



Citizenship Rights in Africa Initiative
Everyone has the right to a nationality



INTERNATIONAL
REFUGEE
RIGHTS
INITIATIVE

CITIZENSHIP IN AFRICA NEWSLETTER

In this issue:

- **Challenging Discriminatory Legislation in Sudan Using African Legal Architecture**
- **Statelessness in Africa, with a Focus on the Gambia**
- **A Significant Step in Favour of Women's Rights in Senegal**
- **How Lawyers for Human Rights is Fighting to End Statelessness**
- **The First Global Forum on Statelessness: Raising the Profile**
- **Summary of the ACHPR's Study on Nationality**

Challenging Discriminatory Legislation in Sudan Using African Legal Architecture

Sophie Chiasson, Intern, International Refugee Rights Initiative

Imagine you are born in a country, to parents who were also born in that country, and all your life you believed you were a citizen of that country – with all the rights that go along with it. Then, one day when you apply for a standard identification document, you are told you are a “foreigner” in the only place you have ever lived.

This is what happened to Iman Hasan Benjamin, when, at age 17, she applied for her national identification number, a document needed to enrol in university. Iman was told she was no longer a Sudanese citizen primarily because her father's last name indicated he was from South Sudan – even though he had died six months before South Sudan even existed as a country.

Unlike many in the same situation, Benjamin challenged this denial of her citizenship in the courts. However, when she took her case to the Sudanese Constitutional Court, the [court ruled](#) that the automatic revocation of a minor's Sudanese citizenship was constitutional within the bounds of the law. The law the court affirmed as constitutional, Article 10(2) of the [Sudanese Nationality Act 1994](#) (SNA)(amended 2011) deprives habitual residents of Sudan of their Sudanese nationality if they are believed to have acquired “*de jure* or *de facto*” the citizenship of South Sudan, without any right to contest the decision. This law appears to be deliberately targeted at the [several hundred thousand people](#) who are seen by the government of Sudan as being from the newly created state of South Sudan, even if they have only weak ties to the country.

[ACJPS](#), along with another Sudanese organisation, are taking up the fight at the regional level, challenging the constitutional court decision at the [African Committee of Experts on the Rights and Welfare of the Child](#) (ACERWC). The complaint, submitted on 19 August, seeks redress for Iman and asking ACERWC to find a violation of her right to nationality. The case is also asking them to make a recommendation to the government of Sudan to amend its current citizenship legislation so that it is in line with international standards, protects the rights of minors, prevents the risk of statelessness and prohibits discrimination. Like [IRRI](#) and [CRAI](#), these organisations understand that arbitrary and

unequal access to citizenship is a major human rights problem that leads to the denial of a host of other rights.

Why was Iman's Sudanese citizenship revoked?

Iman was born in the village of Wad Kaamil, a suburb of Al-Hasaheisa town in the east of Sudan. Iman's mother, Hawa Ibrahim Abd al-Karim, is Sudanese from the Daju tribe. Her father, Hasan Benjamin Daoud, was born in Juba and belonged to the Baria tribe of Southern Sudan. Hasan lived in Al-Hasaheisa town for most of his life, where he married and served in the police force. He died on 29 January 2011 – six months before South Sudan seceded from the rest of the country. His death certificate, issued by Khartoum Hospital, states that his nationality was Sudanese.

After undertaking her preliminary education in Al-Hasaheisa town and then attending secondary school at the Ameed Private School in Al-Haj Yousif, a suburb of North Khartoum, Iman decided she wanted to go to university. In Sudan, a national identification number is required in order to apply for post-secondary education. Iman, however, like many people in Sudan, did not have one. When she went to apply for this document, the Civil Registry Department directed her to the Aliens Department on the grounds that her father had become a foreigner on 18 July 2011, the date South Sudan seceded from Sudan, even though Iman's father had died six months before secession and despite the fact that he had died as a Sudanese citizen (as stated on his death certificate).

It appears that the Civil Registry Department's determination of Iman's citizenship was based primarily on her last name, even though she had taken no steps to acquire South Sudanese citizenship and did not wish to do so. The revocation of Iman's citizenship was justified by Article 10(2) of the SNA. It was this piece of legislation that Iman challenged at Sudan's Constitutional Court on the grounds that it deprives her both of her constitutional right to nationality and her right to access higher education.

Under Sudanese law, dual nationality has been permitted with any other country (except Israel) since 1993, however, Article 10(2) of the SNA now provides that any individuals who acquire "*de facto* or *de jure*" the nationality of South Sudan shall automatically have his or her Sudanese nationality revoked. Further, and of more concern to thousands of children, Article 10(3) states that Sudanese nationality will be rescinded when the nationality of one's "responsible father"¹ is revoked pursuant to Article 10(2).

This significant legislation was enacted in August 2011 – only one month after the [South Sudan Nationality Act 2011](#) (SSNA) was adopted on 9 July 2011 (and seven months after Iman's father had died). The extremely broad provisions of the SSNA legislate that an individual will be considered a South Sudanese national "by birth" if they meet any of the following requirements: they have one parent, grandparent or great-grandparent born in South Sudan; they belong to one of the "indigenous ethnic communities of South Sudan"; or if they or their parents or grandparents have been habitual residents of South Sudan since 1956.

The implications of the denial of citizenship

The South Sudanese citizenship legislation is laudable in the sense that it offers protection to a large number of people. Taken together with the amendments to the SNA, however, the laws have extreme and far-reaching consequences. For example, because the SNA does not take into account where one resides, the legislation presumes all Sudanese of southern origin are also citizens of South Sudan. As such, a large number of people who have only weak ties to the south, have been

¹ The legislation defines "responsible father" as "the father or the mother if guardianship was transferred to her by order of a competent court or if the child was born as a result of an unlawful relationship."

automatically stripped of their Sudanese nationality on the basis of their qualification under the South Sudanese law, regardless of whether or not they want South Sudanese citizenship or have taken any positive steps to obtain it. If the law is applied in its broadest interpretation, an individual will automatically lose his or her Sudanese nationality if they have only one parent, grandparent, or even great-grandparent born in South Sudan. For children under 18 years of age, such as Iman, the child will lose his or her Sudanese nationality if his or her “responsible father” becomes South Sudanese pursuant to any provision of the SSNA. This provision is in contrast to the more progressive standards, enacted in more than half of African countries, which allow any child born on a country’s soil either to derive citizenship from birth or to claim citizenship upon reaching the age of majority.

Practically, the SNA legislation is also discriminatory on the basis of gender, as it deprives children under 18 of their Sudanese citizenship if the parent with legal custody (usually the father) is declared to be South Sudanese even if the other parent (usually the mother) is Sudanese. This runs counter to legislation in the majority of African states that allow men and women citizens equal rights to pass on their citizenship to their children and also to Sudan’s position on any other situation of a Sudanese mother with a father of any other nationality (bar Israel). Further, the amendment to the SNA violates the 2005 [Interim National Constitution of Sudan](#), which mandates that any individual born to a Sudanese mother or father will have an “inalienable right” to Sudanese nationality and, with only the two exclusions, permits dual nationality.

