



JURISPRUDENTIAL DEVELOPMENT ON ACCESS TO ASYLUM, ACCESS TO TERRITORY, ACCESS TO RIGHTS AND ACCESS TO JUSTICE IN THE AFRICAN UNION HUMAN RIGHTS SYSTEM

PRESENTATION AT THE INTERNATIONAL ASSOCIATION OF REFUGEE AND MIGRATION LAW JUDGES: AFRICA CHAPTER 2022 CONFERENCE

16 TO 18 NOVEMBER 2022

ARUSHA, TANZANIA

**PRESENTED BY JUSTICE BEN KIOKO,
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INTRODUCTION

- ❖ In relation to the development of human rights and social justice jurisprudence at the continental level, the African Union Human Rights System relies on three key organs: African Court on Human and Peoples' Rights (African Court), African Commission on Human and Peoples' Rights (African Commission) and African Committee of Experts on the Rights and Welfare of the Child (ACERWC)
- ❖ This presentation focuses on the landmark jurisprudential contributions of the three organs relevant to the theme of the conference: *access to asylum, access to territory, access to justice and access to rights.*
- ❖ Instructively, the three organs have carved out the interpretation of pertinent concepts such as 'statelessness,' 'nationality', and 'citizenship' from a human rights approach, mainly stemming from the African Charter on Human and Peoples' Rights (especially the African Commission and the African Court) and the African Charter on the Rights and Welfare of the Child (especially the ACERWC)

STRUCTURE OF PRESENTATION

- I. MERITS AND REPARATIONS DECISIONS OF THE AFRICAN COURT**
- II. MERITS DECISIONS OF THE AFRICAN COMMISSION**
- III. MERITS DECISIONS OF THE ACERWC**
- IV. CONCLUSIONS**

WHILE THE DECISIONS OF THE COURT ARE FINAL AND BINDING UPON _____ STATES PARTIES, THOSE OF THE COMMISSION AND THE COMMITTEE, AS QUASI JUDICIAL BODIES, ARE RECOMMENDATIONS.

I. AFRICAN COURT DECISIONS

1. **Application No. 012/2015 Anudo Ochieng Anudo v. United Republic of Tanzania [Merits decision, delivered on 22 March 2018]**
2. **Application No. 009/2015 *Lucien Ikili Rashidi v. United Republic of Tanzania* [Merits and reparations decision, 28 March 2019]**
3. **Application No. 013/2015 Robert John Penessis v. United Republic of Tanzania [Merits and reparations decision, 28 November 2019]**
4. **Application No. 017/2015 Kennedy Gihana & others v. Republic of Rwanda [Merits and reparations decision, 28 November 2019]**

AFRICAN COURT DECISIONS

1. **Application No. 012/2015 Anudo Ochieng Anudo v. United Republic of Tanzania [Merits decision, delivered on 22 March 2018]**

- ❖ This Application related to the withdrawal of Mr. Anudo's (or the Applicant) Tanzanian nationality and consequent expulsion from the United Republic of Tanzania (or Respondent State).
- ❖ Between April and May 2014, the Ministry of Home Affairs and Immigration conducted an investigation, which concluded that the information used in obtaining the passport by Anudo was false. Anudo was expelled to the Kenyan border but in November 2014 the Magistrate's Court in Homa Bay, declared him as being in an "irregular status" in Kenya and expelled him to Tanzania.
- ❖ After his expulsion from Kenya, Anudo was left to survive without basic social and health services in 'no-man's land' at Sirari, close to the Kenyan-Tanzania border.
- ❖ The Court found a violation of:
 - ❖ Article 15 of the Universal Declaration of Human Rights, which is recognised as forming part of Customary International Law, as neither the African Charter nor the ICCPR prescribes explicitly the right to nationality.
 - ❖ Article 13 of the ICCPR on the arbitrary expulsion of Anudo from Tanzania.
 - ❖ Article 7 the Charter as well as Article 14 of the ICCPR on the right to be heard. The unavailability of a judicial remedy, his abrupt expulsion to Kenya and the obstacles Anudo endured in 'no-man's land' in securing his right to be heard all formed the basis of the Court's finding.

