

**AFRICAN UNION COMMISSION**  
**Department of Political Affairs**



**Concept Note**

**Member States Experts Meeting on the Draft Protocol to the African Charter  
on Human and Peoples Rights on the Specific Aspects on the Right to a  
Nationality and the Eradication of Statelessness in Africa.**

**31 August - 2 September 2017**

**Port Louis, Mauritius**

## **INTRODUCTION**

Nationality provides people with a sense of identity and creates a legal bond between a person and the State by enabling them exercise a certain range of rights. Thus, the lack of nationality can be really devastating to the lives of the individuals concerned. Despite the international recognition of the right to a nationality, there are almost 10 million stateless people around the world with hundreds of thousands of them living in Africa who find themselves "non-persons" in the only country they have always known as home.

The reason why these people are in this situation of deprivation of rights is that they are not recognized as citizens of the country where they live. They cannot register the birth of their children, nor enrol in school or university, many do not have access to public health services and find it difficult to obtain travel documents or work permits. Above all, they cannot vote or run for office or work for state institutions. This lack of recognition is often based on highly arbitrary and discriminatory grounds of race, ethnicity and gender.

Despite the high number of stateless persons across the world, this problem is particularly acute in Africa, because of the history of the creation of borders, border populations and migration within the continent. It is further exacerbated by weak capacity of many African states today and their inability or failure to respond appropriately to contemporary migration. Statelessness and deprivation of nationality have become political persecution tools and disenfranchisement, while ethnicity and race are explicitly introduced as grounds for access to nationality in several countries, which goes against all international standards on non-discrimination. As a result, arbitrary denial of access to citizenship has become a major factor of the most intractable conflicts in Africa especially among the border and nomadic communities.

Although some stateless persons are refugees, which is not the case for most of them, they are entitled to international protection afforded by the 1951 convention relating to the Status of Refugees. Thus addressing protection issues of stateless persons who are not refugees still remain a major challenge around the world and especially in the African continent.

## **BACKGROUND AND JUSTIFICATION**

Despite the incompleteness of the African Charter on the issue of statelessness in the continent, the African Union Commission, by a bold interpretation of the African Charter, has tried to limit the flexibility of States Parties tempted to use their national laws to deprive persons of their nationality. Most African countries do not have legislation that guarantees citizenship to any child born on their territory which is in violation of their commitments under the African Charter on the Rights and Welfare of the Child.

African nationality laws are based on two basic concepts that are jus soli (right of soil), under which a person obtains citizenship if born in a particular country, and jus sanguinis (right of blood) under which nationality is based on the origin of the parents, who are themselves nationals. In general, legislation based on jus sanguinis will tend to exclude individuals nationality descendant of people who moved from one place to another. However, an exclusive diet of jus soli prohibit

people whose parents are away from their "historic" home to apply for citizenship of this country, but rather includes the current residents of a specific territory. Besides these two principles based on birth, two other factors influence the determination of nationality for adults: marriage to a citizen and long-term residence in a country.

In light of the above, several voices have been raised to condemn this unacceptable situation and call for a thorough reform of African national nationality laws. The Conference organized by the African Union on the theme "Citizenship in Africa: Preventing Statelessness, Preventing Conflicts" in Nairobi (Kenya) in October 2012, made the some recommendations including: Increasing awareness on issues of statelessness and the risks related to it, encouraging Member States to guarantee equal rights in the granting of nationality and citizenship to stateless persons and their rights holders, regardless of gender, race, religion or ethnicity, Invite the African Union to establish a framework of best practices for the identification, prevention and reduction of statelessness, provide additional Protocol on the right to citizenship in Africa in the African Charter on Human and Peoples' Rights among others.

### **The State of law with regard to Nationality**

The international law of human rights is characterized by a certain disparity in the treatment of the issue of the right to a nationality at the international and continental level.

#### **At the international level**

- The Universal Declaration of Human Rights (UDHR) recognizes that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his nationality" and highlights two fundamental elements of the right to a nationality, namely the right to nationality and the prohibition of statelessness.
- The Convention on the Reduction of Statelessness of 1961, enacted in 1975 provides that the State Party "shall grant its nationality to a person born in its territory who would otherwise be stateless" and may not deprive "of his nationality if such deprivation would make them stateless" or "on racial grounds, ethnic, religious or political."
- The International Covenant on Civil and Political Rights (ICCPR), for its part, recognizes every child the right to "acquire a nationality"
- The UN Convention on the Rights of the Child (CRC) requires states parties to respect the child's right to acquire a nationality;
- The International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, they respectively provide that the right to nationality should not be denied upon discriminatory reasons and giving women equal rights with men in terms of citizenship.