In addition, the SNA creates situations where individuals are at risk of being left stateless. Since Sudanese authorities effectively have the power to interpret the provisions of the SSNA, they may decide an individual has met the threshold to obtain South Sudanese nationality even when this is not the case. If the individual is either denied South Sudanese citizenship or does not have the proper documentation to prove their South Sudanese citizenship, they risk becoming stateless. By introducing an ethnic dimension into the acquisition of citizenship, the SSNA also creates opportunities for statelessness as some may face difficulties meeting the evidentiary requirement.

The revocation of one’s citizenship can result in the loss of significant entitlements, including jobs in the public and private sectors, rights to housing, and access to clinics and, as in Iman’s case, education. Furthermore, without recognised citizenship, individuals are more vulnerable to a wide range of human rights abuses, including harassment by police, detention or deportation.

The filing of Iman’s case with the ACERWC signals a relatively novel technique being used in Africa to challenge the arbitrary denial of citizenship to individuals. In addition to ACERWC making a recommendation to the government of Sudan, advocacy and awareness raising around the case can help build support for the creation of new standards, including pushing countries to adopt regulations that respect due process and ensure no individual becomes stateless.

As IRRRI has previously [argued](#), inclusive legislation that supports equal access to citizenship will help resolve issues of forced displacement and will assist in reducing religious, ethnic and cultural tensions leading to a more stable state and region. In the case of Sudan, not only does the law manifestly fail to prevent statelessness, this discrimination is part of a broader pattern of discrimination against peripheral populations of Sudan, which has already led to conflict and mass violence. Although a decision of the ACERWC is unlikely to be implemented in the short term, it begins to build a new legal standard that can form the basis of a platform of action in the event that the political climate in Sudan becomes more open to reform.

Statelessness in Africa, with a Focus on the Gambia

By Prof. Katim Touray, Executive Director, Action Pour les Droits Humains et L'Amitié (ADHA), actiondha@yahoo.fr

Under Article 1(1) of the [1954 Convention on the Status of Stateless Persons](#), a stateless person is someone who is not considered a national by any state under the operation of its laws. The United Nations High Commissioner for Refugees (UNHCR) estimated recently that there at least 10 million stateless people worldwide. They face continuous violations of their fundamental rights because although these rights accrue to all individuals on the basis of their shared humanity, they are often unenforceable without nationality. The stateless suffer from invisibility and red tape.

In practice, this means that stateless persons suffer barriers to education, inability to work legally, inability to move freely within and between states, inability to vote or run for any political office and lack access to social services. And these problems are often passed on to their children: it is often impossible for successive generations to escape the cycle of poverty due to their inability to acquire nationality. Statelessness also increases societal tensions and can contribute to conflicts, population displacement and migration.

Although the issue of statelessness has been recognised by the international community for decades, it still remains a significant human rights challenge that has not been given the attention it deserves, particularly in Africa. Perhaps this is because the issue cuts to the heart of what makes a nation – namely, its nationals – and is loaded with political, ethnic and cultural controversy.

The refugee movements and state succession in Europe after the second World War that led to the adoption of the [1951 UN Convention relating to the Status of Refugees](#) (“Refugee Convention”) also sparked international debate on how to deal with the issue of statelessness. The 1954 Convention relating to the Status of Stateless Persons was originally intended to be a protocol to the Refugee Convention but instead became a separate treaty.

In 2011, on the occasion of the 50th anniversary of the [1961 Convention on the Reduction of Statelessness](#), UNHCR began to escalate its efforts to call attention to the issue. By the end of 2011, eight countries had acceded to at least one of the conventions and more than 30 national governments had made pledges to accede (17 of them have done so to date).² The recent launch of UNHCR’s [campaign](#) to end statelessness in the next ten years, launched in late 2014, is, in many respects, the culmination of this increased attention.

But statelessness, inevitably, plays out differently across the globe. In the African context, discriminatory citizenship laws created during colonisation, combined with economic migration, have led to a scramble for power in the post-colonial era which, in many instances, has ensured a continuation of exclusionary citizenship laws intended to protect the perceived original occupants of the area. This has had a negative impact on many migrant labourers and their descendants, many of whom have found themselves effectively without a nationality. As countries continue to develop, and as access to wealth and social services become ever more dependent on administrative systems and documentation, statelessness in Africa is only likely to increase, with those on the fringes of society left outside the citizenry circle. Their plight is likely to be exacerbated by the global economic recession, which has led many countries to tighten their borders.

² See UNHCR’s overview of progress on pledges, available at <http://www.unhcr.org/pages/4ff2bdff6.html>.

The Statelessness Phenomenon

A common refrain when people first hear about statelessness is: “who is a stateless person?” and “how is it possible that a person could have no nationality?” I reply, “statelessness is a reality for some; it is possible to affect anyone directly or indirectly; and it is a responsibility for all”.

People unfamiliar with the idea of statelessness tend to perceive it as an isolated, infrequent event, somewhat like being struck by lightning. It is hard for many people to imagine what set of circumstances could occur to result in a person being stateless. Statelessness is, however, a reality for at least 10 million people around the world. Sadly, statelessness is often treated with doubt, suspicion and defensiveness by people who are in a position to prevent and reduce it – government leaders, officials and representatives. Many insist that it is not a problem for people in or from their country.

Further, in the African context, statelessness is often confused with a lack of belonging. Doubts as to whether statelessness can exist in Africa are usually centred around notions of the extended African family and the importance of roots. How can an African be stateless if he or she, like all Africans, comes from an identifiable town or village and has an extended family or a chief who can vouch for him or her? A stateless person may well have an established identity and home, and many feel a real sense of belonging in their place of origin. But citizenship – belonging legally to a state – is not a matter of how much a person *feels* that he or she belongs, it is about whether or not he or she is recognised by the state as a national.

In Africa, as elsewhere in the world, citizenship laws are mostly based on two concepts: *jus soli*, where citizenship is granted to anyone born on the territory (law of the soil), or *jus sanguinis*, where citizenship is granted to anyone whose parents are, or were, citizens (law of the blood). Most countries also allow spouses of citizens as well as long term residents to apply for citizenship through naturalisation procedures.

The interaction of *jus soli* and *jus sanguinis* principles can create gaps in access to citizenship, particularly in contexts of migration. For example, if a person is born to foreign parents in a country that only allows children of citizens to access citizenship, but his or her parents’ country does not allow them to pass nationality to a child born abroad, the child may become stateless. A number of countries in Africa, including Lesotho and Malawi, do not allow citizens abroad to pass nationality to their children, leaving the generation born abroad stateless if they cannot access citizenship in the country of birth.