...AFRICAN COURT DECISIONS

.....*Anudo Ochieng Anudo v. United Republic of Tanzania*

1. On 2 December 2021, the Court rendered a judgment on reparations awarding the Applicant a total sum of approximately Ninety-Six Thousand US Dollars (96,000 USD).
2. The Court also ordered the Respondent State to amend Tanzanian legislation in order to provide individuals with judicial remedies in the event of a dispute over their citizenship.
3. The Court further ordered the Respondent State to allow Mr. Anudo to return to Tanzania and ensure his protection
4. At the time of preparing this presentation, the Respondent State had not filed a report even though the time for filing the report had elapsed on 2 June 2022. In the meantime, the Court has been made to understand that Mr. Anundo now lives in Uganda where he was granted the status of a refugee.

...AFRICAN COURT DECISIONS

2. Application No. 017/2015 Kennedy Gihana & others v. Republic of Rwanda [Merits and reparations decision, 28 November 2019]

- ❖ This Application relates to the invalidation of seven (7) Rwandese nationals' (or Applicants) passports, who learnt of the invalidation, by Rwanda (or the Respondent State), when one of them was informed upon applying for a visa to travel to the United States of America, that his name appeared on a list of 14 May 2012, indicating the invalidity of the passports held by all persons included on the said list.
- ❖ The Court found that the Respondent State had arbitrarily revoked the Applicants' passports as the manner of revocation did not conform with any of the conditions set out in Article 12(2) of the Charter and Article 12(2) and (3) of the ICCPR on the limitations of the right to freedom of movement and residence.
- ❖ The Court found a violation of the Applicant's right to freedom of movement provided in Article 12 (2) of the Charter as they were prevented from returning to their country and traveling to other countries.
- ❖ Further, the Court held that the Respondent State violated the Applicants' right to participate freely in the government of their country, Rwanda provided under Article 13(1) of the Charter.
- ❖ The Court awarded Rwandan Francs Four Hundred and Sixty-Five Thousand (RWF 465,000) to each of the Applicants for the moral prejudice caused and ordered Rwanda to reinstate the seven Applicants' passports.

...AFRICAN COURT DECISIONS

3. Application No. 009/2015 *Lucien Ikili Rashidi v. United Republic of Tanzania* [Merits and reparations decision, 28 March 2019]

- ❖ This Application relates to the arrest, detention and deportation of the Mr. Rashidi (or Applicant), his wife and seven children for allegedly residing illegally in Tanzania (or Respondent State). All were nationals of Democratic Republic of Congo. Rashidi had entered Tanzania through a temporary visa in 1993 while his wife and children entered as refugees in 1999, although they lived with Rashidi in Dar es Salaam as opposed to the designated refugee camps
- ❖ At the time of filing the Application, Rashidi was residing in Bujumbura. He alleged that his attempts to appeal the notice of prohibited immigrant issued by Tanzania in 2014, had come to naught.
- ❖ To determine the Applicant's alleged violation on the right to freedom of movement under Article 12(1) of the Charter, the Court held that it was instructive to first establish a violation on the right to residence.

...AFRICAN COURT DECISIONS

...Lucien Ikili Rashidi v United Republic of Tanzania

- ❖ Therefore, the Court found that Rashid's right to residence was violated based on the following:
 - i. His possession of the certificate of loss of his passport issued by the Tanzanian police and an official correspondence from the DRC Embassy confirming that he was in the process of obtaining a new passport were not only issued by competent authorities but resulted in a legitimate expectation that the Respondent State would not issue a Notice of Prohibited Immigrant against him.
 - ii. The fact that the Respondent State withdrew the criminal suit on illegal residency against the Applicant thereby releasing his wife and children demonstrated that the Respondent State had alternatives to the issuance of a Notice of Prohibited Immigrant followed by arrest and deportation.
- ❖ Having established the violation of the right to residence, the Court found that as a consequence, Rashid's right to freedom of movement was violated.

