [n]o one shall be arbitrarily deprived [of it]."<sup>88</sup> While the Universal Declaration is a non-binding document, the principles it embodies are widely regarded as customary international law.<sup>89</sup>

The right to birth registration is also recognized as a fundamental human right by the International Covenant on Civil and Political Rights (ICCPR).<sup>90</sup> Article 24 of the ICCPR declares that "[e]very child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of . . . the State."<sup>91</sup> The ICCPR then follows with this mandate: "Every child shall be registered immediately after birth and shall have a name."<sup>92</sup> Thus, the ICCPR makes it clear that birth

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Todres, *supra* note 29, at 32-33.

<sup>88</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 15, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

<sup>89</sup> Todres, *supra* note 29, at 33.

<sup>90</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), art. 24, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

<sup>91</sup> *Id.* art. 24(1).

<sup>92</sup> *Id.* art. 24(2).

registration is considered a measure of protection for the child that states have the responsibility to provide. Article 16 of the ICCPR also guarantees that “[e]veryone shall have the right to recognition everywhere as a person before the law.”<sup>93</sup>

Additionally, the rights to birth registration, a name, and a nationality are delineated in the Convention on the Reduction of Statelessness,<sup>94</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>95</sup> the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,<sup>96</sup> and the Declaration on the Rights of Indigenous Peoples.<sup>97</sup> Moreover, the American Convention on Human Rights—commonly known as the Pact of San José—establishes the right to a juridical personality in Article 3, the right to a name in Article 18, and the right to a nationality in Article 20.<sup>98</sup> These are all rights to which birth registration is most essential.

#### *A. The Convention on the Rights of the Child*

The United Nations Convention on the Rights of the Child (CRC), adopted by the U.N. General Assembly on November 20, 1989, is the international agreement most often referenced in the discussion of a child’s right to birth registration.<sup>99</sup> The CRC is an instrument of great legal and political significance as it “elevate[s] the child to the status of an independent rights-holder and place[s] children’s issues at the centre of the mainstream human

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<sup>93</sup> *Id.* art. 16.

<sup>94</sup> Convention on the Reduction of Statelessness art. 1, *adopted* Aug. 30, 1961, 989 U.N.T.S. 175 (requiring that children acquire nationality from their country of birth if they would otherwise be stateless).

<sup>95</sup> International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, art. 5, U.N. GAOR, 20th Sess., 1406th plen. mtg., U.N. Doc. A/6014 (Dec. 21, 1965) (everyone shall enjoy the right to nationality “without distinction as to race, colour, or national or ethnic origin”).

<sup>96</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. Res. 45/158, art. 29, U.N. GAOR, 69th plen. mtg., Supp. No. 49A, U.N. Doc. A/45/49 (Dec. 18, 1990) (“Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality.”).

<sup>97</sup> Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, art. 6, U.N. Doc. A/Res/61/295 (Oct. 2, 2007) (“Every indigenous individual has the right to a nationality.”).

<sup>98</sup> American Convention on Human Rights arts. 3, 18, 20, Nov. 22, 1969, 1144 U.N.T.S. 123.

<sup>99</sup> CRC, *supra* note 13, at 47.

rights agenda.<sup>100</sup> The principles embodied in the CRC grew out of the legal norms of the common law and civil law of the West, yet these principles are also prevalent in other legal systems.<sup>101</sup> Enjoying near-universal acceptance, the CRC is the most widely ratified international human rights treaty,<sup>102</sup> and it symbolizes the universality and indivisibility of children's human rights.<sup>103</sup> Consequently, the rights guaranteed to children and the obligations it imposes on states are considered customary international law.<sup>104</sup>

Article 7 of the CRC states:

The child shall be registered immediately after birth and shall have the right from birth to a name [and] the right to acquire a nationality . . . . State 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.<sup>105</sup>

The placement of the right to birth registration in the CRC is an indication of the importance of this right. The first right of the child set forth by the CRC is found in Article 6: the child's "inherent right to life."<sup>106</sup> It is indubitably the child's "most basic and fundamental right."<sup>107</sup> The right to birth registration

<sup>100</sup> Deirdre Fottrell, *One Step Forward or Two Steps Sideways? Assessing the First Decade of the United Nations Convention on the Rights of the Child*, in REVISITING CHILDREN'S RIGHTS: 10 YEARS OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD 1, 1 (Deirdre Fottrell ed., 2000).

<sup>101</sup> Savitri Goonesekere, *Introduction*, in UNICEF, PROTECTING THE WORLD'S CHILDREN: IMPACT OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN DIVERSE LEGAL SYSTEMS 1, 27 (2007).

<sup>102</sup> Todres, *supra* note 29, at 32; see Goonesekere, *supra* note 101, at 27 (describing the CRC as "an instrument that reflects the universality and indivisibility of children's human rights"). Only two countries have not ratified the treaty: the United States and Somalia. Dow, *supra* note 7, at 7.

<sup>103</sup> Goonesekere, *supra* note 101, at 27.

<sup>104</sup> Ineta Ziemele, *Article 7: The Right to Birth Registration, Name and Nationality, and the Right to Know and Be Cared for by Parents*, in A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 1, 25 (Andre Alen et al. eds., 2007).

<sup>105</sup> CRC, *supra* note 13, at 47.

<sup>106</sup> *Id.*

<sup>107</sup> Todres, *supra* note 29, at 32.



follows in Article 7, ostensibly because it “provides the initial foundation for the fulfillment of other rights of the child.”<sup>108</sup>

Article 7 leaves it to member states to implement the rights under the Article according to their national laws. Questions, however, arise as to the Article’s scope. The CRC gives little guidance, for example, on how “immediately” birth registration has to take place.<sup>109</sup> Judge Ineta Ziemele of the European Court of Human Rights argues that the most logical reading of the immediacy requirement implies that birth registration must occur within days or weeks of the birth, rather than months or years.<sup>110</sup>

Article 7 imposes a positive obligation on states to ensure that children are registered.<sup>111</sup> Where parents have failed to fulfill this responsibility, the state is obligated to seek out the child.<sup>112</sup> This is supported by the fact that under the CRC, the states must submit regular reports detailing their progress in implementing the guaranteed rights.<sup>113</sup> The Human Rights Committee has explained that this positive obligation is necessary to reduce the child’s susceptibility to abduction, sale, or trafficking and to ensure his or her right to special protection.<sup>114</sup>

States also have a positive obligation under Article 7 to protect a child from statelessness.<sup>115</sup> While a state must grant some form of legal recognition to all children born on its soil, it is not obligated to grant nationality to every such child.<sup>116</sup> Depending on the state’s national legislation, nationality is either given according to *jus sanguinis* or *jus soli* principles, or a combination of the

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<sup>108</sup> *Id.*

<sup>109</sup> See CRC, *supra* note 13, at 47 (stating that a “child shall be registered immediately after birth” but not qualifying that address).

