

International & regional framework on eradication of statelessness in Africa

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I BELONG

PART 1 : Key concepts

Nationality, Stateless persons & others related

Identity vs Nationality

Identity

Self-determined

Nationality

Legal determination



Nationality

'The legal bond between an individual and a particular State

"Everyone has the right to a nationality"

- Universal Declaration of Human Rights, Article 15



Conferral of nationality

- Nationality is given by States on the basis of rules that come from domestic law (influenced in turn by international obligations).
- States look for evidence of a factual link – or appropriate connection – between the individual and the State.

Birthplace / lieu de naissance



Link to a territory
Lien à un territoire



Residence / Résidence

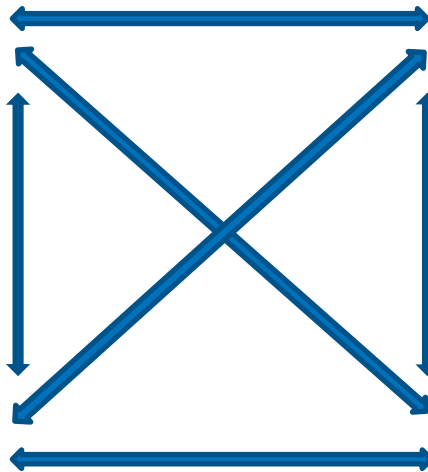
Parentage /
Filiation



Link to a national
Lien à un citoyen



Marriage /
Mariage



Acquisition of nationality

- Link to the population:
 - Acquisition at birth: parents are nationals (*jus sanguinis*)
 - Acquisition later in life: marriage to a national, adoption
- Link to the territory:
 - Acquisition at birth: birth on State soil (*jus soli*)
 - Acquisition later in life: long-term residence

Automatic / non-automatic acquisition of nationality

Who is stateless?

- ‘A person who is not considered as a national by any State under the operation of its law’
 - Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons
 - Recognized as customary international law
 - Also referred to as *de jure* stateless persons
 - A mixed question of law and fact

Stateless refugee

Article 1(A)2 1951 Convention:

“A person who (...) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Person with undertermined nationality

A person who has links to several States that may form the basis of a claim to nationality, but for whom it is unclear to which State(s) - if any - they belong.

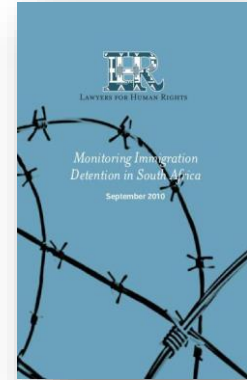
For UNHCR, a person may be assessed as being of undetermined nationality following a review verifying the following: 1) they lack proof of possession of a nationality; and either 2)a) have links to more than one State (on the basis of birth, descent, marriage or habitual residence) ; or 2)b) are perceived and treated by authorities in the State of residence as possessing such links to other States.

(UNHCR Glossary <https://www.unhcr.org/glossary/>)

- Neither foreigners nor nationals
 - Invisible problem
- Affected persons often unaware
 - Risk scale
 - *In situ* vs. migrant



Negative impact of statelessness on the enjoyment of rights



PART II : CAUSES OF STATELESSNES



HCR/Anthony Karumba

- Discrimination
 - e.g.: gender, racial, ethnic, religious, linguistic
- Gaps and conflicts in nationality laws
- State succession/transfer of territory
- Administrative barriers



Discrimination

- More than 75% of the world's known stateless populations belong to a minority group.
- In some cases, discrimination against minorities is prescribed by law.
- Even when the law is discrimination-free, discriminatory policies and practices may prevail.

Gender discrimination

- 23 countries do not allow mothers to pass on nationality to their children on the same basis as fathers.
- More than 50 countries have gender discriminatory laws which do not grant women equal rights with men to acquire, confer, change or retain their nationality.