Other causes of statelessness originate in the exclusion of certain groups from the citizenry of a country. Examples include racial, ethnic and religious discrimination in citizenship laws; gender discrimination that limit women’s ability to pass nationality to their children; the targeted deprivation of political opponents’ citizenship; and expulsion of persons who are no longer welcome as citizens.

For instance, at independence, many countries discriminated against women, limiting their right to pass nationality to their children if the father was not also a citizen, or to pass citizenship to foreign spouses. This and similar discrimination continues today.

Likewise, Ethiopia expelled untold numbers of individuals and families of ethnic Eritrean origin during and following the border war with Eritrea from 1998 to 2000. Such persons were expelled *en masse* as enemy aliens by truck or bus to the border with Eritrea. Although they were, for the most part, accepted by Eritrea, they lost significant property and suffered numerous human rights abuses in transit. In addition, in some cases, families were torn apart as some family members were deported

and others were not.³ Thus one can begin to see the complex set of scenarios that have contributed to the creation of statelessness in Africa.

Contradictions in the Constitution of The Gambia regarding citizenship by birth causing some Gambian-born to be stateless

Sections 8, 9 and 10 of [The Gambia's 1997 constitution](#) govern nationality.

Section 8, states clearly in two clauses "a" and "b" that:

Every person who immediately before the coming into force of this Constitution, is a citizen of The Gambia, shall, subject to this Constitution

(a) continue to be a citizen of The Gambia;

(b) retain the same status as a citizen by birth, by descent, by registration or by naturalisation, as the case may be, as he or she enjoyed immediately before the coming into force of this Constitution.

Section 9 states:

Every person born in The Gambia after the coming into force of this Constitution shall be presumed to be a citizen of The Gambia by birth if at the time of his or her birth, one of his or her parents is a citizen of The Gambia.

Section 10 states:

A person born outside The Gambia after the coming into force of this Constitution shall be a citizen of The Gambia by descent if at the time of his or her birth either of his or her parents is a citizen of The Gambia otherwise than by virtue of this section or any comparable provision of any earlier Constitution.

Many persons living in The Gambia for a certain period of time, or who were born in the country, regard themselves as citizens. However, both section 9 and 10 above show that this is not necessarily correct. Merely living in The Gambia for decades or being born there does not automatically make one a citizen unless one or more of the parents are citizens.

Who, then, is a citizen of The Gambia? For the sake of simplicity we will focus on the so-called "citizenship by birth." First, we will consider a couple from a neighbouring country settling in The Gambia before 18 February 1965 and giving birth to a boy in The Gambia called X. This boy is not a citizen of The Gambia because neither parent nor grandparent was born in there: [the 1970 constitution](#) stipulates that a person born before 1965 shall not be a citizen of The Gambia if neither of his parents nor any grandparent was born in The Gambia.

If the son X gives birth to a baby girl, child Y, with a non-Gambian on or after 16 January 1997, when the current constitution came into force, child Y is not a citizen of The Gambia because neither of her parents is a citizen. Hence, even though her father was born in The Gambia, the father is not a citizen of The Gambia, so daughter Y is therefore not a citizen of The Gambia.

Section 9 of the 1997 Constitution has not rectified this anomaly, which could potentially allow generations to remain excluded from citizenship. It demonstrates how generations of grandparents, parents and grandchildren are not citizens of The Gambia even though they were born in The Gambia.

³ For more information on the Ethiopia-Eritrea citizenship issues, please see, Katherine Southwick, "[Ethiopia-Eritrea: statelessness and state succession](#)," *Forced Migration Review*, no. 32.

As a result, many people living in The Gambia are therefore stateless. The Gambia, where they supposedly belong, does not recognise them as citizens, and most have no proof of nationality of the country in which they (or their parents or grandparents) were born.

While in practice this issue may seem less important on account of the fact that many find it easy to get national documents such as ID cards and voters' cards even without formal recognition of their citizenship. However, politicians can and do use it as a weapon whenever they desire. For example, after a demonstration in the early seventies, a student was deported to Senegal even though he had grown up in The Gambia as he did not meet the criteria for citizenship. Another example is the mass prosecution of voters from Upper Saloum District for unlawfully obtaining voters' cards. It was alleged that even though these voters were born and bred in that constituency, neither their parents nor their grandparents were born in The Gambia and therefore they were not citizens.

A Significant Step in Favour of Women's Rights in Senegal

By Djibril Balde, West Africa Focal Point, International Refugee Rights Initiative (IRRI)

In June 2013, the Senegalese National Assembly passed a law allowing all Senegalese citizens to pass on their nationality to their children and spouses of foreign nationality. Previously, Senegalese women could only pass on their nationality to their children if the father was of unknown nationality or stateless. Similarly, although women marrying Senegalese men automatically took on Senegalese nationality, there was no provision for husbands of Senegalese women to acquire nationality (now spouses of either gender can acquire nationality after five years at their request). This major change in the nationality law is seen as a step towards gender equality. This Law No. 03/2013 amends Law No. 61-10 of 7 March 1961 on nationality. This new law gives Senegalese women equal rights as men to pass their nationality to their spouses and children and this reform will also allow women the same rights as men in relation to adoption. Children adopted by Senegalese women, and not only Senegalese men, can now access citizenship.

The amendments to Articles 5, 7, 7a, 8, 9, 10, 12 of Law No. 61-10 of 7 March 1961, the law determining Senegalese nationality, try to correct gender inequalities. Many organisations appreciate the enactment of this law, particularly women's rights organisations who, for many years, have led the struggle for equality at a legal level. It is important to remember these advocates have fought for decades to make Senegal comply with international commitments such as the [Convention on the Elimination of All Forms of Discrimination Against Women](#), to which Senegal is a party. A woman's right to transfer her Senegalese nationality to her foreign spouse or child is one of great importance.

The enactment of this law has caused many reactions around the nation. Former Minister of Justice Aminata Touré was quoted in the Senegalese press as welcoming the enactment of a law that "eliminates discrimination based on gender and parentage and terminates the primacy of man over woman on the transmission of nationality." She believes that this law is the result of the struggle by both Senegalese women and their foreign husbands. Thus, this law responds to the requests of the Senegalese population.

Mustapha Diakhate, a member of the parliament and chairman of the parliamentary group of the ruling party in the National Assembly, stated in June 2013 that he is "effectively completing the process that has led to gender equality." According to the MP, "[t]here has been incongruity in the injustice done to Senegalese women. This injustice has been corrected. Now, this is yet another victory for Senegalese women. Because our struggle is to eradicate any form of segregation between men and women in our country."

Generally, women have welcomed the enactment of Law No. 03/2013, amending Law No. 61-10 of 7 March 1961 on nationality. However it is clear there is more work to be done to make this lofty statement a reality. One woman IRRI interviewed in October 2014, however, married to an Ivorian man for over five years, was, like many other women, not aware of the promulgation of the new citizenship law. However, she believes that the government has made a good decision by allowing women to pass their nationality to their husbands and children. She considers this an important opportunity, and will seek to take advantage in order to ensure that her husband is able to naturalise.