<sup>110</sup> Ziemele, *supra* note 104, at 8. Ziemele makes this argument by comparing Article 7 of the CRC to Article 24 of the ICCPR which views birth registration as a measure of protection states must give to children. *Id.* That birth registration should take place in a matter of days and weeks is in line with the “fundamental right of a child to special protection.” *Id.*

<sup>111</sup> See *id.* at 9 (articulating why states must “actively ensure that children are registered”).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*; see CRC, *supra* note 13, at 59 (outlining reporting requirements for each state party).

<sup>114</sup> Ziemele, *supra* note 104, at 9.

<sup>115</sup> *Id.* at 12–13.

<sup>116</sup> *Id.* at 13.

two.<sup>117</sup> The Human Rights Committee has emphasized that states must take appropriate steps to ensure that children have a nationality at birth.<sup>118</sup>

Even if a state will not grant nationality to every child born within its territory, Article 7 arguably contemplates the provision will be “applied in a manner that ensures that a child is not given less protection because of his/her statelessness.”<sup>119</sup> The argument has also been made that national measures taken to implement Article 7 must strive to *eliminate statelessness*.<sup>120</sup> In fact, it is suggested that the CRC along with other documents addressing nationality and statelessness espouse the international rule of *jus soli* in situations where a child would otherwise be stateless in the country of his or her birth.<sup>121</sup>

At the heart of Article 7 is the right of the child to recognition before society.<sup>122</sup> For this reason, Article 7 is closely connected to Article 8 of the CRC, which concerns itself with the child’s right to an identity.<sup>123</sup> Under Article 8, the child has the right to “preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”<sup>124</sup> States cannot fulfill their obligation to respect this right unless the child is first given a chance to establish his or her identity through registration of the child. The CRC is viewed as a document setting out indivisible children’s rights.<sup>125</sup> Under this framework, Article 7 is also related

<sup>117</sup> *Id.* at 12–13. The *jus sanguinis* (“right of blood”) principle holds that a child acquires the nationality of his parents. BLACK’S LAW DICTIONARY 880 (8th ed. 2004). A state that operates under this principle can decline to grant nationality to a child born on its soil where the parents have foreign nationalities. The *jus soli* (“right of the soil”) principle confers nationality according to the individual’s place of birth, independent of the parents’ nationalities. *See id.* (defining *jus soli* as “[t]he rule that a child’s citizenship is determined by place of birth”).

<sup>118</sup> Ziemele, *supra* note 104, at 13 (noting that the Committee emphasizes that every state is “required to adopt every appropriate measure to ensure that a child has a nationality when . . . born,” but noting that this requirement does not oblige nationality to all children born in its territory).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.* at 24.

<sup>121</sup> *Id.* at 25.

<sup>122</sup> *See* VAN BUEREN, *supra* note 32, at 117 (“The right of children to a name is fundamental, as a home is the first point of reference both for the child and society as a means of identifying the child. . .”).

<sup>123</sup> *See* Ziemele, *supra* note 104, at 10 (noting the existence of this argument).

<sup>124</sup> CRC, *supra* note 13, at 47.

<sup>125</sup> *See* Goonesekere, *supra* note 101, at 5 (discussing how the CRC attempts to convert specific issues like health and education from being a protective social policy to being an “indivisible dimension of children’s rights that must be incorporated into law”).

to many other rights recognized in other articles of the CRC, for example, the rights to education and healthcare.<sup>126</sup>

### *B. Enforcement and Monitoring of the CRC*

The drafters of the CRC understood that public awareness of the guaranteed rights is crucial to the enforcement and monitoring of its provisions. Consequently, Article 42 obliges states parties to “undertake to make the principles and provisions of the [CRC] widely known, by appropriate and active means, to adults and children alike.”<sup>127</sup> In addition, countries must make reports submitted to the Committee on the Rights of the Child widely available to their inhabitants.<sup>128</sup>

The Committee on the Rights of the Child, created by Article 43, monitors states parties’ implementation of the CRC.<sup>129</sup> The Committee consists of independent experts in the field of human rights who are elected to four-year terms with the possibility of re-election.<sup>130</sup> These persons must be of “high moral standing.”<sup>131</sup> States must submit periodic reports to the Committee outlining their progress in implementing the rights granted under the CRC.<sup>132</sup> The Committee, in turn, must submit a report on its activities to the U.N. General Assembly every two years.<sup>133</sup>

After examining each country report, the Committee responds to each country in the form of a “concluding observation.”<sup>134</sup> In the concluding observation, the Committee recognizes areas in which the states have complied with the CRC, voices concerns over the areas where states have not complied, and makes suggestions for change.<sup>135</sup> The Committee usually meets three times per year in Geneva for four weeks at a time.<sup>136</sup> It does not have

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<sup>126</sup> Todres, *supra* note 29, at 33–34.

<sup>127</sup> CRC, *supra* note 13, at 58.

<sup>128</sup> *Id.* at 59.

<sup>129</sup> *Id.* at 58–59.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 59. Countries submit their first report two years after acceding to the CRC; thereafter, reports must be submitted every five years. *Id.* States parties must describe the specific measures taken to effectuate the rights granted, as well as any factors or difficulties bearing upon their ability to fulfill their obligations under the CRC. *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Fottrell, *supra* note 100, at 6.