Conflict between/gaps in nationality laws

- Conflicts between nationality laws and absence of safeguards against statelessness can leave children stateless.
- Safeguards against statelessness at birth prevent statelessness from being passed down from one generation to the next.
- Most important safeguard: children born on the territory of a State should acquire the nationality of that State where they would otherwise be stateless.

State succession

Statelessness can occur during state succession or creation of a new state.

Factors include:

- Their previous state of nationality ceases to exist.
- The territory on which they live comes under the control of another State and new laws discriminate against particular minorities based on national or ethnic identification.
- There is a conflict with the old nationality law.

Administrative obstacles

- Lack of access to birth registration particularly late birth registration
- Required (prerequisite) documentation not available or not accessible
- Unrealistic deadlines
- Geographic barriers
- Illiteracy
- Lack of awareness
- Discrimination
- Migratory factors (historical displacement and/or contemporary displacement)

In disruptive conflict or post-conflict situations, difficulties in completing simple administrative procedures, such as birth registration, are exacerbated.

Main profiles of affected persons in Africa

❑ Long-term migrants and their descendants

- Historical/pre-independence migrants and their children
- Protracted contemporary migrants and their children
- Certain migrants without ID or civil status documents
- "Repatriated" to a country of origin
- Protracted refugees and former refugees as well as descendants

❑ Cross-border populations

- Ethnic groups divided by international borders including nomads
- Populations affected by modern-day State succession

❑ Vulnerable children (in childhood and in later life)

- Foreign fathers, born out of wedlock, abandoned, orphans
- Child workers, victims of trafficking

Part III- International Conventions on statelessness & UNHCR Statelessness Mandate



1954 Convention relating to the Status of Stateless Persons

- ✓ Purpose: **Identify** and **Protect** Stateless People
- Defines a “stateless person” in international law
- Core Principle: *Treat stateless people at least as favorably as foreigners who do possess a nationality.*
- Establishes rights to **identity & travel documents**; encourages naturalization “as far as possible”

Main elements of the 1954 Convention

- Definition of a "stateless person"
- Similar content to the 1951 Refugee Convention **except the principles of *non-refoulement* & non-penalization of illegal entry**
- Lists stateless persons' rights
- Obligations of stateless persons
- Principle of non-discrimination for the treatment of stateless persons
- Exclusion clauses similar to the 1951 Refugee Convention

1961 Convention on the Reduction of Statelessness

- **Purpose:**

To prevent and reduce statelessness -*not an international law regulating nationality!*

- **Approach:**

-Prescribes minimal safeguards for states to introduce in their nationality laws.

***Safeguards** to ensure children enjoy their right to acquire a nationality in practice

***Safeguards** to prevent statelessness if nationality is renounced or withdrawn; and to prevent arbitrary deprivation of nationality

- **Strengths:**

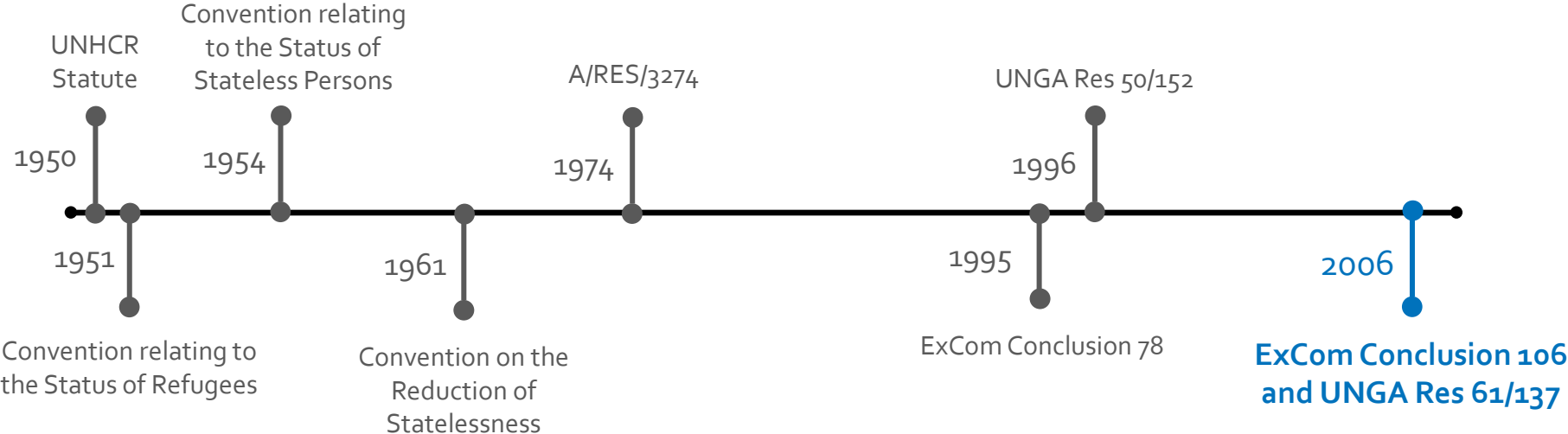
-Common framework for avoiding statelessness, detailed and concrete standards