Another woman, despite also being unaware of the promulgation of the new citizenship law, told us that she has been married to a Sierra Leonean for ten years and her husband has applied for naturalisation. He is still awaiting a response from the authorities in relation to this request and she now believes that with the new law it is necessary to re-apply based on the provisions under the law, especially because she and her husband have been married for ten years (and so fulfil the residency requirement) and have a marriage certificate (and so can prove that they are married).

We also spoke with another woman who was married to a Sierra Leonean man who had been denied asylum. He has been living without documentation for about five years and has been arrested on a number of occasions. She was aware of the law and believes that the government has made a good decision by amending this law and strengthening the rights of women in Senegal. She is going to help her husband apply for naturalisation with the court department of Dakar. She remains optimistic about obtaining Senegalese nationality for her husband and believes he will benefit from obtaining Senegalese citizenship after six years of marriage.

We also interviewed a foreign man married to a Senegalese woman for seven years with three children. He lamented the slow processing of his naturalisation application despite his belief that he has fulfilled all necessary conditions for citizenship. He wants to re-apply based on his wife's newfound ability to transmit nationality.

One obstacle to the full enjoyment of the rights granted under this new law, however, is the fact that many women are not aware of it. The authorities, through the Ministry of Women, Children and Women's Entrepreneurship; the Ministry of Justice and the Ministry of Foreign Affairs, should now launch a major campaign to raise awareness about the law. These different departments must work in close conjunction with the media and civil society organisations, particularly those that concern women. The same activities must be conducted at Senegalese embassies and consulates abroad. Senegalese around the world must be aware of the provisions of the new citizenship law. Civil society organisations should also put in place a network to ensure that the citizenship law is applied.

Another potential obstacle to full enjoyment of the new rights under the law may be related to obtaining the documentation needed to establish citizenship. In Senegal the registration of children who are not recognised by their fathers often presents a problem. Although such children should now have an unproblematic claim to Senegalese citizenship based on their mothers (presuming that she is Senegalese), women whose partners will not recognise their children, may face difficulty in registering the birth of their children. Without birth registration documents, children may have difficulty establishing their citizenship, even where the law is clear. Women can register children whose male parentage is not established by obtaining a judicial decision, however this process is more complicated than the regular process and many women are unaware of this option, which acts as an obstacle to accessing birth certificates. In addition, many people are unaware of the provision which allow for late registration of births. As a result, there is a need to conduct awareness raising on the legal provision which allow for these special registration processes in the short term, so that families, and women in particular, are aware of the options for gaining access to birth registration for those who are not recognised by their fathers and in the longer term, to simplify procedures so as to

encourage registration. These measures would increase access to documentation and reduce the risk of statelessness in Senegal, particularly in rural areas.

Conditions, procedures and papers required for obtaining Senegalese nationality should also be popularised among district courts. In addition, training workshops on the right to nationality in Senegal should be provided to strengthen the capacity of organisations and agents of the state working in this field. A consultation and coordination framework must be on-site to develop a plan of action to spread knowledge of the law.

Finally, women's rights activists in Senegal believe that more reforms of this nature must be carried out to achieve gradual improvement based on gender-discriminatory legislation such as the Labour Code and the Social Security Code.

Despite the fact that more work is needed to continue to improve gender discrimination in Senegal and ensure that all those affected by the change in the law are aware of it, it is important to emphasise that with this law on nationality, Senegal has made a significant advancement of women's rights. The example of Senegal should also be followed by some African states to give more rights to women. This will both contribute to the fight against statelessness in Africa and heal injustices to which many women are subjected.

How Lawyers for Human Rights is Fighting to End Statelessness

By Jana Kaschuba, Intern, International Refugee Rights Initiative

At least 10 million people around the world are stateless, many of them suffering from serious human rights violations, and yet the issue of statelessness still remains quite invisible. Statelessness causes vulnerabilities in every aspect of human life, denying these individuals access to the basic human needs and rights. Statelessness makes it impossible to enjoy personal liberty and security, because one can't obtain legal employment, get treatment at a medical facility or even attend school.

On the frontlines of the battle for the rights of the stateless is the non-profit organisation [Lawyers for Human Rights](#) (LHR) in South Africa. In March 2011, they launched a project focusing on statelessness as part of the Refugee and Migrant Rights Programme, which offers direct legal assistance to refugees and asylum seekers. The [Statelessness Project](#), was initially founded in response to the presence of many Zimbabweans with one or two parents who were born outside of Zimbabwe, who lost their nationality following changes in Zimbabwean law. There were several legislative changes over time, one of which automatically deprived Zimbabweans with one foreign born parent of their citizenship, unless they renounced any potential claim to another nationality within a six month period. However, many Zimbabweans living and working in South Africa, unaware of the new provisions (the amendment to the act was never published), failed to renounce their claims to foreign citizenship and therefore automatically lost their Zimbabwean nationality. Quite quickly, South African human rights advocates were faced with a sizeable stateless population.

Through its engagement with this population, LHR became aware of the need to address statelessness more broadly. LHR is a strong advocate for the stateless – those “not considered as nationals by any state under the operation of its law”.⁴ LHR helps undocumented children with foreign parents with the process of obtaining their birth certificates, which is one of the key identification documents needed to establish citizenship. With the help of LHR, a girl born in South Africa to Cuban parents can now proudly call herself a South African citizen, after the successful

⁴ [1954 Convention relating to the Status of Stateless Persons](#), art. 1(1).

resolution of a lawsuit that took nearly two years to resolve (it had been six years after they applied for a birth certificate for the first time). Neither Cuba nor South Africa recognised this child, born in 2008, as a citizen. The parents were not able to pass on their Cuban nationality because under Cuban law they are defined as “permanent emigrants” because they had been absent from Cuba for more than 24 months. Although South African law provides that children born in South Africa with no access to another citizenship are South Africans by birth, the Department of Home Affairs declined to register the child and suggested she could eventually naturalise. LHR strongly argued that denying this child citizenship was a violation against the child’s right to “a name and nationality from birth”⁵ and the courts agreed (Read more [here](#)).

In other cases, individuals may have difficulty proving that they should be allowed to access citizenship. Often, LHR deals with people born in South Africa who want to prove their South African nationality. These people may be legally entitled to South African citizenship, for example through a South African parent, but may be unable to prove it because they lack identity documents such as a birth certificate. This may be because they were born abroad in countries where rates of birth registration are low or because they are unable to provide the necessary documentation for registration in South Africa. “In South Africa the birth registration process is a process where your nationality is determined,”⁶ says Liesl Heila Muller, an attorney with LHR and lead attorney of this project. Obtaining birth registration records can be an arduous process because parents need to be present to register their birth along with a witness who was present at the time of the child’s birth. That witness could either be a doctor if they were born in a medical facility or another person who was a witness to their birth if they were not born in a medical facility. However, the parents need to be able to establish their identity and the witness has to be a South African citizen. If one’s parents do not have documents of their own, or if the birth did not take place in a hospital, one may not be able to meet these requirements and may be unable to establish South African citizenship despite the fact that they are entitled to it under the law.