<sup>135</sup> *Id.*

<sup>136</sup> Office of the United Nations High Commissioner for Human Rights, Committee on the

competence to hear individual complaints.<sup>137</sup> There are no provisions in the CRC for individual petitions or inter-state challenges.<sup>138</sup>

The Committee has adopted reporting guidelines which require that countries present the information in their reports under eight headings.<sup>139</sup> Under the heading entitled "Civil Rights and Freedoms," states are to provide information regarding their implementation of Articles 7 and 8.<sup>140</sup> Article 45 of the CRC recognizes the role of specialized agencies, who may, in their expert capacities, assist the Committee in the monitoring of the CRC.<sup>141</sup> For example, the CRC specifically refers to UNICEF, which has primarily directed its efforts to the areas of the CRC focusing on health, education, and development rights.<sup>142</sup>

### C. Implementation

Article 4 contains the CRC's general implementation provision.<sup>143</sup> According to Article 4, countries are expected to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized" in the CRC.<sup>144</sup> For issues that concern "economic, social, and cultural rights, [s]tates [p]arties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."<sup>145</sup> The current status of Latin American countries' progress in the area of birth registration reveals this is much more easily said than done.

There are several steps states must take in order to implement the rights of the CRC, and more specifically, the right to birth registration. First, states must review their laws and ensure that they are consistent with the spirit of the CRC, otherwise known as the process of legal harmonization.<sup>146</sup> States must

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Rights of the Child, <http://www2.ohchr.org/english/bodies/crc> (last visited Apr. 2, 2009).

<sup>137</sup> *Id.*

<sup>138</sup> Fottrell, *supra* note 100, at 6.

<sup>139</sup> A. GLENN MOWER, JR., THE CONVENTION ON THE RIGHTS OF THE CHILD: INTERNATIONAL LAW SUPPORT FOR CHILDREN 104 (1997).

<sup>140</sup> *Id.* at 106.

<sup>141</sup> CRC, *supra* note 13, at 59–60.

<sup>142</sup> Goonesekere, *supra* note 101, at 2.

<sup>143</sup> CRC, *supra* note 13, at 46.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> OFFICE OF THE U.N. COMM'R FOR HUM. RIGHTS, FACT SHEET NO. 10 (REV. 1), THE RIGHTS OF THE CHILD 6, <http://www.ohchr.org/Documents/Publications/FactSheet10rev.1en.pdf> (last

also strengthen their national statistical offices because the gathering of relevant data is essential to the continued monitoring and improvement of implementation.<sup>147</sup> Countries should also reevaluate their national budgets to determine whether appropriate resources are being allocated to programs aimed at the protection and development of children.<sup>148</sup>

It is also vital to implementation that law enforcement personnel and other personnel working with children receive the proper training.<sup>149</sup> With regards to Article 7, for example, civil registry personnel and health officials working at hospitals where babies are delivered must receive appropriate training. Also important to implementation, as noted earlier, is awareness. The general population must know that immediate birth registration is a right guaranteed by the CRC, so that citizens may encourage, and even pressure, their governments to guarantee this right.

The CRC contains four general principles that should guide its implementation by states parties. The first of these is the principle of non-discrimination.<sup>150</sup> States must strive to ensure equality of opportunity for *all* children.<sup>151</sup> The second is that states must always make decisions affecting children with the best interest of the child as a primary consideration.<sup>152</sup> The third principle is the child's inherent right to life and "to the maximum extent possible," survival and development.<sup>153</sup> Lastly, the fourth principle gives significance to the views of children in matters concerning them.<sup>154</sup>

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visited June 1, 2009) [hereinafter FACT SHEET No. 10]; Thomas Hammarberg, *Forward, in* UNICEF, IMPLEMENTING THE CONVENTION ON THE RIGHTS OF THE CHILD: RESOURCE MOBILIZATION IN LOW-INCOME COUNTRIES, at v, vii (James R. Himes, ed., 1995).

<sup>147</sup> FACT SHEET No. 10, *supra* note 146, at 6; Hammarberg, *supra* note 146, at vii.

<sup>148</sup> Robert J. Ledogar, *Realizing Rights Through National Programmes of Action for Children, in* UNICEF IMPLEMENTING THE CONVENTION ON THE RIGHTS OF THE CHILD: RESOURCE MOBILIZATION IN LOW-INCOME COUNTRIES 55, 56 (James R. Himes ed., 1995).

<sup>149</sup> FACT SHEET No. 10, *supra* note 146, at 6.

<sup>150</sup> See CRC, *supra* note 13, at 46 ("States Parties shall respect and ensure rights set forth [in the CRC] to each child . . . without discrimination of any kind . . .").

<sup>151</sup> *Id.*; FACT SHEET No. 10, *supra* note 146, at 2.

<sup>152</sup> CRC, *supra* note 13, at 46; FACT SHEET No. 10, *supra* note 146, at 2.

<sup>153</sup> CRC, *supra* note 13, at 47; FACT SHEET No. 10, *supra* note 146, at 2.

<sup>154</sup> CRC, *supra* note 13, at 48; FACT SHEET No. 10, *supra* note 146, at 2.

#### IV. LATIN AMERICAN RESPONSE TO AND COMPLIANCE WITH ARTICLE 7 OF THE CRC

The Latin American countries all ratified the CRC within two years of its adoption by the General Assembly.<sup>155</sup> There were no reservations or objections to Article 7 made by Latin American countries.<sup>156</sup> Nearly all Latin American countries can point to changes made in their laws in order to comply with the CRC and Article 7 specifically.<sup>157</sup> Yet, Latin American countries still are far from ensuring free and timely birth registration to all children.<sup>158</sup> While it is undeniable that progress has been made in the mission for universal birth registration, much work remains to be done. Consider, as an example, some recent Latin American country reports evaluated by the Committee on the Rights of the Child.

##### A. Venezuela

At the Committee's forty-sixth session, it considered a country report submitted by Venezuela and issued its concluding observations.<sup>159</sup> In its report, the Venezuelan government outlined the ways in which its legal system furthers the right to birth registration and nationality. First, the report pointed out that the Venezuelan constitution establishes the right to nationality to all Venezuelan-born children.<sup>160</sup> The constitution also embodies *jus sanguinis* principles, granting nationality to a foreign-born child who "is the child of a father and mother who are both Venezuelans by birth."<sup>161</sup> It also grants

<sup>155</sup> See United Nations Treaty Collection, Status of Treaties, Convention on the Rights (Apr. 2, 2009), <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=133&chapter=4&lang=en> (listing states party to the convention and the date of their ratification).

<sup>156</sup> See *id.* (listing reservations of all state parties to the CRC).