1961 Convention on the Reduction of Statelessness

Preventing Statelessness at Birth

- Grant nationality of **the State of birth to a child born in the country, “who would otherwise be stateless”** through one of two means (Art 1 (1-2))
- Grant of the **mother’s nationality by descent** if the child was born in the mother’s State and would otherwise be stateless (Article 1(3))
- Grant of **the nationality of a parent by descent via an application procedure** for individuals who do not acquire nationality of the State of birth (Article 1(4))
- Grant nationality **of a parent by descent for a child born abroad** who would otherwise be stateless(Article 1(4))
- Grant nationality to **foundlings** (Art 2)
- **Clarify rules for births on ships or planes** (Art 3)

UNHCR's Statelessness Mandate



UNHCR is the UN Agency Mandated by the UN General Assembly to address statelessness

4 Pillars:

1. Identify stateless persons
2. Prevent statelessness
3. Reduce statelessness
4. Protect stateless persons

Global Action Plan to end Statelessness

- Action 1: Resolve existing major situations of statelessness.
- Action 2: Ensure that no child is born stateless.
- Action 3: Remove gender discrimination from nationality laws.
- Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds.
- Action 5: Prevent statelessness in cases of State succession.
- Action 6: Grant protection status to stateless migrants and facilitate their naturalization.
- Action 7: Ensure birth registration for the prevention of statelessness.
- Action 8: Issue nationality documentation to those with entitlement to it.
- Action 9: Accede to the UN Statelessness Conventions.
- Action 10: Improve quantitative and qualitative data on stateless populations.



What UNHCR under its statelessness mandate?

- Technical advice on nationality legislation.
- Help to identify stateless persons - studies/ censuses/ support for self-census
- Support to grant or confirm nationality to stateless persons.
- Support access to birth registration for persons identified at risk of statelessness or stateless persons
- Support to establish statelessness determination procedures.
- Promote accession to the UN Statelessness Conventions.
- Participate as amicus curiae in court cases.
- Work in partnership with global, regional local organizations to conduct advocacy and to provide legal assistance to stateless people.
- Publicize UNHCR's role, including with respect to assisting persons with claims.
- Raise awareness about the problem of statelessness.
- Develop partnerships with other UN Agencies, international organizations and civil society groups to amplify and strengthen global advocacy on statelessness.