Muller notes that the organisation also handles refugee cases, especially assisting in the naturalisation process. In South Africa, the [Refugee Act](#) came into force in 1998, but refugees have only started coming to the Statelessness Project for legal help recently. Due to the various waiting times for this and intermediate statuses, refugees are only now finding that they have been living in South Africa long enough for them to be considered for naturalisation.

A migrant with refugee status must apply to be certified as a refugee indefinitely, which requires that the refugee show that he or she will always be a refugee. Once a refugee has been certified as such, they may then apply for permanent residence. Once a person has been recognised as a permanent resident for five years, they can then apply for naturalisation. A stateless person who happens to also be a refugee may have an advantage over other stateless persons, in that they can draw on the protections in the 1951 UN Convention relating to the Status of Refugees and also in that national law in South Africa provides them with a clear path to naturalisation.

Muller says the very first client the project had was a stateless person that was born in South Africa but could not prove his nationality. After four court orders in three years, his application for permanent residence remains rejected and his case still remains to be fully considered. This case is emblematic of the long periods that most cases wait without resolution.

One critical problem LHR and their clients face is the lack of laws in South Africa that address statelessness directly. There is no specific system for identifying and protecting stateless persons

⁵ Nomahlubi Jordaan, [SA adopts stateless baby](#), 8 July 2014.

⁶ Interview with Liesl Heila Muller, November 2014.

under South African law. The lack of a mechanism that determines statelessness results in confusion over who belongs in this category, as Muller says “[w]henever I apply for permanent residence for a client, there is always that fight about whether the person is stateless or not” and that makes it difficult to formally recognise stateless persons and offer them protection. Even where the law does provide protection (as for children born in South Africa who would otherwise be stateless), protection is nearly impossible to access in practice, due to the absence of a statelessness determination procedure and the restrictions on registration for children of undocumented parents. The fact that South Africa has neither signed nor ratified the United Nation’s Statelessness Conventions of [1954](#) and [1961](#) limits the legal options available. That is why LHR is calling for ratification of the treaties, creation of domestic legislation that allows for the identification and protection of stateless people and the relaxation of birth registration requirements in South Africa in order to allow more people to access documentation.

According to LHR, the main objective of the Statelessness Project is the provision of direct legal advice and legal assistance to clients. Their offices are situated in Cape Town, Durban, Johannesburg, Musina, Pretoria and Upington, but they only run their legal clinics out of Pretoria, Johannesburg and Musina. It is at these legal clinics that clients initially meet the LHR staff for consultation and legal advice. For instance, if the stateless person is also a refugee, LHR can assist them with applying for asylum, and then for permanent residence and eventually naturalisation on the basis of their refugee status and continued residence in the country. In the case of stateless persons, or persons unable to prove their nationality, LHR can try to pursue other immigration options, such as seeking qualification for permanent residence because of a family member living in the country. However, most such immigration options require identity documents, which are unavailable to many stateless persons. In this case, LHR will prepare an application for permanent residence on the basis of a provision in the [Immigration Act](#) which exempts applicants from the ordinary requirements for permanent residence when they find themselves in “special circumstances” . Although, as Muller points out, this provision was not designed for stateless people, it has assisted in a number of cases. However, there are no guidelines for the Department of Home Affairs to follow in such cases and the granting or rejection of status is entirely discretionary. In all these processes, the LHR staff are there to help with the applications and with following up. Unfortunately, not all cases can be taken to court because of limited resources. However, LHR maintains a strong working relationship with some counsellors who help connect clients with their country of origin, as well as partner organisations that can provide social assistance.

LHR is also actively involved in raising awareness about statelessness. LHR provides training for other non-government organisations and for certain government departments. Community meetings are held in townships to teach about citizenship and birth registration. Alongside this initiative, LHR also provides communities with free legal advice for the day and is also launching a practitioner’s guide to promoting citizenship and preventing statelessness in South Africa.

In order to raise awareness about statelessness, LHR staff are also involved in the writing articles for online papers and journals. This year, a short film entitled [“Belonging Part One”](#) was released, highlighting the vulnerability of stateless persons, with Part Two already in the planning stages. All this remains part of an extensive plan by LHR to raise awareness about statelessness, a little known problem that affects millions of people worldwide.

The First Global Forum on Statelessness: Raising the Profile

By Lucy Hovil, Senior Researcher, International Refugee Rights Initiative

Awareness of the problems associated with statelessness has gained increasing traction over the past few years. In 2011, UNHCR celebrated the 50th anniversary of the [1961 Convention on the Reduction](#)

of [Statelessness](#) and has now launched a [ten-year campaign](#) to end statelessness, linked to the 60th anniversary of the [1954 Convention relating to the Status of Stateless Persons](#).

The many problems associated with statelessness have been given inadequate attention, and this new emphasis is to be welcomed. Statelessness renders people vulnerable to numerous human rights abuses reflecting the fact that citizenship represents the “right to have rights.” Official UNHCR statistics talk of 10 million people worldwide being stateless; but the number is likely to be far higher.

A major step forward in increasing the profile of statelessness and generating networking opportunities around this issue took place at the first [Global Forum on Statelessness](#) from 15 to 17 September 2014 in The Hague, co-hosted by UNHCR and Tilburg University. The forum, which was intended to explore new directions in statelessness research and policy, brought together approximately 300 academics, policy makers, NGO workers and stateless people from across the globe. The three key themes of the forum – stateless children, statelessness and security, and responses to statelessness – saw over 90 presentations on a multitude of related issues.

There were also interviews with several individuals who either had previously been stateless, or are still stateless, which provided a good antidote to the more theoretical discussions. In addition, there was an impressive line-up of keynote speakers, including Irene Khan, Director-General of the International Development Law Organization; Barbara Hendricks, a renowned classical singer and human rights activist and UNHCR’s longest serving ambassador; Nils Muižnieks, the Council of Europe Commissioner for Human Rights; Volker Türk, then Director of International Protection at UNHCR; and A.A. Gill, the British writer and critic.

In relation to citizenship issues in Africa, Bronwen Manby gave a paper on [“Nationality, migration and statelessness in West Africa.”](#) Her presentation reported on a study, done under the auspices of UNHCR and IOM, which focused on the management of nationality in the context of legal frameworks providing for free movement among the ECOWAS countries. It was based on a report that highlighted populations most at risk of statelessness in the region, including frontier and nomadic populations, migrants and their descendants, refugees and former refugees, victims of trafficking and children born out of wedlock. In the same session, IRRI presented their research⁷ on the stalled naturalisation process in Tanzania, in which tens of thousands of Burundian refugees who were offered the opportunity to apply for naturalisation had been caught in legal limbo due to the failure by government to implement the offer (since the time of the conference implementation has moved forward).