<sup>157</sup> See Emilio García Méndez, *A Comparative Study of the Impact of the Convention on the Rights of the Child: Law Reform in Selected Civil Law Countries*, in UNICEF, PROTECTING THE WORLD'S CHILDREN: IMPACT OF THE CONVENTION OF THE RIGHTS OF THE CHILD 100, 123 (2007). Nearly all Latin American countries undertook legal reforms after ratifying the CRC. *Id.*

<sup>158</sup> Duryea et al., *supra* note 6, at 5 (noting U.N. estimates that fourteen percent of all births in Latin America are not registered).

<sup>159</sup> See Committee on the Rights of the Child, 46th Session, <http://www2.ohchr.org/english/bodies/crc/crcs46.htm> (last visited June 1, 2009) (listing all activities of the 46th Session).

<sup>160</sup> See U.N. Comm. on the Rights of the Child, *Second Periodic Report of the Bolivarian Republic of Venezuela to the Comm. on the Rights of the Child*, ¶ 148, U.N. Doc. CRC/C/VEN/2 (Apr. 5, 2007) [hereinafter *Venezuela Country Report*] ("The Constitution establishes the right to nationality as a fundamental principle. . .").

<sup>161</sup> CONST. OF THE BOLIVARIAN REP. OF VENEZ. art. 32(2).

nationality to a foreign-born child whose father *or* mother is Venezuelan by birth, provided the child has “established residence within the territory of the Republic *or* declared [her] intention to obtain the Venezuelan nationality.”<sup>162</sup> Lastly, a child whose father or mother has been naturalized in Venezuela may claim Venezuelan nationality, provided that the child “[establishes her] residence within the territory of the Republic, *and* before reaching the age of 25 [declares her] intention to obtain the Venezuelan nationality.”<sup>163</sup> Thus the constitution of Venezuela provides a broad implementation of the principle of Article 7 that the child shall be given the right to a nationality and will be protected from statelessness.

Second, the Venezuelan report pointed to the rights guaranteed by the Protection of Children and Adolescents Act.<sup>164</sup> Article 16 of the Act provides that children and adolescents will have the right to a name and nationality.<sup>165</sup> Article 17 states that “[a]ll children have the right to be identified immediately after their birth. To that effect, the [s]tate should guarantee that the registration of newborns be both compulsory and timely, establishing the filial link with the mother.”<sup>166</sup> Article 18 says that all children and adolescents have the right to free registration in the state’s civil register.<sup>167</sup> It also provides that “specific measures shall be adopted to facilitate the registration in the [s]tate’s civil register of adolescents who were not registered in a timely fashion.”<sup>168</sup>

The Act also provides procedural guidelines for birth registration. Article 19 says that when a child is born in a hospital, clinic, or other public health institution, the highest public authority within the institution will register the birth.<sup>169</sup> Pre-drafted forms will be made available at the institution for that purpose.<sup>170</sup> The civil servant present must make four copies of the birth certificate.<sup>171</sup> One of the copies will be given to the person who presents the child, presumably the parent.<sup>172</sup> Another copy will be sent to the “highest civil authority” of the city where the birth occurred.<sup>173</sup> The hospital or other

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<sup>162</sup> *Id.* art. 32(3) (emphasis added).

<sup>163</sup> *Id.* art. 32(4) (emphasis added).

<sup>164</sup> *Venezuela Country Report*, *supra* note 160, ¶ 149.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.* ¶ 149 n.35.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* ¶ 152.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

institution where the birth took place will also keep a copy of the birth certificate in its files.<sup>174</sup> Lastly, the fourth copy will be sent to the National Identification and Aliens Office.<sup>175</sup>

Finally, Venezuela also implemented the right to birth registration in the Venezuelan Civil Code. Article 464 states that “within [twenty] days following the birth, the birth should be registered with the highest civil authority of the parish or municipality.”<sup>176</sup>

In responding to Venezuela’s implementations in its concluding observations, the Committee said it welcomed the recent initiatives taken by Venezuela to ensure universal birth registration.<sup>177</sup> However, the Committee did note particular legislation that raised concern: Venezuela has in force a 1998 decree requiring that parents must be documented in order to register a child born in Venezuela.<sup>178</sup> The Committee worried that this requirement would have an undesirable impact.<sup>179</sup>

The Committee also urged Venezuela, “in partnership with UNICEF, to continue its efforts to ensure that all children within its territory are registered at birth, including children of undocumented foreigners and those belonging to indigenous groups and immigrant families.”<sup>180</sup> On a related note, the Committee expressed a general concern that the Venezuelan government was not making child rights information widely available to the Venezuelan population, particularly to indigenous groups and Afro descendants.<sup>181</sup>

### B. Uruguay

The Committee also considered a country report from Uruguay in May 2007.<sup>182</sup> Uruguay noted in its report that it had previously adopted the Children and Adolescents Code.<sup>183</sup> Under Article 25 of the Code, all the

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* ¶ 150.

<sup>177</sup> U.N. Comm. On the Rights of the Child, *Concluding Observations: Venezuela*, ¶ 39 U.N. Doc. CRC/C/VEN/CO/2 (Oct. 5, 2009).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* ¶ 40.

<sup>181</sup> *Id.*

<sup>182</sup> See U.N. Committee on the Rights of the Child, 45th Session, <http://www2.ohchr.org/english/bodies/crc/crcs45.htm> (last visited June 1, 2009) (listing all activities of the 45th Session).

<sup>183</sup> U.N. Comm. on the Rights of the Child, *Second Periodic Report of Uruguay to the Comm. on the Rights of the Child*, ¶ 3, U.N. Doc. CRC/C/URY/2 (Oct. 13, 2006).



children have the right to be registered.<sup>184</sup> The Code also lays out a procedure for the registration of births.<sup>185</sup> Finally, Uruguayan law guarantees nationality to all children born in its territory, as well as to any children, regardless of their place of birth, born to a Uruguayan father or mother.<sup>186</sup> In its concluding observations, the Committee did not comment specifically on Uruguay's progress in achieving universal birth registration.<sup>187</sup>

### C. Honduras

In January 2007, the Committee considered Honduras' third periodic report.<sup>188</sup> The Honduran constitution guarantees nationality to all born on its soil and states in Article 39 that "[e]very Honduran shall be registered with the National Registry of Persons."<sup>189</sup> Honduras also promulgated a law entitled the Code on Children and Adolescents.<sup>190</sup> Article 29 of the Code provides that all children have the right to a nationality, a personal identity, and a name and the right to know their parents.<sup>191</sup> Furthermore, the Code provides that "the father, mother, or legal representatives shall register the newborn child with the National Registry of Persons in conformity with the law" and that failure to satisfy this duty "shall be an offence punishable in accordance with the provisions of specific laws."<sup>192</sup>

Honduras also passed a National Registration of Persons Act, which states that children must be registered within thirty days of birth and that the birth certificates must be provided at no cost.<sup>193</sup> Either parent may declare the birth.<sup>194</sup> If both parents are absent, either a relative living in the same household as the child, a witness to the birth, or someone working in the

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<sup>184</sup> *Id.* ¶ 102.