...AFRICAN COURT DECISIONS

4. **Application No. 013/2015 Robert John Penessis v. United Republic of Tanzania [Merits and reparations decision, 28 November 2019]**

- ❖ The Application related to the detention of Mr. Penessis (or the Applicant) on the ground that he did not possess the necessary documentation to prove that his presence in Tanzania (or the Respondent State) was legal. Penessis was arrested in 2010 by immigration officers at Kagera, tried and convicted for illegal entry and irregular presence in Tanzania, and sentenced to two years' imprisonment
- ❖ The Respondent State contended that Penessis was not a citizen of Tanzania, proven, *inter alia*, by the following
 - i. His possession of a South African passport indicating his nationality as South African and place of birth as Johannesburg
 - ii. His possession of a passport from the United Kingdom indicating that his name was Robert John Rubenstein, indicating that he was a British citizen who was born in South Africa
 - iii. The trial court relied on the certified copies of the South African and UK passports to convict the Applicant
 - iv. The Applicant submitted the copies of the two passports in support of his application for a Tanzanian residence permit

...AFRICAN COURT DECISIONS

....Robert John Penessis v. United Republic of Tanzania

❖ The Court was satisfied that there was a presumption that Penessis was a Tanzanian citizen based on the testimony of his mother, Anastasia Penessis, who confirmed that her son was born in Tanzania. Further, the certified copy of the birth certificate adduced before the Court indicated that Anastasia was Penessis' mother and that the Applicant was born in Tanzania. Consequently, the burden shifted to the Respondent State to refute the presumption. In the Court's finding, the Respondent State failed to refute the presumption by:

- i. Not providing compelling evidence to substantiate its averment that the South African and United Kingdom passports belonged to the Applicant
- ii. Not providing a copy of Penessis' application for a resident permit, where the application was supported by the alleged British passport
- iii. Not providing concrete evidence (e.g., original documents) to back its assertions despite its position of authority 'as a depository and guarantor of public authority and custodian of the civil status registry,' with the means to accurately determine whether the Applicant was a Tanzanian, South African or a British citizen.

....AFRICAN COURT DECISIONS

..... *Robert John Penessis v. United Republic of Tanzania*

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- ❖ Whereas in *Anudo v Tanzania*, the Court relied on Article 15 of the UDHR, in this Application, the Court also determined the right to nationality within the context of Article 5 of the Charter and Article 6 of the UDHR on the inherent right to human dignity
 - ❖ Another distinctive feature of the Court's appreciation of the right to nationality in this Application, was the evidentiary exercise that the Court undertook to find a violation of Article 5 of the Charter and Article 15 of the UDHR, with regard to settling the issue of proof of nationality. The Court established the principle that: **“the Applicant who alleges that he holds a certain nationality bears the onus to prove so. Once he has discharged the duty *prima facie*, the burden shifts to the Respondent State to prove otherwise**
 - ❖ The Court found a violation of Article 12 of the Charter because Penessis was still in detention for six (6 years) up to the time of the judgment, long after he had finished serving the prescribed 2-year imprisonment sentence meted out by the domestic courts in 2010.
 - ❖ The Court awarded:
 - A lump sum of ten million (10,000,000) Tanzanian shillings for his illegal detention to date of the Court's judgment and a further sum of three hundred thousand (300,000) Tanzanian shillings for each month of illegal detention from the date of notification of the Court's judgment until his release
 - A lump sum of Five Million (5,000,000) Tanzanian Shillings to the Applicant's mother for the moral prejudice she suffered
 - The immediate release of the Applicant.

II. AFRICAN COMMISSION DECISIONS

1. Communication No.71/92, *Rencontre Africaine pour la Défence des Droits de l'Homme (RADDHO) v Zambia* [Merits decision, 31 October 1997]
2. Communication No. 159/96, *Union Inter Africaine des Droits de L'homme (UIDH), Federation Internationale des Ligues des Droits de L'homme (FIDH), Rencontre Africaine des Droits de L'homme (RADDHO), Organisation Nationale des Droits de L'homme au Sénégal (ONDH) and Association Malienne des Droits de l'homme (AMDE) v. Angola* [Merits decision, 11 November 1997]
3. Communication No. 212/98, *Amnesty International v. Zambia* [Merits decision, 5 May 1999]
4. Communication No. 97/93, *John K. Modise v. Botswana* [Merits decision, November 2000]
5. Communication No. 292/02, *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea* [Merits decision, 2004]
6. Communication No. 317/2006, *The Nubian Community in Kenya v. The Republic of Kenya* [Merits decision, February 2015]