Perhaps the main criticism around the forum was the fact that it was weighted towards focusing on stateless issues in Europe. However, this was somewhat inevitable given its location within Europe, and is something of which the organisers appeared to be aware. That said, it was an excellent opportunity for people to connect with others across disciplines and across the globe working on issues around statelessness, and is no doubt the beginning of a movement that is going to gather momentum with time.

Summary of the ACHPR’s Study on the Right to a Nationality in Africa

Olivia Bueno, Associate Director, International Refugee Rights Initiative

In April 2014, the African Commission on Human and Peoples’ Rights (ACHPR) adopted the [study](#) of its Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons (Special

⁷ See, IRRI, [“I Can’t Be a Citizen If I am Still A Refugee,”](#) 2013; and IRRI, the Centre for the Study of Forced Migration and the Social Science Research Council, [“Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania,”](#) 2008.

Rapporteur) on the right to a nationality in Africa. The study was formally launched at the AU Summit in January 2015 in Addis Ababa. The ACHPR had called on the Special Rapporteur to carry out this study in an April 2013 [resolution](#), at its 53rd ordinary session, in which they also reaffirmed “that the right to nationality of every human person is a fundamental human right implied within the provisions of Article 5 of the African Charter on Human and Peoples’ Rights and essential to the enjoyment of other fundamental rights and freedoms under the Charter”, and called on Member States of the AU to respect that right. Following the consideration of this report, the ACHPR has drafted a protocol on the right to a nationality in Africa, which adopts new regional standards for addressing the situation. African civil society now has an important opportunity to advocate for the adoption, ratification and implementation of these important new standards.

In order to do so, however, it is useful to have an understanding of the content of the study and the range of problems which it seeks to address. In that context, this article seeks to provide an overview of the study and its recommendations, aimed at bringing practical solutions to the problems faced by large numbers of Africans whose right to a nationality is either questioned or denied outright.

The Problem of Nationality

For many, it is hard to conceive of a situation in which a person has no nationality. However, many Africans suffer from the problem of either being stateless (that is, not being recognised as a national in any country by operation of its law), or being unable to effectively establish their nationality due to poor documentation systems, ethnic discrimination or other obstacles. This can constitute a serious obstacle for the individuals concerned, and can deprive them of:

- access to education;
- access to public healthcare services;
- the ability to leave their country, or return to it, as they may be unable to access travel documents;
- the right to vote or run for election;
- the possibility of registering their children at birth.

This problem is exacerbated by weak international legal standards with regard to the right to a nationality on the continent. The [African Charter on Human and Peoples’ Rights](#) does not recognise the right to a nationality, although subsequent decisions of the ACHPR have asserted that this right is implicit through creative interpretation of other protocol positions.

The right was, however, taken up more explicitly in the [African Charter on the Rights and Welfare of the Child](#). This instrument requires states to offer their nationality to any child born on their territory who would otherwise be stateless.

In 2003, the [Protocol to the African Charter on the Rights of Women in Africa](#) also addressed the question of citizenship, confirming the right of women to acquire a nationality and to take on the nationality of their husbands upon marriage. The Protocol also provides that “a woman and a man shall have equal rights, with respect to the nationality of their children”. This provision, however, is undermined by the fact that it is caveated with an exception “where this is contrary to a provision in national legislation or is contrary to national security interests.” The Protocol also remains silent on the rights of women to extend nationality to their spouses.

The study raises concerns about the practical implementation of nationality rights in light of Africa’s history of weak implementation of international standards and the complex issues of pastoralism, terrorism, insecurity, changing boundaries and the place of the African diaspora in continental politics. The study calls on the ACHPR to take up a leading role in responding to these questions.

Origins of National Laws on Nationality

The study offers an overview of the development of the concept of nationality internationally. Although research on pre-colonial African conceptions of the individual's relationship with the state is scarce, what exists indicates that it was conceptualised in a completely different way, with reference to extended families, villages, neighbourhoods, and cantons taking on special significance. Most nationality laws in Africa, however, are based on the legal history of their colonial powers. In themselves, these were based on the European development of the concept of nationality, where the concept emerged towards the end of the 18th century.

In common law countries, the concept of nationality can be traced back to feudal allegiances, which eventually developed into the doctrine that the population of the kingdom in its entirety were "subject" of the crown, owing it allegiance. Eventually, the idea of a "subject" was replaced by that of a "national" which, was defined comprehensively for the first time in 1948 by legislation which provided that nationality was acquired upon birth on the territory of the United Kingdom or one of its colonies; through naturalisation; through birth, abroad, to a father who was a British citizen; and through marriage.

In civil law countries, particularly France, nationality developed as a way of defining one's relationship to the king. From the 17th century, birth on the territory was the dominant criteria for granting nationality. With the French Revolution in 1789, a new concept of citizenship was defined, in which all individuals who agreed to abide by the law of the country and its constitution were considered citizens. At the outset of the colonial period, colonised peoples, with the exception of some Senegalese, were treated as "subjects" distinct from, and deprived of the rights of, citizens. In 1889, several new provisions were introduced, establishing that those born on French soil to non-nationals who were also born in France were nationals from birth and that those born to non-national parents born outside the country could acquire nationality at majority, provided that they were still resident there. In 1946, a new French constitution extended French citizens to all colonial inhabitants.

Although the study acknowledges that there is no universally recognised definition of nationality, it lays out some contours based on existing references in international instruments, judgments and soft law. The idea of nationality is tied to that of the state – citizenship is about creating an effective link with the state. For this link to be effective, the state must create an environment in which the individual can enjoy the rights granted to nationals. The concept of nationality has been touched on in international law in relation to norms regarding diplomatic and consular assistance as well as through the interpretation of rights that accrue based on a connection with the state.

Limitations of State Discretion in regard to Nationality

Traditionally, deciding who is, and is not, the national of a state has been considered to be the prerogative of the concerned state. While, as the study notes, this remains the general rule, in the last century increasing limitations on state discretion in this area have been developed in international law. In 1923, the Permanent Court of International Justice decided that state discretion was subject to treaty obligations. In 1930 this was confirmed by the [Hague Convention](#), which also provided that state discretion could be limited by customary international law and generally accepted principles of law.

With the creation of the United Nations, a range of new standards were adopted:

- [The 1948 Universal Declaration of Human Rights](#) stated that "Everyone has the right to a nationality" and "No one shall be arbitrarily deprived of his right to a nationality nor denied the right to change his nationality."