<sup>185</sup> *Id.* ¶ 103.

<sup>186</sup> *Id.* ¶ 104.

<sup>187</sup> See U.N. Comm. on the Rights of the Child, *Concluding Observations: Uruguay*, U.N. Doc. CRC/C/URY/CO/2 (July 5, 2007) [hereinafter *Concluding Observations: Uruguay*].

<sup>188</sup> See Committee on the Rights of the Child, 44th Session, <http://www2.ohchr.org/english/bodies/crc/crcs44.htm> (listing all activities of the 44th Session).

<sup>189</sup> CONST. OF THE REP. OF HOND. art. 39; U.N. Comm. on the Rights of the Child, *Third Periodic Report of Honduras to the Comm. on the Rights of the Child*, ¶ 178, U.N. Doc. CRC/C/HND/3 (July 27, 2006) [hereinafter *Honduras Country Report*].

<sup>190</sup> *Honduras Country Report*, *supra* note 189, ¶ 179.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.* ¶ 180.

<sup>194</sup> *Id.*

welfare institution responsible for the child may make the declaration.<sup>195</sup> In some cases, municipal officers may be responsible for obtaining information on the birth and applying to civil registry authorities for the child's registration.<sup>196</sup>

While the Committee recognized and welcomed Honduras' "considerable efforts" to ensure birth registration of all Honduran children, the Committee also expressed concern over "the significant discrepancies in birth registration rates between urban and rural areas, which are partly due to the low level of awareness thereof and lack of adequate resources and qualified staff in the registration system."<sup>197</sup> The Committee "reiterate[d] its previous recommendation urging that the [s]tate party make a priority of the immediate registration of the births of all children . . . ."<sup>198</sup> It also recommended that Honduras continue to promote awareness campaigns targeting rural and remote areas.<sup>199</sup>

#### *D. Mexico*

Mexico submitted its third periodic report to the Committee in August 2005.<sup>200</sup> Mexico highlighted the fact that its Federal Civil Code states that "[t]he birth of a child must be registered by the father or mother of the child or, failing these, by the paternal grandparents, or failing these, the maternal grandparents, within six months following the date on which the birth occurred."<sup>201</sup> In reality, the country report points out that registration can occur at any time after six months without sanction.<sup>202</sup> Mexico's Civil Code places the responsibility on various persons in different situations to ensure that birth registration takes place.<sup>203</sup> Physicians or midwives assisting in a delivery are required to report the birth to the Civil Registry Judge within twenty-four hours.<sup>204</sup> If the birth occurs in a household that is not the parental

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<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> U.N. Comm. on the Rights of the Child, *Concluding Observations: Honduras*, ¶ 39, U.N. Doc. CRC/C/HND/CO/3 (May 3, 2007).

<sup>198</sup> *Id.* ¶ 40.

<sup>199</sup> *Id.*

<sup>200</sup> U.N. Comm. on the Rights of the Child, *Third Periodic Report of Mexico to the Comm. on the Rights of the Child Addendum*, U.N. Doc. CRC/C/125/Add.7 (Aug. 24, 2005).

<sup>201</sup> *Id.* ¶ 59.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* ¶ 60.

<sup>204</sup> *Id.*

home, the head of that household is subjected to the same requirement.<sup>205</sup> When the birth takes place in a private or state clinic, the director of the clinic must report the birth.<sup>206</sup> Upon notification of a child's birth, "the Civil Registry Judge shall take whatever legal measures are necessary to ensure that the birth certificate is drawn up in accordance with the law."<sup>207</sup>

Mexico's Act on the Protection of the Rights of Children codifies the child's right to an identity at Article 22.<sup>208</sup> According to the Act, the right to identity comprises "[h]aving a first name and the family name of the parents from the time of birth and being entered in the Civil Registry," possessing a nationality, the right to know one's origins except where prohibited by law, and "[b]elonging to a cultural group and sharing with its members customs, religion, language or tongue, without this being interpreted as a reason for denying any of one's rights."<sup>209</sup>

The Mexican constitution, in Article 30, provides that persons acquire Mexican nationality by birth or by naturalization.<sup>210</sup> All who are born in the territory or born of Mexican-born parents are guaranteed Mexican nationality.<sup>211</sup> Mexico's Nationality Act was amended to include the following provision:

[U]nless it is proven to the contrary, it shall be assumed that an abandoned child found on the national territory was born there and is the child of Mexican parents, and that the child's adoption shall not entail, either for the adopted child or for the adoptive parents, either the acquisition or the loss of nationality.<sup>212</sup>

Mexico admitted in its report that, in spite of all the measures taken, the civil registry's lack of infrastructure prevents it from reaching rural communities.<sup>213</sup> Indeed, in its concluding observations, the Committee responded that it was "concerned that a large number of children in the [s]tate party, in particular indigenous children and children living in remote areas, do

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<sup>205</sup> *Id.* ¶ 61.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* ¶ 65.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* ¶ 63.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* ¶ 67.