### **At the Continental level**

- The African Charter on Human and Peoples' Rights contains no provision on nationality.
- The African Charter on the Rights and Welfare of the Child provides in Article 6 that:
  - Every child has the right to a name at birth;
  - Every child shall be registered immediately after birth
  - Every child has the right to acquire a nationality
  - States parties to the present Charter shall ensure that their laws recognize the principle that a child shall acquire the nationality of the country in whose territory he / she was born (e) if at the time of his birth, he / she is not entitled to citizenship of any other State in accordance with its laws.
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides in Article 6 that:
  - a woman has the right to retain her nationality or to acquire the nationality of her husband;
  - the woman has the same right as men regarding the nationality of their children except where otherwise provided for in national legislation and national safety requirements. "The American Convention on Human Rights (ACHR) from 1969 contains explicit provision on the right to nationality that cannot be suspended, and since 1997, the Council of Europe adopted a European Convention on Nationality based on the principal idea that everyone has the right to a nationality.

### **Initiatives of the African Commission on Human and Peoples' Rights**

- Despite the incompleteness of the African Charter on the issue, the African Commission, by a bold interpretation of the African Charter, try to limit the flexibility of States Parties tempted to use their national laws to deprive persons of their nationality; Communication No. 97/93 John Modise v. State of Botswana, in which it concluded that Botswana, confining Mr Modise in a no man's land for years simply to deny nationality violated Article 5 of the African Charter;
- Communication No. 212/98 Amnesty International v. State of Zambia, in which it says that "in forcing the plaintiffs (William Banda and John Chinula) to live as stateless in degrading conditions, the Zambian government ... deprived them of affection from their families and deprived families the support of these men, and that this constitutes a violation of the dignity of the human person, in violation of Article 5".
- Communication No. 211/98 Legal Resources Foundation v. State of Zambia which states the famous constitutional amendment Zambian government which required anyone wishing to run for the presidency he proves that both his parents are Zambians by birth or

descent (amendment clearly intended to prevent former President Kenneth Kaunda to run for re-election) contrary to Articles 2, 3 and 13 of the African Charter.

- **Resolution 234** adopted at the 53rd Ordinary Session held in April 2013 in Banjul, Gambia which assigned the task of carrying out an in-depth study on issues relating to the right to nationality to the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa.
- **Resolution 277**, adopted at the 55th Ordinary Session held in May 2014 in Luanda, Angola at which the final version of the study on The Right to Nationality in Africa was presented and assigned the Special Rapporteur the task of drafting a Protocol to the African Charter on the right to a Nationality and the eradication of Statelessness.

### **EXECUTIVE DECISIONS ON STATELESSNESS**

Decision on the Report of the activities of the African Commission on Human and Peoples' Rights (ACHPR) (Doc.EX.CL/968 (XXIX))

- Paragraph (5): Welcomes the development by the ACHPR the draft protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa and requests the Commission to take the required steps to ensure the processing of the draft instrument in line with the procedures for the development of AU legal instruments

### **OBJECTIVE**

The Member States' Experts Meeting on the finalization of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, aims to bring together Member States experts on issues of Statelessness and also academic experts on the same to examine and finalize based on the recommendations of the legal and academic experts from the previous meetings held before its submission to the STC in the fourth quarter.

Additionally, another objective of the experts' meeting on the Draft Protocol to the African Charter on human rights and on the right to nationality of peoples in Africa is part of an on-going process, both at the Continental and International level, to contribute to the eradication of statelessness cases on the African Continent by the proposal of a legal text regulating the major problems existing with regards to statelessness in Africa.

The Member States experts' meeting on the Draft Protocol is held as part of the process established by the aforementioned actors after the adoption by the African Commission on Human and Peoples' Rights in 2013 of the Resolution ACHPR / Res.234 (LIII) 2013 on the right to nationality, asking the Special Rapporteur (SR) of the African Commission on Human and Peoples' Rights on Refugees, Asylum seekers, Migrants and Internally Displaced Persons in Africa to conduct a thorough study on the right to citizenship in Africa.

## **EXPECTED OUTCOMES**

The following outcomes are expected from the Member States Experts meeting on the Draft Protocol to the African Charter on Human and People's Rights on the Specific Aspects to the Right to a Nationality and the Eradication of Statelessness in Africa:

- That the Draft protocol be finalized with all the necessary inputs from the experts before its submission to the STC in the fourth quarter 2018.