AFRICAN COMMISSION DECISIONS

1. Communication No.71/92, *Rencontre Africaine pour la Défence des Droits de l'Homme (RADDHO) v Zambia* [Merits decision, 31 October 1997]

This Communication was about the expulsion of five hundred and seventeen (517) West Africans, who between 26 and 27 February 1992 were found to be in Zambia illegally. Before the expulsion, a majority of the concerned individuals had been detained in a camp for over two months.

The Commission found violations of:

- Article 2 of the Charter, on freedom from discrimination, as Zambia based the expulsion on the nationalities of the individuals, specifically, persons from West Africa.
- Article 7(1) (a) of the Charter, on the right to appeal, as none of the individuals were given the opportunity to appeal against the expulsion order.
- Article 12(5) of the Charter, which provides that: “*The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.*” The Commission characterised the expulsion as *en masse* targeted at persons with nationalities of various West African states.

...AFRICAN COMMISSION DECISIONS

2. **Communication No. 159/96, *Union Inter Africaine des Droits de L'homme (UIDH), Federation Internationale des Ligues des Droits de L'homme (FIDH), Rencontre Africaine des Droits de L'homme (RADDHO), Organisation Nationale des Droits de L'homme au Sénégal (ONDH) and Association Malienne des Droits de l'homme (AMDE) v. Angola* [Merits decision, 11 November 1997]**

❖ This communication related to the rounding up and expulsion of West African nationals by the Angolan government between April and September 1996. The merits decision developed further the interpretation of Article 12(5) on mass expulsions, which was established in Communication 71/92 discussed above.

❖ The merits decision developed further the interpretation of Article 12(5) of the Charter on mass expulsions, which was established in RADDHO v Zambia discussed above.

❖ Notably, the Commission was of the view that:

*African States in general and the Republic of Angola in particular are faced with many challenges, mainly economic. In the face of such difficulties, States often resort to radical measures aimed at protecting their nationals and their economies from non-nationals. Whatever the circumstances may be, however, such measures should not be taken to the detriment of the enjoyment of human rights. Mass expulsions of any category of persons, whether on the basis of nationality, religion, ethnic, racial or other considerations **'constitute a special violation of human rights'** (Emphasis added)*

...MERITS DECISIONS

3. Communication No. 212/98, *Amnesty International v. Zambia* [Merits Decision, 5 May 1999]

- ❖ This communication related to the arbitrary deportation of two politicians (Mr. William Steven Banda and the late Mr. John Lyson Chinula) in 1991 and 1994 respectively) from Zambia to Malawi, based on the fact that the Respondent State opined that their “presence, [was] likely to be a danger to peace and good order in Zambia.” Both politicians obtained decisions from the High Court of the Republic of Malawi declaring that they were not citizens of Malawi, hence, ordered their return to Zambia.
- ❖ The African Commission found, inter alia, violations of:
 - i. Article 9(1) of the Charter, on the right to receive information, to the extent that neither of the two politicians were supplied with reasons for their respective deportation orders.

 - ii. Article 12(4) of the Charter, in respect of Mr. Banda. The provision reads: “A non-national legally admitted in a territory of a state party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.”
 - iii. The African Commission found that Mr. Banda was not a national of Zambia by birth, but that his deportation to Malawi was not backed by law.

...AFRICAN COMMISSION DECISIONS

...*Amnesty International v. Zambia*

- iii. Article 7 (1) (a) of the Charter, on the right to appeal, in respect of Mr. Chinula, as he was not given any opportunity to approach the Zambian courts and appeal against the deportation order.
 - iv. Article 5 of the Charter, on the inherent right to human dignity, “by forcing Banda and Chinula to live as stateless persons under degrading conditions...depriving them of their family and...depriving their families of the men’s support...”
 - v. Article 10 of the Charter, on the right to free association, as the arbitrary deportation of the two politicians prevented them from participating in the activities of their political party, United National Independence Party
- ❖ The Commission also recommended that the Government of Zambia should grant the request of the family of Chinula for the return of Mr. Chinula’s body for burial in Zambia.