<sup>213</sup> *Id.* ¶ 62.

not have a birth certificate.”<sup>214</sup> The Committee called on Mexico to undertake “innovative efforts” to increase access of registration to indigenous children and those living in remote areas, as well as to “raise awareness of the importance of birth registration for children for the full enjoyment of their rights.”<sup>215</sup>

### *E. Chile*

Chile submitted its second and third periodic reports to the Committee in June 2001 and December 2005, respectively.<sup>216</sup> The second report pointed to Chile’s longstanding Civil Registry Act and asserted that Chilean citizens “have thus acquired the habit of registering new births in the Civil Register, so that there is no need for any campaigns to that end.”<sup>217</sup>

Between its second and third country reports, the Chilean government seemingly realized that measures in addition to legislation were needed. The third report notes that since 2001, sub-offices of the Civil Registry and Identification Service have been installed in public hospitals for the registration of newborns.<sup>218</sup> Additionally, “a gradual process of personalized registration of births in the maternity departments of hospitals has been introduced.”<sup>219</sup> The country report also points to Chile’s Filiation Act, which requires the Civil Registry and Identification Service “to provide information in writing to all persons applying for the registration of a child born of a non-matrimonial relationship on the elements of law which will assist them in claiming filiation of the child through judicial process.”<sup>220</sup> Lastly, in Chile’s Solidario Program, an anti-poverty social policy,<sup>221</sup> one of the criteria required

<sup>214</sup> U.N. Comm. on the Rights of the Child, *Concluding Observations: Mexico*, ¶ 31, U.N. Doc. CRC/C/MEX/CO/3 (June 2, 2006).

<sup>215</sup> *Id.* ¶ 32.

<sup>216</sup> U.N. Comm. on the Rights of the Child, *Second Periodic Report of Chile to the Comm. on the Rights of the Child*, U.N. Doc. CRC/C/65/Add.13 (June 25, 2001) [hereinafter *Chile Second Country Report*]; U.N. Comm. on the Rights of the Child, *Third Periodic Report of Chile to the Comm. on the Rights of the Child*, U.N. Doc. CRC/C/CHL/3 (Dec. 20, 2005) [hereinafter *Chile Third Country Report*].

<sup>217</sup> *Chile Second Country Report*, *supra* note 216, ¶ 322.

<sup>218</sup> *Chile Third Country Report*, *supra* note 216, ¶ 64.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> See generally Julieta Palma & Raúl Urzúa, *Anti-Poverty Policies and Citizenry: The Chile Solidario Experience*, 1 (UNESCO/Most Programme vol. 12, 2005) (discussing Chile’s Solidario program which “requires the family to sign a contract to meet [fifty-three] specified minimum

to benefit from this program is that every member of the family must be registered and have identity cards.<sup>222</sup>

The Committee adopted its concluding observations of Chile's second and third reports in February 2002 and February 2007 and did not comment on Chile's efforts to improve birth registration in either concluding observation.<sup>223</sup>

## V. BARRIERS TO IMPLEMENTATION OF ARTICLE 7 IN LATIN AMERICA

After the CRC was adopted, legislation and use of the legal system were seen as essential to its implementation. Thus, law reform came to be perceived as an effective means of achieving implementation.<sup>224</sup> Over the years, however, legal reformation by itself has been deemed inadequate.<sup>225</sup> With respect to constitutional reform, for example, it has been argued that such a method, "while entrenching the key principles of the [CRC], does not necessarily ensure respect for children's rights."<sup>226</sup> The Committee has noted limitations to legal reform in its concluding observations. For example, in its most recent review of Uruguay's country report in 2007, the Committee stated that though it welcomed the recent adoption of the Uruguayan Code on Childhood and Adolescence and its incorporation of CRC principles, "the practical application of the Code remain[ed] a significant challenge."<sup>227</sup>

In actuality, after ratifying the CRC, almost all of the Latin American countries embarked on "an initial cycle of legislative reforms."<sup>228</sup> The creation of new laws, however, led to problems because in all of the countries in the region, the ratification of the CRC did not lead to the automatic repeal of old

conditions seen as necessary to overcome extreme poverty. In exchange, they receive from the State: psychosocial support, protection bonds, guaranteed cash subsidies, and preferential access to skill development, work and social security programmes.").

<sup>222</sup> *Chile Third Country Report*, *supra* note 216, ¶ 65.

<sup>223</sup> U.N. Comm. on the Rights of the Child, *Concluding Observations: Chile*, ¶ 1, U.N. Doc. CRC/C/15/Add.173 (Apr. 3, 2002); U.N. Comm. on the Rights of the Child, *Concluding Observations: Chile*, ¶ 1, U.N. doc. CRC/C/CHL/CO/3 (Apr. 23, 2007).

<sup>224</sup> Goonesekere, *supra* note 101, at 3.

<sup>225</sup> *Id.*

<sup>226</sup> WORLD VISION CANADA, LEGISLATIVE MEASURES FOR THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD: INTERNATIONAL LESSONS LEARNED AND RECOMMENDATIONS FOR THE GOVERNMENT OF CANADA 10 (2006), available at <http://www.law.utoronto.ca/documents/ihrp/Children-WorldVision.pdf>.

<sup>227</sup> *Concluding Observations: Uruguay*, *supra* note 187, ¶ 7.

<sup>228</sup> García Méndez, *supra* note 157, at 123. García Méndez explains that the "expression 'initial cycle' implies awareness of the ongoing — and therefore always unfinished — nature of the legal reform process." *Id.*

“child laws” that were in existence before the CRC.<sup>229</sup> Between 1919 and 1939, Latin America had adopted a series of laws focusing on children’s issues, but these laws treated only some children simply as objects of protection and not all children as subjects of rights.<sup>230</sup> Under this type of law, only the most socially disadvantaged class of children were in need of legal protection.<sup>231</sup> With the advent of the CRC, states adopted a new type of law under which all children were bearers of rights.<sup>232</sup> This created “situations of profound legal contradiction,” as laws that were antagonistic to each other enjoyed simultaneous validity.<sup>233</sup>

Another cited factor contributing to the lack of full implementation of the CRC—and in turn, Article 7—has to do with the reporting system established by the CRC.<sup>234</sup> The reporting system has been criticized as limited in its effectiveness, as it “sets the [s]tate up as a judge in its own cause.”<sup>235</sup> In fact, recent studies reviewed by UNICEF indicate that, on the whole, the Committee’s work has not successfully monitored country performance.<sup>236</sup> The Committee encourages an open and cooperative dialogue between itself and the states, as opposed to a supervisory relationship.<sup>237</sup> At the same time, the Committee lacks investigatory powers and the resources to conduct its own research; thus, it relies on states to be honest about their progress.<sup>238</sup> This in turn encourages states to regard the Committee as a facilitator, rather than an enforcer.<sup>239</sup> Consequently, the perception has arisen that states do not take the observations and recommendations of the Committee seriously.<sup>240</sup> The

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<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 124.

<sup>233</sup> *Id.* at 123.

