



Strategy on the adoption of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality and the Eradication of Statelessness in Africa

The present document outlines the strategy that the ECOWAS Commission and ECOWAS Member States will follow to support the adoption of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality and the Eradication of Statelessness in Africa (hereinafter "Draft Protocol").

1. Background

1.1 Draft Protocol :

The African Charter on Human and Peoples' Rights does not have explicit provisions on the right to a nationality, although Article 5 thereof does provide for the right to the "recognition of legal status." In a number of communications considered by the African Commission on Human and Peoples' Rights (hereinafter "the African Commission"), the African Commission found that Article 5 of the Charter could be invoked to protect the right to a nationality.

At its 53rd Ordinary Session, held in **April 2013** in Banjul, The Gambia, the African Commission adopted resolution 234 on the right to nationality whereby it (i) reaffirmed that the right to a nationality is a fundamental human right implied within the provisions of Article 5 of the African Charter, (ii) affirmed norms on non-discrimination, (iii) appointed a focal point on statelessness from among the existing Commissioners (the Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa, Ms. Sahli Fadel), and (iv) called for a comprehensive study on Nationality and Statelessness in Africa.

In **May 2013**, the Special Rapporteur and the Commission of the African Union agreed on a "roadmap" for the implementation of this resolution. Subsequently, at its 55th Ordinary Session held in **May 2014** in Luanda, Angola, the African Commission adopted the completed study on the Right to Nationality in Africa and decided to draft a Protocol on the Right to Nationality in Africa.

The text of the Draft Protocol, as deliberated upon by experts, was presented before the African Commission at its 56th Ordinary Session held in **May 2015** in Banjul, The Gambia, and then at its 18th Extraordinary Session held in **August 2015** in Nairobi, Kenya, where the text was adopted.

As part of the ongoing validation process, the African Commission and experts on the subject presented the draft text to the African Union Commission on International Law (AUCIL) at its 11th Ordinary Session held in **October 2015** in Cairo, Egypt. AUCIL Members reviewed the Draft and made recommendations for amendments to the text to ensure it is in conformity with international law. Acknowledging the Draft Protocol's relevance and its innovative aspects, the Commissioners stressed the usefulness of the legal instrument in helping to eradicate statelessness on the continent.

During its 29th Ordinary Session in Kigali, Rwanda in **July 2016**, the Executive Council of the African Union (AU) agreed to submit the Draft Protocol for review to the Special Technical Committees (STCs) of the AU, in two stages.

The Draft Protocol will be considered first by the STC on Migration, and then by the STC on Legal and Judicial Affairs. The STC on Migration will review the substantive provisions of the Draft Protocol while the latter STC will review its compliance with regional and international norms. The two STCs are composed of experts nominated by the ministries responsible for nationality issues from within AU Member States.

The text was initially scheduled to be submitted to the STC on Migration in **October 2017**. However, in September 2017, a meeting of experts took place in Mauritius at the request of the AU Commission for Political Affairs to finalize the Draft Protocol prior to its submission. It was then decided to postpone the submission of the Draft Protocol to a subsequent STC meeting.

Once the STCs have reviewed the text and proposed the necessary amendments thereto; the Draft Protocol will be submitted to the AU Council of Ministers. This is the most crucial stage in the adoption process and is expected to take place in 2019. Once the Council has approved the Draft Protocol, it will be brought first before the Executive Council of Ministers, and then before the Assembly of Heads of State and Governments of the AU for adoption. Upon adoption, the Protocol will be open for ratification.

1.2 ECOWAS Support:

ECOWAS Member States have called upon the AU to prepare and adopt a Protocol to the African Charter on Human and Peoples' Rights on the right to a nationality (Article 5 of the Abidjan Declaration on the eradication of statelessness). Member States also committed to develop a common position document, prior to the meeting of the AU Specialised Technical Committee during which the Draft Protocol will be reviewed (Objective 1.4.1.2 of the Banjul Plan of Action of the Economic Community of West African States on the eradication of statelessness 2017-2024).

2. Position

The focal points of the Member States present at the coordination meeting held at Saly from the 17th to the 20th of October 2017, recommend the current strategy to the ECOWAS institutions and to Member States, in the context of the process for adoption of the Draft Protocol:

- 2.1 ECOWAS Member States agree that the Draft Protocol is a document promoting integration, by guaranteeing the right to a nationality for all Africans.
- 2.2 ECOWAS Member States agree to defend the following key principles of the Draft Protocol before all AU institutions where the text will be discussed and validated, in particular:
 - The definition of statelessness is extended to people unable to establish their nationality, in order to take into account the specific situations of statelessness that arise in Africa;
 - The attribution of a nationality at birth (whether of the state where the birth takes place or the state of one of the parents), in order to guarantee that no child is born stateless, and the establishment of child protection systems to ensure this rule is respected;
 - The attribution of a nationality to a child found on the territory of a Member State whose parents and birth place cannot be established;

- An end to discrimination between men and women in the transmission of nationality to children and spouse;
- Recognition of multiple nationality in certain cases;
- The acceptance of written and oral testimony as appropriate means to establish the facts showing entitlement to nationality;
- The importance of due process and judicial oversight of executive decisions in relation to the grant of documents recognising nationality;
- The rules aiming at the eradication of statelessness in both *in situ* and migratory contexts.

2.3. Each government's focal point for statelessness issues will attend all AU Specialised Technical Committee meetings and any other technical meetings related to the Draft Protocol. In case s/he is unable to participate, the concerned Member State will ensure that s/he is replaced by an alternate representative duly informed about the Draft Protocol and the present common ECOWAS strategy;

2.4. The ECOWAS Member State holding the presidency shall take the lead in advocating for the adoption of the Draft Protocol in all AU fora. As such, the concerned Member State will defend the ECOWAS position during all AU meetings where discussions take place on the Draft Protocol and/or where there is an opportunity to raise the issue of the adoption of the Draft Protocol, including (but not limited to) the Council of Ministers and the Summit of Heads of States;

2.5. During State negotiations on the adoption of the Draft Protocol, Member States will meet regularly to discuss the development of the discussions and will actively lobby other States to support the key objectives of the Protocol.

Saly, Senegal,

20 October 2017