- [The 1957 Convention on the Nationality of Married Women](#) provided that neither a woman's marriage nor her husband's change of nationality would automatically affect her nationality.
- [The 1959 Declaration of the Rights of the Child](#) provided that children have the right to "a name and a nationality" from birth.
- [The 1961 Convention on the Reduction of Statelessness](#) obliges states parties to offer citizenship to individuals born on their territory "who would otherwise be stateless" and to refrain from withdrawing a person's nationality where doing so would leave them stateless.
- [The 1965 International Convention on the Elimination of All Forms of Racial Discrimination](#) seeks to prohibit racial or ethnic discrimination in the right to nationality.
- [The 1966 International Covenant on Civil and Political Rights](#) provides that "Every child has the right to acquire a nationality."
- [The 1979 Convention on the Elimination of All Forms of Discrimination against Women](#) reinforces the provisions of the 1957 Convention and provides that women should have equal right with men in transmitting nationality to their children.
- [The 1989 Convention on the Rights of the Child](#) provides for a child's right to a nationality from birth.

The study then offers an overview of the development of citizenship standards in other regions.

African State Law and Practice

There are many sources of nationality law at the national level, constitutions, specific laws on citizenship, and specific laws on children.

Despite the diversity in sources, African nationality laws are almost all inspired by colonial law. They combine the broad legal principles on nationality developed by colonial power, but include some provisions which respond to the historical context of the creation of the state, for example creating transitional provisions for determining who would be considered a national at independence. All essentially draw on four main criteria to determine nationality:

1. Place of birth,
2. Descent,
3. Marriage, and
4. Residence.

There is generally a distinction between nationality conferred automatically at birth and that which is acquired voluntarily later in life, which can more easily be withdrawn.

Recognition of the Right to a Nationality

A number of countries in Africa, namely Angola, Ethiopia, Guinea-Bissau, Malawi, Rwanda and South Africa, provide for the right to a nationality in their constitutions, either for everyone or for all children. In some cases, however, this constitutional provision are not reflected in the nationality law. In other countries, including Kenya, Tunisia and Sierra Leone the right of children to a nationality is protected in specific laws on children.

Many nationality laws provide partial protection against statelessness by providing that a child born in the territory to unknown or stateless parents should be considered a national. However, these laws are not in place in more than half of African states and do not address the situation of children resident, but not born on the territory.

Nationality of Origin

As noted above, access to citizenship can be broken down into two general categories, nationality of origin and nationality by acquisition. Nationality of origin (or nationality acquired at birth) is based on two essential principles, *jus soli*, the right of the soil, which grants access based on birth in the territory, and *jus sanguinis*, which offers citizenship by descent. Of all the national legislations, only those of Equatorial Guinea, Lesotho, Tanzania and Chad apply *jus soli*. Three countries grant nationality to all children born on the territory of specific ethnic groups. Fifteen countries allow children born on their territory to foreign parents to claim their nationality of origin at the age of majority if they meet residence requirements. Twelve countries allow children born on the territory to claim nationality if at least one of their parents was also born there. Three countries offer nationality to children born to legal and habitual residents. A relatively large number of countries offer citizenship to those born on the territory either to unknown parents or if they would otherwise be stateless, however seven fail to grant any rights at all on the basis of birth on the territory.

Recognition of *jus sanguinis* is more common. Forty-nine countries in Africa (that is almost all) offer citizenship to a child of citizens born in or outside the territory. Fourteen countries, however, give preferential treatment to fathers in transmitting citizenship. A few countries discriminate based on whether or not the child was born in wedlock and others require special registration procedures for children born abroad.

Acquired Nationality

One major way in which adults can acquire nationality is through marriage, which is provided for in virtually all national legislation on citizenship. However, some countries maintain provisions in this area that discriminate against women, not allowing them to transmit nationality on an equal basis with men. Some countries automatically assert that a woman married to a national is a national, regardless of her preference, in violation of international standards. Others, while allowing nationality by marriage in law, obstruct it in practice through onerous procedures.

Another key means of accessing nationality is through naturalisation, provided for in all national legislation. However, the criteria vary and are sometimes discriminatory or hard to fill. There is generally a residence requirement, ranging from five to 35 years. Some allow naturalisation only on discriminatory basis. A number of other criteria are also applied, depending on the state concerned including, knowledge of the local language or culture, economic investment, renunciation of any other nationalities, good character and/or good health.

There are few statistics available on the number of people who are able to access citizenship through naturalisation in practice, however, and few states, apart from Tanzania, have been willing to naturalise refugees.

A number of countries have procedures that allow for recovery of nationality where it is lost for reasons outside the individual's control, such as marriage to a foreign national in cases where women were deemed to automatically take on the nationality of her husband. In other cases, procedures exist for regaining nationality where it was intentionally lost, but these are generally discretionary.

Multiple Nationality

The notion that individuals can possess dual or multiple nationalities has long been combatted by different interest groups and individuals. It is not surprising then, that at independence, almost all African states banned dual nationality. Over time, with the migration of millions of Africans and the significant prosperity of many abroad, more and more countries are, however, now allowing dual or multiple nationality. About half of African states now permit dual nationality. Some others allow dual nationality with some restrictions, including requiring government permission or allowing it only for

citizens from birth or conversely, only for naturalised citizens, or only for women who automatically acquire their husbands nationality on marrying.

Discrimination

Article 2 of the African Charter on Human and Peoples' Rights states "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the (...) Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status".

And yet it seems that a number of African states include criteria in their laws on nationality that are expressly prohibited by the African Charter. In some countries, racial or ethnic criteria are explicitly included or considered in access to citizenship. In others, ethnic criteria are not expressly provided for in the law, but are applied in practice.

Numerous countries restrict the exercise of certain rights by those who are not citizens by birth; others impose a moratorium on naturalised citizens with respect to the exercise of certain official functions. For instance, naturalised citizens may be prohibited from running for office; and being members of the government, members of parliament, diplomats or members of the armed forces. Other constitutional or legislative provisions prohibit persons with dual citizenship from holding ministerial portfolios or becoming president.

Loss and Deprivation of Nationality

Although the result is the same (that the individual's nationality is withdrawn), there is a distinction between loss or deprivation of nationality in that loss is an automatic process of law whereas deprivation of nationality requires a procedure of some kind. In general, it is easier to lose acquired citizenship than citizenship from birth. Some countries provide that citizenship cannot be withdrawn from those with citizenship from birth or where the individual would become stateless. The reasons for loss or revocation of nationality include: acquiring another nationality (or doing so without permission), fighting in a war for a foreign nation, behaving like a citizen of another state, or committing crimes against the state. Almost all states provide for withdrawal of naturalised citizenship. Criteria for this are sometimes overly broad and include vague notions such as "disloyalty".

Procedural rules

Given the critical importance of access to nationality, due process in questions of access to nationality is key. In general, requests are made to administrative or judicial authorities and allow for appeal to first administrative and then judicial authorities. However, some countries provide in their legislation that no reason for rejection of a request be given, and/or preclude the possibility of challenging a decision in the courts.

Proof of Nationality

In any administrative proceeding, the state can contest an individual's assertion that they are a national, in such cases, the burden of proof is generally on the individual to show that he or she is a national, as opposed to on the state to show that he or she is not.