<sup>234</sup> See Fottrell, *supra* note 100, at 6–7 (discussing the reporting system and stating that relying solely on it for supervision is “unwise”).

<sup>235</sup> *Id.* at 6.

<sup>236</sup> Goonesekere, *supra* note 101, at 11.

<sup>237</sup> See Fottrell, *supra* note 100, at 6 (stating that the Committee champions a “constructive dialogue with States and [avoids] confrontational supervision”).

<sup>238</sup> See *id.* at 12 (noting that the Committee cannot refute an “overly optimistic picture” painted by a state). NGOs and interest groups, however, help alleviate this potential problem, as these groups actively render aid to the Committee and play a large role in agenda-setting. *Id.*

<sup>239</sup> *Id.* at 6.

<sup>240</sup> This perception would seem to be supported by the fact that countries routinely fail to submit timely reports. See *id.* at 12 (noting that over fifty states are overdue). For example, Chile’s second periodic report was due in 1997, but Chile did not submit it until June 2001. See *Chile Second Country Report*, *supra* note 216 (articulating that the report was due in 1997, while

systematic integration by states of the Committee's concluding observations "has yet to be achieved."<sup>241</sup>

At times, the work of the Committee even seems redundant or superfluous. Critics point out that the Committee's observations and concerns "have only reinforced reform agendas on child rights issues that have already been raised by international and national non-governmental organizations."<sup>242</sup> Moreover, they argue a reporting system alone is insufficient to effectuate the supervision and implementation of a human rights treaty; some sort of quasi-judicial process is needed.<sup>243</sup>

There has also been a concern that the Committee is overwhelmed by its workload.<sup>244</sup> The Committee has been behind in its review of country reports by as many as four years.<sup>245</sup> This undoubtedly has an adverse effect on the full implementation of rights, as this situation reduces the pressure on states to review and enhance its practices and to submit timely reports.<sup>246</sup> Also, there appear to be no sanctions in place for the failure to submit a timely periodic report. For example, Uruguay did not submit its second periodic report until 2006 when it should have submitted its second and third reports in 1997 and 2002, respectively.<sup>247</sup> The Committee welcomed the report, saying only that it "regret[ted] the late submission of the [s]tate party's second periodic report and that it did not follow the reporting guidelines."<sup>248</sup> In the Committee's reporting guidelines, the Committee "emphasizes the importance of timely reports."<sup>249</sup> The guidelines also say that records are kept on which reports are overdue and periodic reminders are given to the states.<sup>250</sup> However,

being dated June 25, 2001).

<sup>241</sup> Goonesekere, *supra* note 101, at 11.

<sup>242</sup> *Id.*

<sup>243</sup> Fottrell, *supra* note 100, at 7.

<sup>244</sup> See *id.* at 12 (noting that the Committee is "running four years behind" in reviewing reports).

<sup>245</sup> *Id.* For a more detailed description of the challenges facing the Committee on the Rights of the Child, see MOWER, *supra* note 139, at 95–100.

<sup>246</sup> Fottrell, *supra* note 100, at 12.

<sup>247</sup> See *Uruguay Country Report*, *supra* note 183, ¶ 1. In this report, Uruguay was certain to emphasize that its "delay in the preparation and presentation of the periodic report cannot be attributed to a lack of will or a failure by the Uruguayan State to cooperate with the Committee; rather, it was due to domestic events and other factors arising during those years . . ." *Id.* ¶ 2.

<sup>248</sup> *Concluding Observations: Uruguay*, *supra* note 187, ¶ 2.

<sup>249</sup> U.N. Comm. on the Rights of the Child, *Overview of the Reporting Procedures*, ¶ 29, U.N. Doc. CRC/C/33 (Oct. 24, 1994).

<sup>250</sup> *Id.* ¶ 30.

nothing indicates that there is a penalty for not submitting reports.<sup>251</sup> Consequently, while there is certainly an important value in having countries evaluate their laws and practices and prepare periodic reports for submission to a reviewing body, the extent of the Committee's effectiveness in ensuring that countries are fully implementing the CRC's provisions is unclear.

## VI. WHAT MORE CAN BE DONE?

As evidenced by Latin America's experience thus far with the implementation of Article 7 of the CRC, simply amending or enacting new laws to require universal birth registration is not enough. Legal reform must be accompanied by practical measures. The most obvious practical measure, which countries and agencies have already undertaken and should continue, takes the form of mass registration campaigns.<sup>252</sup>

Latin American countries must primarily seek to make birth registration relatively easy to access. This can be achieved by looking to the places where children are most likely to be found and implementing registration programs in those places. While hospitals are an obvious location for birth registration to take place, they are alone not enough because, as previously mentioned, many children are born at home. A good example for Latin American countries to follow would be that of Ghana, where traditional birth attendants receive training so that they can register the babies they deliver.<sup>253</sup> Another way to make registration more accessible is to implement registration programs in schools.<sup>254</sup> In Uruguay, a UNICEF study has shown that public schools are the best settings in which to implement registration programs for several reasons: (1) almost 100% of Uruguayan children attend primary school, (2) the public education system extends widely throughout the entire country, and (3) teachers are familiar with the situation of children and their families, and thus are in a great position to aid in universal registration.<sup>255</sup> In addition,

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<sup>251</sup> See *id.* ¶¶ 29–32 (providing the procedure for overdue reports but providing no penalty for noncompliance). It is clear that non-compliance with the reporting process would violate the CRC, but there is no immediate recourse for such non-compliance.

<sup>252</sup> See, e.g., Plan International, *The Right To Have Rights*, *supra* note 64 (noting that mass registration campaigns are needed as well as political lobbying).

<sup>253</sup> Dow, *supra* note 7, at 8.

<sup>254</sup> For an illustration of a school principal's key role in the registration of fifty-one children, see Plan International, *Guiding the Way Toward the Right to Dignity*, *supra* note 65.