...AFRICAN COMMISSION DECISIONS

4. Communication No. 97/93, John K. Modise v. Botswana [Merits decision, November 2000]

- ❖ The communication related to a claim by Mr. John K. Modise to Botswana nationality by ancestry. He alleged that he grew up in Botswana although he was born in South Africa, after his father (a Botswana citizen) got married there having immigrated to South Africa for work purposes. In 1978, Botswana authorities deported the Complainant to South Africa following the government's decision to render him an "undesirable immigrant," based on his supposed membership in an opposition party named, Botswana National Front
- ❖ Commission also found, inter alia, violations of:
 - i. Article 3(2) of the Charter, on the right to equal protection before the law, based on the refusal of South Africa to accept him as its citizen in all the four state-mandated deportations of the complainant from Botswana to South Africa.
 - ii. Article 5 of the Charter, as the final deportation forced Mr. Modise to live for eight years in the former South African Homeland of Bophuthatswana, which eventually deported him to Botswana. Further, the complainant had spent seven years in 'no-man's land,' a border strip between the former South African Homeland of Bophuthatswana and Botswana. "These acts exposed him to personal suffering and indignity."
 - iii. Article 13(1) of the Charter, on the right to participate freely in the government of [one's] country, in two respects. First, the citizenship by registration granted by Botswana, impeded the complainant from vying for high political seats such as the presidency. Second, the complainant's first deportation demonstrated an attempt to hamper his political participation as it occurred soon after the complainant founded the opposition party.

...AFRICAN COMMISSION DECISIONS

5. **Communication No. 292/02, Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Guinea [Merits decision, 2004]**

- ❖ This communication related to the treatment of several Sierra Leonean refugees living in Guinea. In 2004, a presidential proclamation (over national radio) instructed that all Sierra Leonean refugees should be rounded up and detained in camps. This resulted in arbitrary deportation to Sierra Leone, extortion, sexual violence, assassinations and daily harassment; mainly perpetrated by the Guinean soldiers.
- ❖ The Commission found the Republic of Guinea in violation of Articles 2, 4, 5, 12(5) and 14 of the Charter and Article 4 of the Convention Governing Specific Aspects of the Refugee Problems in Africa. Further, it recommended the establishment of a Joint Commission of the Sierra Leonean and the Guinea Governments mandated to assess the losses by various victims with the view to compensate the victims.

...AFRICAN COMMISSION DECISIONS

6. **Communication No. 317/2006, The Nubian Community in Kenya v. The Republic of Kenya [Merits decision, February 2015]**

- ❖ The Commission found, inter alia, violations of:
 - i. Article 2 of the Charter, as the Nubian Community were unfairly discriminated against in the acquisition of identity documents solely on account of their ethnic and religious affiliations.
 - ii. Article 3 of the Charter, as the Nubian Community, unlike other communities, were subjected to unlawful procedures in their attempts to acquire national identity cards such as providing their grand-parents' identification documents; undergoing questioning by a "vetting committee" and thereafter obtaining the committee's approval; visiting the Magistrates' Court in order to swear an affidavit in support of their claim; and payment of a mandatory court fee.
 - iii. Article 5 of the Charter, on the right to inherent human dignity and respect of one's legal status, as Kenya failed to take measures to prevent members of the Nubian Community from becoming stateless and by failing to put in place fair processes, devoid of discrimination and arbitrariness for the acquisition of identity documents. Notably, the Commission asserted that nationality was intricately linked to Kenyan Nubians' juridical personality [synonymous with 'legal status'].
- ❖ The Commission requested the Republic of Kenya to "establish objective, transparent and non-discriminatory criteria and procedures for determining Kenyan citizenship."