Across African countries there are a variety of documents that can be used as proof of nationality including, passports, ID cards, declarations granting citizenship, decrees of naturalisation or recovery of national or, in a few countries, a birth certificate. The most conclusive document is a citizenship or nationality certificate.

In order to establish nationality documentation, one must be able to prove the elements of citizenship and the most important document to do this is a birth certificate. Although a variety of

incentives and programs have been put in place to increase birth registration, for example, the study cites UNICEF estimates that in 2013 that half of all births on the continent were not registered. In these circumstances, it is important that national systems allow for alternative means of proof including testimony from concerned individuals, local or traditional authorities, and proof of residence (payment of taxes, etc.).

State Succession

In cases of state succession, issues can arise with regard to the position of individuals who end up across a newly created international border from their area of origin or whose ethnic affiliation is perceived to be cross border. There have been a number of recent cases in Africa where these complex issues have played out.

The cases of Ethiopia and Eritrea, as well as Sudan and South Sudan, provide interesting studies on this subject. In addition, similar issues arise in the transfer of a part of a state's territory as in the transfer of the Bakassi peninsula from Nigeria to Cameroon and between Burkina Faso and Niger.

The International Law Commission has proposed some solutions in the [Draft Articles on Nationality in Relation to the Succession of States](#). In cases of transfer of territory it is proposed that individuals whose habitual residence is in the area transferred be offered nationality in the new state, while the predecessor withdraws its citizenship, unless the parties concerned decide otherwise. In cases of separation, it is proposed that each country extend citizenship to those habitually resident on the territory of the new state and that any change in citizenship status "must not adversely affect [an individual's] human rights."

The Notion of "Community Citizenship"

ECOWAS has, since its inception, promoted regional integration, inter alia, by elaborating the notion of community citizenship. Citizens of the community are given special rights in other community states to travel, work and undertake commercial activities. The [1982 Protocol to the Treaty on the Definition of a Community Citizen](#) lays out the conditions for acquisition or loss of community citizenship. In practice, community citizenship is not expressly granted but acts as a complement to the national citizenships of members. The progress made by ECOWAS has prompted other regions to discuss similar measures.

Recommendations

The study finds that despite legal protections, the existing legal architecture is insufficient to protect individual rights and recommends the drafting of a new regional protocol on nationality rights. It suggests that such draft should be based around the following principles:

1. National legislation should affirm the right of all men, women and children to a nationality.
2. Everyone should enjoy nationality without discrimination.
3. Provisions to prevent and reduce statelessness should be included in national constitutions and legislation.
4. The discretionary power of states should be limited by their human rights obligations.
5. International protection should be made available to stateless persons.
6. Minimum procedural standards should be applied to decisions regarding nationality.
7. Remedy must be available for those whose citizenship rights are denied.
8. The principles of non-discrimination, prevention of statelessness and due process must apply in situations of state succession.
9. States should ensure that laws and regulations on citizenship are consistent.

The study recommends that states should create laws that ensure access to nationality by:

1. Allowing immediate access to nationality for children born in the state who would otherwise be stateless.

2. Allowing children to access the nationality of either parent.
3. Allowing nationality for children born in the country if they are resident there a predetermined amount of time, but no later than the age of majority.
4. Allowing mechanisms for a person with no nationality to acquire the nationality of the state to which he or she has the strongest ties.
5. Women should be allowed to transmit nationality to both spouses and children on an equal basis with men.

With regard to nationality by acquisition, the study recommends.

1. Laws should facilitate access to nationality by the spouse of a national.
2. Citizenship laws should allow women whose marriages dissolve to simply recover their former nationality if they lost it during the marriage.
3. Naturalisation procedures should be open to long term residents.
4. Differences in rights accorded to naturalised citizens and citizens from birth should be minimised and be both proportionate and reasonable.

With regard to dual citizenship, the study encourages states to allow dual nationality and at a minimum to allow it for children with parents of different nationalities and spouses of non-nationals living in the spouse's state and who wish to acquire nationality in that state. It also recommends that where dual nationality is not allowed, a person discovered to have two nationalities should have the opportunity to renounce one nationality before any are revoked.

In cases of state succession it recommends that individuals have the option to choose the nationality of the successor state to which they have the strongest ties, or, if that is not possible, the one where they have their habitual residence. In any case they must be given the right to nationality in one of the successor states.

In relation to loss or deprivation of nationality, the study recommends that:

1. The grounds must be reasonable and proportionate, grounded in compliance with the law, with the state providing proof that the conditions are fulfilled and not be disproportionate to the alleged infraction.
2. Before removing citizenship, a state must prove that the person holds effective and undisputed nationality in another country.

States are also encouraged to ensure birth registration for all without discrimination.

With regard to proof of nationality and due process, the study recommends:

1. That states should ensure access to documentation without discrimination.
2. If there are reasons to think that a person has a given nationality (including if they have always lived there), the burden of proof to show that the person is not a national should rest with the state.
3. If a person is refused or deprived of nationality, this decision should be subject to judicial review.

With regard to treatment of foreigners, it recommends:

1. Limitations of the rights of foreigners should be compliant with international human rights law.
2. Distinctions between foreigners of various nationalities should be established by treaty and conform to human rights norms.
3. Having a given nationality must not be the sole reason for imposition restrictions of human rights.

4. Where rights are restricted, the state must prove that this is rationally linked to a legitimate public policy goal.
5. Any such decisions should be reviewable in court.

ABOUT THE CONTRIBUTORS

[ADHA](#) is a Senegalese registered NGO (Registration No: 13108. Its mission is to promote essential human rights and peace through friendship among all in Africa. It believes that the opinions of Africans should be the driving force behind decision making processes; however voices of diverged opinions remain unheard on many significant African issues. It is necessary to provide a legitimate platform for Africans that advocates for equal rights and justice through promoting peace and friendship. ADHA's mission is to serve as the legal platform that facilitates the effective implementation of such. In the same vein, ADHA is to seek to educate and empower Africans on peace building.

[IRRI](#), an NGO registered in the US, UK and Uganda, is dedicated to promoting human rights in situations of conflict and displacement, enhancing the protection of vulnerable populations before, during and after conflict. IRRI accomplishes this by:

- *tackling the exclusion and human rights violations which are the root causes of flight;*
- *enhancing the protection of the rights of the displaced, and*
- *promoting policy solutions which enable those affected by conflict to rebuild sustainable lives and communities.*

IRRI grounds its advocacy in regional and international human rights instruments and strives to make these guarantees effective at the local level. Focusing primarily on Africa, IRRI works with networks of advocates to identify the key challenges facing vulnerable communities and collaborates to advance changes in law, policy and practice. Partnership with networks of civil society and NGOs across the continent is a hallmark of our work including our stewardship of the CRAI website. The geographic diversity of our offices allow us to act as a bridge between local advocates and the international community, enabling local knowledge to infuse international developments and helping integrate the implications of regional and international policy at work on the ground.