International & Regional Legal Instruments on the Right to a Nationality



International Human Rights Instruments : right to a nationality

- Universal Declaration of Human Rights - Art 15
- Convention on the Elimination of All Forms of Racial Discrimination - Art 5
- International Covenant on Civil and Political Rights - Art 24
- Convention on the Elimination of All Forms of Discrimination against Women - Art 9
- Convention on the Rights of the Child - Art 7-8
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families - Art 29
- Convention on the Rights of Persons with Disabilities - Art 18

Regional human rights framework : Right to a nationality



- African Charter on the Rights and Welfare of the Child, 1990 - Article 6 (3) and 6 (4)
- Additional Protocol to the African Charter on the Rights of Women in Africa of 11 July 2003 - Article 6

Nationality Rights and Statelessness under the African Charter on Human and Peoples' Rights

- 1) **Adopted in** 1981 and entered into force 1986
- 2) **Monitoring Organ-** The African Commission on Human and Peoples' Rights (The ACHPR)
- 3) **Relevant provisions**
 - No specific/direct provision on the right to a nationality
 - However, Art 2- Non-discrimination, Ar-3-Equality before the law, Art 5-right to the respect of the dignity and legal status.(recognized by the African jurisprudence as the right to a nationality being an important component), Art 12 the right to leave and return to own country, and Art 18 protection of the family
- 4) **The ACHPR dealt with few Communications on matters of the right to nationality including:**
 - *Modise v. Botswana*
 - *Amnesty International v. Zambia*
 - *Legal Resources Foundation v. Zambia*
 - *IHRDA v. Angola*
 - *IHRDA V Republic of Guinea*
- 5) **Initiatives of the ACHPR on the right to a nationality and eradication of statelessness include:**
 - Resolution 234 on the Right to Nationality-affirmed the right to nationality,
 - The Commission has launched a study on the rights to a nationality in Africa (2015)
 - The Draft protocol to the ACHPR on the specific aspects of the right to a nationality and eradication of statelessness in Africa

The Draft Protocol to ACHPR on the Specific Aspects of the Right to a Nationality and Eradication of Statelessness in Africa

- Complementary to the ACHPR : no right to a nationality in the Charter
- Specific measures to prevent and reduce statelessness in Africa
- Three drafting workshops in 2017-18
- Review by the AU STC migration in 2018 and tabled to STC on legal affairs in DEC 2022, ahead of its final adoption by AU Council & Assembly, and opening for AU State's ratification

STRENGTHS :

- Enlarges the definition of stateless
- Measures to prevent statelessness by acquisition of nationality at birth
- Measures to promote access to nationality for nomadic, cross-border, pastoralist groups.
- Measures to remove certain gender discrimination into nationality laws
- Dual nationality only for a child
- Access to documentary proof of nationality to all
- Procedural safeguards to the right to a nationality

Key points of the Draft Protocol to ACHPR on the Specific Aspects of the Right to a Nationality and Eradication of Statelessness in Africa

- **Stateless person**” means a person who is not considered as a national by any State under the operation of its law, including a person whose nationality cannot be established
- **Appropriate connection-** instead of genuine link- to prove nationality
- When proving nationality depends on **habitual residence**-such residence doesn't have to be if the person is stateless
- **Attribution of nationality** for child that would otherwise be statelessness
- **Acquisition of nationality later in life in accordance with its national law and facilitating of acquisition of nationality specifically for stateless and children at risk of becoming stateless.**
- **Nomadic and cross-border communities-** list on what need to be appropriate connection

Key points of the Draft Protocol (Continued)

- **No longer prohibition of multiple nationalities for a child** who has automatically acquired 2-3 nationalities at birth. In case multiple nationality is not allowed, when attaining majority, s/he will be required to choose one nationality.
- **Renunciation, loss and deprivation-** safeguards- against statelessness (with weak pronouncement) and the decision shall not affect the spouse and children.
- **Child 's right to have his/her birth registered immediately after birth**
- **Procedural guarantees to the right to a nationality**

Statelessness and Citizenship in the East African Community

A Study by Bronwen Manly for UNHCR
September 2020



UNHCR Regional Service Centre, Nairobi, Kenya
www.unhcr.org

Nationality, Migration and Statelessness in West Africa



CITIZENSHIP AND STATELESSNESS IN THE MEMBER STATES OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY DECEMBER 2020



CITIZENSHIP AND STATELESSNESS IN THE HORN OF AFRICA DECEMBER 2021