III. ACERWC DECISIONS

- 1. Communication No. Com/002/2009, Decision on the communication submitted by the Institute for Human Rights and Development in Africa & the Open Society Justice Initiative (On Behalf of Children of Nubian Descent in Kenya) against the Government of Kenya [Merits decision, 22 March 2011]**
- 2. Communication No. Com/001/2015, Decision on the communication submitted by the African Centre of Justice and Peace Studies (ACJPS) and Peoples' Legal Aid Centre (PLACE) against the Government of Sudan [Merits decision, May 2018]**

ACERWC DECISIONS

1. Communication No. Com/002/2009, Decision on the communication submitted by the Institute for Human Rights and Development in Africa & the Open Society Justice Initiative (On Behalf of Children of Nubian Descent in Kenya) against the Government of Kenya [Merits decision, 22 March 2011]

- ❖ The communication related to effecting the right to nationality for Nubian children in Kenya, which was tainted by the systemic denial of Kenyan nationality to the Nubian Community in Kenya, therefore, making untenable the birth registrations of their children.
- ❖ Accordingly, the ACERWC found a violation of Article 6 of the African Children's Charter on the right to nationality.
- ❖ Worth mentioning is the ACERWC's finding on the violation of Article 14 of the African Children's Charter on the right to health as it relates to the arbitrary deprivation of nationality. According to the ACERWC:

The affected children had less access to health services than comparable communities who were not comprised of children of Nubian descent. There is de facto inequality in their access to available health care resources, and this can be attributed in practice to their lack of confirmed status as nationals of the Republic of Kenya.

...ACERWC DECISIONS

2. **Communication No. Com/001/2015, *Decision on the communication by the African Centre of Justice and Peace Studies (ACJPS) and Peoples' Legal Aid Centre (PLACE) against the Government of Sudan* [Merits decision, May 2018]**

- ❖ This communication relates to the claim for Sudanese nationality by Ms. Iman Hassan Benjamin, who was born in Sudan in 1994.
- ❖ She therefore acquired a birth certificate indicating the same. Her mother held a Sudanese nationality certificate while her father, Mr. Benjamin Hassan Daoud, was born in the Equatorial State, which almost six months after his death, was seceded from Sudan to form part of South Sudan. Even so, Mr. Daoud had served in the Sudanese Police Force, and his death certificate indicated that he was a national of Sudan.
- ❖ ACERWC found, inter alia, a violation of Article 6 (3) and (4) of the African Children's Charter, on the right to nationality, having concluded that Ms. Iman had become stateless as she was neither formally recognised as a national of South Sudan nor Sudan. The ACERWC stated that: "Even if the nationality of a parent is revoked, that cannot justify revocation of nationality of a child."
- ❖ ACERWC recommended that Ms. Iman be granted Sudanese nationality, based on her mother's Sudanese nationality; that Sudan should revise its Nationality Act to ensure that children born to Sudanese mothers automatically obtain Sudanese nationality as would pertain to children born to Sudanese fathers; and that the revised law should ensure that children born to South Sudanese parents are not discriminated against in obtaining Sudanese nationality, where the children concerned demonstrate a clear link with Sudan.

IV. CONCLUSION & RECOMMENDATIONS

1. CONCLUDING OBSERVATIONS ON THE DECISIONS

- ❖ The jurisprudence of the African Court, the African Commission and the ACERWC demonstrate an awareness of the political and socio-legal hurdles that African states contend with in order to guarantee its inhabitants (nationals, non-nationals, refugees, stateless persons) a sense of belonging.
- ❖ The decisions also demonstrate that the right to nationality must not only be understood through a human rights lens but also through the broader demands of social justice.
- ❖ The jurisprudence unearths the connection between nationality in Africa and marginalisation be it historical, systemic or political. Here, clear examples include the connection between marginalised communities and their claims to citizenship, the connection between politically-motivated (mass) expulsions and the right to nationality.

...CONCLUSION & RECOMMENDATIONS

2. BEYOND JURISPRUDENTIAL CONTRIBUTIONS THROUGH DECISIONS ON MERITS

- ❖ The African Commission and the ACERWC have expounded on the right to nationality through studies, general comments and the activities of the special mechanisms. Some mentionable examples in this regard are:
 - i. Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, established by the African Commission in 2004
 - ii. The ACERWC Continental study on children on the move- it provides detailed information on issues of refugee, internally displaced etc. children and their protection issues.
 - iii. The General Comment on Article 6 of the African Children's Charter- it unpacks the provision of the African Children's Charter as it relates to nationality and statelessness.