<sup>255</sup> UNICEF, *URUGUAY: THE RIGHT TO AN IDENTITY CAMPAIGN IN SCHOOLS 3* (2008), [http://www.unicef.org/uruguay/spanish/URU\\_Project\\_right\\_to\\_an\\_identity.pdf](http://www.unicef.org/uruguay/spanish/URU_Project_right_to_an_identity.pdf).



implementing registration programs in public schools presents a strong solution because it can protect children from the grave possibility of not being able to go to school on account of not having a birth certificate, as seen in two illustrations that appeared at the beginning of this Note.<sup>256</sup>

Also, as discussed earlier, birth registration rates are particularly low in rural areas. Thus, countries must undertake specific measures that target these hard-to-reach locales. While Latin American governments have taken measures to extend the civil registry's reach to rural areas, these efforts are subject to criticism as being isolated and insufficient.<sup>257</sup>

For example, mobile crews have been organized in Ecuador to register children in poor neighborhoods.<sup>258</sup> In Argentina and Equador, traveling registrars go to remote rural areas to register children.<sup>259</sup> Chile has employed a mobile registration unit with a computer connection to the civil registry in its capital of Santiago.<sup>260</sup> In Peru, seminars on civil registration have been held and have been attended by judges, lawyers, registrars, educators, and staff from various organizations.<sup>261</sup> Nicaragua has focused special attention on registering the children of migrants from rural areas as well as children from indigenous areas.<sup>262</sup> These steps are commendable; however, countries must be consistent in their efforts in order for these steps to have the maximum impact.

Also critical to the improvement of birth registration rates in the Latin American countries is raising awareness among citizens. This requires educating the public about the CRC and the right to be registered. For example, Inter-American Children's Institute has suggested that in El Salvador, "the difficulties could be solved in great part with a campaign of information and conscience forming through the media."<sup>263</sup> This idea could be extended to other Latin American countries as well. Since countries are obligated under

<sup>256</sup> See *supra* notes 2–5 and accompanying text.

<sup>257</sup> Dow, *supra* note 7, at 8. The author writes that this fact is evidenced by most nations' uncertainty as to the percentage of their children that are registered. *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> INTER-AMERICAN CHILDREN'S INSTITUTE, EXECUTIVE BRIEF: THE DIAGNOSIS OF BIRTH REGISTRIES IN EL SALVADOR, GUATEMALA, HAITI, HONDURAS, NICARAGUA AND THE DOMINICAN REPUBLIC (2002), [http://www.iin.oea.org/resumen\\_ejecutivo\\_diagnostico\\_registro\\_nacimiento\\_s\\_ingles.htm](http://www.iin.oea.org/resumen_ejecutivo_diagnostico_registro_nacimiento_s_ingles.htm).

the CRC to make the right to birth registration known,<sup>264</sup> they should exhaust all means at their disposal to do this.

Of course, none of these measures can be implemented without the proper resources. States must adequately budget for the execution of birth registration program. In situations where states are not making birth registration a priority, outside pressure is needed. Plan International's website suggests that one of the reasons Latin American countries continue to lag behind in ensuring universal birth registration is because, apart from the mechanism used by the Committee on the Rights of the Child, countries receive minimal pressure from the international community to implement effective birth registration systems.<sup>265</sup> This would seem to suggest that the Committee is successfully placing pressure on countries to implement the CRC and its birth registration requirement. However, the Committee could do more to ensure that countries are prioritizing birth registration. For example, as mentioned earlier, the Committee failed to comment on the parts of Uruguay's and Chile's country reports that outlined birth registration implementation.<sup>266</sup> Since birth registration in Latin America is low overall, there is obviously much more that countries can do to improve registration rates. Thus, the Committee should be actively making recommendations and constructive criticisms in its concluding observations, rather than selectively commenting on some countries' measures and not others.

Also, changes should be made to the Committee so that states will take its role more seriously. Since the Committee often lags behind in its consideration of country reports, the Committee should consider improving its efficiency by enlarging its size or meeting more often to be more efficient. Additionally, although the Committee currently does not have standing to hear individual or inter-state complaints, modification of this policy would help it to more aptly enforce the CRC. Realistically speaking, hearing individual complaints might not be the best use of the Committee's limited resources, particularly if it is possible for individuals to seek redress in their home countries. However, the ability to hear inter-state complaints would allow countries to police gross violations of the CRC that occur in other countries,

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<sup>264</sup> CRC, *supra* note 13, at 58.

<sup>265</sup> See Plan International, What Obstacles Must Be Overcome?, <http://www.writemedown.org/issues/problem/> (last visited Apr. 2, 2009) (identifying a "[l]ack of implementation and action" as one of two obstacles at the international level).

<sup>266</sup> See discussions of Uruguay's and Chile's country reports *supra* notes 187 and 223 and accompanying text.

while also ensuring that the Committee is playing a more active role in enforcing the CRC.

Therefore, not only must the Committee place more pressure on developing countries to achieve universal birth registration, the international community as a whole must do so as well. Plan International suggests setting international guidelines for achieving universal birth registration.<sup>267</sup> It also suggests that international organizations providing monetary aid to developing countries with low birth registration should make birth registration a reporting requirement.<sup>268</sup> The latter is a great idea, but arguably one that should be taken one step further: monetary aid provided to these countries should be conditioned on *timely* reporting.

## VII. CONCLUSION

The rights to a name, nationality, and identity are all recognized by international law. Registration of the child at birth is the best way to secure these rights, and as such, the CRC requires that all children be registered immediately after birth. The importance of this simple procedure—birth registration—cannot be overstated: as this Note has shown, Latin American children face great difficulties and dangers when their births are not recorded and they are left without a means of proving their identity as a consequence.

Latin American countries have enacted new legislation and amended old laws in order to comply with the CRC and Article 7. Without more, however, this step is insufficient. In fact, while the Latin American region has seen improvements in birth registration, they still are not close to ensuring birth registration to *all* children because logistical and economic barriers, as well as a lack of awareness, stand in the way. Latin American governments and child rights agencies alike must continue in their efforts to make birth registration accessible by actively seeking out unregistered children. This means decentralizing civil registry systems to reduce the discrepancy between birth registration in rural and urban areas. Also, the Committee on the Rights of the Child should take a more active role in enforcing the CRC by being more critical of country reports. Lastly, the international community as a whole must appreciate the importance of birth registration and place appropriate

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<sup>267</sup> Plan International, Birth Registration: A Ticket to Citizenship, <http://www.planusa.org/contentmgr/showdetails.php/id/131437> (last visited June 1, 2009).

<sup>268</sup> Plan International, Universal Birth Registration: Recommendations, <http://www.writemdown.org/research/recommend/> (last visited Apr. 2, 2009).

pressure on developing countries to provide and guarantee this right to all children.