GAZING INTO THE FUTURE: THE DRAFT PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE SPECIFIC ASPECTS OF THE RIGHT TO A NATIONALITY AND THE ERADICATION OF STATELESSNESS IN AFRICA

As I conclude, I would like to ask participants to be on the look out, hopefully in the not too distant future, for the **Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa.**

Although still under consideration by State Parties to the Charter, for several years now, the Draft Protocol incorporates the jurisprudential contributions in the cases discussed above. This is aptly illustrated by the motivations given for the Protocol in its preamble:

- *the right to a nationality is a fundamental condition for the protection and effective exercise of the full range of other human rights...*
- *statelessness is a violation of the right to human dignity and to legal status enshrined in Article 5 of the African Charter on Human and Peoples' Rights...*
- *the history of the African continent, especially the initial establishment of borders by colonial powers, has given questions of nationality and statelessness particular characteristics in our States that are not sufficiently taken into account by the existing African and international instruments...*

References

A. African Court Decisions

1. [Application No. 012/2015 Anudo Ochieng Anudo v. United Republic of Tanzania \[Merits decision, delivered on 22 March 2018\]](#)
2. [Application No. 009/2015 Lucien Ikili Rashidi v. United Republic of Tanzania \[Merits and reparations decision, 28 March 2019\]](#)
3. [Application No. 013/2015 Robert John Penessis v. United Republic of Tanzania \[Merits and reparations decision, 28 November 2019\]](#)
4. [Application No. 017/2015 Kennedy Gihana & others v. Republic of Rwanda \[Merits and reparations decision, 28 November 2019\]](#)

References

B. African Commission Communications

1. [Communication No.71/92, Rencontre Africaine pour la Défence des Droits de l'Homme \(RADDHO\) v Zambia \[Merits decision, 31 October 1997\]](#)
2. [Communication No. 159/96, Union Inter Africaine des Droits de L'homme \(UIDH\), Federation Internationale des Ligues des Droits de L'homme \(FIDH\), Rencontre Africaine des Droits de L'homme \(RADDHO\), Organisation Nationale des Droits de L'homme au Sénégal \(ONDH\) and Association Malienne des Droits de l'homme \(AMDE\) v. Angola \[Merits decision, 11 November 1997\]](#)
3. [Communication No. 212/98, Amnesty International v. Zambia \[Merits decision, 5 May 1999\]](#)
4. [Communication No. 97/93, John K. Modise v. Botswana \[Merits decision, November 2000\]](#)
5. [Communication No. 292/02, Institute for Human Rights and Development in Africa \(on behalf of Sierra Leonean refugees in Guinea\) v. Guinea \[Merits decision, 2004\]](#)
6. [Communication No. 317/2006, The Nubian Community in Kenya v. The Republic of Kenya \[Merits decision, February 2015\]](#)

References

C. Communications by African Committee of Experts on the Rights and Welfare of the Child

- 1. Communication No. Com/002/2009, Decision on the communication submitted by the Institute for Human Rights and Development in Africa & the Open Society Justice Initiative (On Behalf of Children of Nubian Descent in Kenya) against the Government of Kenya [Merits decision, 22 March 2011]**
- 2. Communication No. Com/001/2015, Decision on the communication submitted by the African Centre of Justice and Peace Studies (ACJPS) and Peoples' Legal Aid Centre (PLACE) against the Government of Sudan [Merits decision, May 2018]**

References

D. Beyond jurisprudential tools

- i. Resolutions and other contributions by the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, established by the African Commission in 2004
- ii. Research study by the ACERWC titled “Mapping Children on the Move within Africa”, which it provides detailed information on issues of refugee, internally displaced etc. children and their protection issues.
- iii. The General Comment on Article 6 of the African Children’s Charter- it unpacks the provision of the African Children’s Charter as it relates to nationality and statelessness
- iv. Draft Protocol to the African Charter on Human and Peoples’ Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa