

# National Action Plan to Eradicate and End Statelessness in the Kingdom of Eswatini

## OVERVIEW:

On May 21-23, 2019, a workshop was held in order to discuss the causes and consequences of statelessness and to agree upon the most relevant actions to develop a national action plan to eradicate statelessness in Eswatini. Participants involved in the drafting of the National Action Plan (NAP) ranged from Government representatives and Non- Governmental Organisations. There were representatives from Ministry of the Home Affairs, Ministry of Justice & Constitutional Affairs, Ministry of Foreign Affairs, Ministry of Labour and Social Security, Deputy Prime Minister's Office, Kings' Office, Human Rights Commission, Women and Law, Lawyers for Human Rights, Caritas, Adra, UNHCR, and academia.

Considering the fact that statelessness is both a human rights and development issue, addressing statelessness will go a long way towards realizing the Sustainable Development Goals in the context of Eswatini's National Development Agenda.

The Government Focal Point on Statelessness and UNHCR shall submit the final draft of the NAP to the Minister of Home Affairs, after its finalisation and approval by the drafting team which was selected at the meeting comprising of Legal Advisor Home Affairs, Deputy Refugees Commissioner, Deputy Prime Minister's Office and civil society representatives. The Minister of Home Affairs after consideration transmitted same to Cabinet for approval and endorsement.

Cabinet endorsed the Action Plan and its adoption was reported as an achievement at the High Level Statelessness Event that was held in Geneva on the 7<sup>th</sup> October, 2019. The main purpose of that event was to highlight achievements by Member States towards ending statelessness as per the Global Action Plan to end Statelessness by 2024.

Other achievements under this sector, include that the country is signatory to both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 on the Reduction of Statelessness. Further, the Kingdom has appointed a National Focal Person on Statelessness in compliance with MDSA resolution and the Global Action Plan to end statelessness.

The intended monitoring, evaluation and reporting mechanisms for the implementation of this action plan are as follows:

- Decision making level: High-Level Steering Committee on the Prevention and Reduction of Statelessness in Eswatini composed of various stakeholders made up of Government ministries and Civil Society and the Academia.
- Operational level: National Taskforce formed to follow up on the NAP, consisting of the Government Focal Point on Statelessness, UNHCR, and representatives from the Ministry of Home Affairs (representatives from the Civil Registration, Immigration and Refugees Departments), Deputy

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Prime Minister's Office, Ministry of Justice and Constitutional Affairs, Ministry of Tinkhundla, Human Rights Commission and Non- Governmental Organisation.

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### ACTIONS:

#### Action 1: Improve quantitative and qualitative data on stateless population

**National Context:** Even though the last census in Eswatini was conducted in 2017, there is no available data on stateless persons.

Improve quantitative and qualitative data on stateless population		
Starting Point	Goal	Milestones
There is no comprehensive data available on the scale of statelessness in Eswatini, both in terms of size as well as geographical spread; there is also no comprehensive data available on the profile of the affected population (including its demographic composition with data disaggregated by sex and age) and no analysis of the causes and impacts of statelessness. Therefore stateless persons are not recorded in national governmental registers.	Quantitative and qualitative data on the stateless population and population at risk of statelessness in the country is publicly available by 2022	<ul style="list-style-type: none"> <li>(i) Technical Working Group on conducting primary and secondary research is established in 2020</li> <li>(ii) Advocacy on the study on statelessness in 2020</li> <li>(iii) A study on the nationality laws, causes of statelessness and population at risk of statelessness available in 2022</li> <li>(iv) Nationality related questions included in the next National Population and Housing Census 2020</li> </ul>
	<b>Performance Indicator:</b> <ul style="list-style-type: none"> <li>(i) <b>Number and nature of Risks factors to statelessness are identified</b></li> <li>(ii) <b>Number of stateless population</b></li> </ul>	

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	<p>(iii) <b>Report on the exploration of all sources of data</b></p> <p>(iv) <b>Nationality related questions included and analyzed in the Population Census Report</b></p>	<p>(I) Data on statelessness publicly available by 2022( once next census conducted)</p>
<b>Activities</b>	<b>Responsible Authority</b>	<b>Support from UNHCR/ Other Stakeholders</b>
<p>Conduct a baseline survey/study in 2020/2021, to determine the risks of statelessness and estimate the number of persons affected by statelessness</p>	<p><b>Ministry of Home Affairs (MOHA)/Central Statistical Office (CSO)</b></p>	<p><b>Technical and financial support of UNFPA, UNHCR, UNDP</b></p>
<p>Advocate for inclusion of questions relating to statelessness in the next round of the population and housing census.</p>	<p><b>Ministry of Home Affairs (MOHA), Focal Point</b></p>	<p>UNHCR, UNFPA, Central Statistical Office (CSO)</p>

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Explore secondary sources of data to determine if stateless population can be identified	Ministry of Home Affairs (MOHA)	Central Statistical Office (CSO)
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### Action 2: Ensure that no child is born stateless

**National Context:** In light with Article 1 of the 1961 Convention on the Reduction of Statelessness, and Article 6 of the African Charter to the Welfare and the rights of the Child, Eswatini shall ensure that all children born on its territory who would otherwise be stateless acquire the nationality of Eswatini. In light of Article 1 of the 1691 Convention, Eswatini shall ensure that all children born abroad to a national acquires the nationality of Eswatini if they would otherwise be stateless. In light of Article 2 the 1961 Convention, Eswatini shall ensure that all children found abandoned (foundlings) on its territory are considered as nationals of Eswatini.

Action 2: Ensure that no child is born stateless		
Starting Point	Goal	Milestones
Gaps in the nationality legislation: <ul style="list-style-type: none"> <li>- The Constitution and the law allow nationality to be passed for only one generation outside the country:</li> <li>- Nationality by birth is conferred if born of a male national in the country (or a mother in case of a child born</li> </ul>	<ol style="list-style-type: none"> <li>1. No reported case of child born stateless in Eswatini by 2022</li> <li>2. Eswatini grants nationality to children of unknown origin found in its territory (foundling), without age limit. Initiate review process for legislative reforms.</li> </ol>	<ol style="list-style-type: none"> <li>1. Policy on Nationality reform to prevent childhood statelessness by end of 2022</li> <li>2. Members of Parliament , as well as traditional leaders are aware of the</li> </ol>

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<p>out wedlock if the father does not claim paternity). A child born abroad to a father also born abroad must notify the authorities of his or her desire to retain Eswatini citizenship within one year of majority; if this is not done, the person ceases to be a citizen.</p> <ul style="list-style-type: none"> <li>- the Constitution, neither the law provides for acquisition of nationality by children born in Eswatini, who would otherwise be stateless.</li> <li>- Foundlings can acquire the nationality of Eswatini, however section 47 of the Constitution provides for an age limit of 7 years</li> <li>- Further, there is no regulation to assist in the implementation of this provision (age determination, when does the age limit start running, ie when the child is found or when the child is reported to the authorities, etc)</li> </ul>	<ol style="list-style-type: none"> <li>3. Eswatini grants nationality to children born in Eswatini who would otherwise be stateless</li> <li>4. Eswatini has a safeguard in its nationality laws to grant nationality to children born to a national abroad who would otherwise be stateless</li> </ol>	<p>importance to prevent childhood statelessness by June 2020</p> <ol style="list-style-type: none"> <li>3. Relevant provisions of the 2005 Constitution are reviewed.</li> <li>4. Nationality Legislation is aligned with the constitution.</li> </ol>
<p><b>Activities</b></p>	<p><b>Responsible Authority</b></p>	<p><b>Support from UNHCR/ Other Stakeholders</b></p>

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Policy formulation for guiding the reform process	Ministry of Home Affairs – action to be undertaken by end of 2021	Technical support from UNHCR and UNICEF, UNDP, Civil Society Organisations
Educating and sensitizing Parliamentarians and Traditional Leaders in order to get their buy-in on the policy to prevent statelessness and its implications.	Ministry of Home Affairs – Action to be undertaken by end June 2020	Technical support from UNHCR and UNICEF, Ministry of Tinkhundla
Review and reform of the constitution, acts and policies related to nationality	Ministry of Home Affairs - Action to be undertaken by end of 2022	Technical support from UNHCR and UNICEF, Civil Society Organisations, Min. of Tinkhundla

### Action 3: Remove gender discrimination from nationality laws

**National Context:** In line with the Convention for the Elimination of All forms of Discrimination against Women (CEDAW), Eswatini shall ensure that women and men can on equal term transmit their nationality to their children and to their spouses.

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Action 3: Remove gender discrimination from nationality laws		
Starting Point	Goal	Milestones
<p>Under the Constitution children derive citizenship from the father, unless the birth occurs outside marriage and the father does not claim paternity, in which case the child acquires the mother's citizenship</p> <p>The constitution only provides for foreign women married to an Eswatini national the possibility to acquire nationality by application of the registration procedures.</p>	<p>Eradication of Gender Discrimination in the Constitution and nationality Legislation</p> <p><b>Performance Indicator:</b> Gender discrimination removed from the constitution</p>	<ul style="list-style-type: none"> <li>- Launch Task force by end of June 2020</li> <li>- Media trained on gender discrimination in nationality laws and its implications by end of 2020</li> <li>- Traditional Leaders sensitized on the importance to ensure gender equality in nationality laws, by end of 2020</li> <li>- Review of relevant legislation to identify all provisions that are required to be reformed to ensure gender equality in nationality laws</li> </ul>
Activities	Responsible Authority	Support from UNHCR/ Other Stakeholders
Creating a Task force, led by the Government focal point on statelessness	Government Focal point on Statelessness, r Refugee Commissioner, Ministry of Home Affairs	UNHCR, Civil Society Organisations Deputy Prime Minister's Officers, Attorney General Office Ministry of Justice
Training of media on gender discrimination and risks of statelessness	Ministry of Home Affairs	UNHCR Funds and technical support Gender Coordination Unit of the Deputy Minister Office Women and Law of Swaziland-WILSA



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<p>Sensitization of civil society and relevant traditional authorities on gender discriminatory laws statelessness</p>	<p>Ministry of Home Affairs</p>	<p>NGO's , Ministry of Justice &amp; Constitutional Affairs, Deputy Minister Office</p>
<p>Review legislation to identify gender discriminatory provisions affecting the right to nationality , including Constitution and laws related to marriage, birth registration, nationality, and recommend amendments</p>	<p>Ministry of Home Affairs &amp; Attorney General's</p>	<p>Technical and Financial support from UNHCR, Law Society, Min of Justice, Civil Society Organisations, Deputy Prime Minister</p>
<p>Develop a policy brief on the importance to reform the constitution in this regard, in line with action 2</p>	<p>Ministry of Home Affairs</p>	<p>Technical and Financial support from UNHCR, Law Society, Ministry of Justice, Civil Society Organisations, Deputy Prime Minister</p>

Action 4: Grant protection status to stateless migrants and facilitate their naturalization

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**National Context:** In line with the 1954 Convention on the Status of Stateless persons, Eswatini shall elaborate a protection regime for stateless migrants as currently measures for identifying and status determination of such individuals have not been put in place.

Grant protection status to stateless migrants and facilitate their naturalization		
Starting Point	Goal	Milestones
<p>There is currently no qualitative and quantitative data available on statelessness migrants;</p> <p>There are no procedures in place to determine who is stateless, and there is no institution mandated by the State to carry out such determination procedures.</p>	<p>By 2020, stateless migrants are identified, their legal status determined by the competent Determining Authority and they are protected in line with the 1954 Convention relating to the status of Stateless Persons.</p>	<ul style="list-style-type: none"> <li>(i) Establish a statelessness determination mechanism by 2020</li> <li>(ii) Establish a legal framework for protecting stateless persons by 2021</li> <li>(iii) Naturalize identified stateless persons by the time they become eligible</li> </ul>
	<p>Legal framework on Statelessness</p> <p>number of persons identified as stateless migrants.</p> <p>number of persons determined as stateless</p> <p>number of stateless persons who have lodged request application for naturalization in Eswatini that has been deemed admissible.</p> <p>number of stateless persons who acquired Eswatini nationality through naturalization.</p>	

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Activities	Responsible Authority	Support from UNHCR/ Other Stakeholders
Sensitize Chiefs on statelessness and the importance to protect stateless migrants	Ministry for Home Affairs	UNHCR Financial and technical support
Draft a bill on the rights and entitlements of stateless persons, and statelessness procedures	Ministry for Home Affairs	UNHCR technical expertise, Ministry of Justice, Attorney General's
Mandate a State agency responsible for the determination of status of stateless persons and the protection of stateless persons.	Ministry for Home Affairs	UNHCR, UNDP for financial and technical support , Ministry of Justice and Constitutional Affairs
Draft Standard Operating Procedures for the determination procedure of stateless migrants for the eligibility personnel of the Determining Authority for Stateless Persons	Ministry for Home Affairs	UNHCR technical expertise
Provide training to eligibility Personnel	Designated authority for statelessness determination	UNHCR trainers
	Ministry of Home Affairs	

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Design a communication strategy and disseminate information on the role and the procedure of the State Determining Authority (Services Charter, Brochure, Helpline etc.).		UNHCR, Min of Justice, Attorney General's , Civil Society, Human Rights Commission
Review/reform of the relevant nationality legislation in particular provisions to facilitate naturalization of stateless persons		

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### Action 5: Ensure birth registration for the prevention of statelessness

**National Context:** There are questions regarding the extent to which a number of the elderly are without birth certificates, those in the diaspora, and children in the country who have not yet been able to access birth registration. Birth registration is not free but attracts costs of up to E25. 00. Others believe it should be free and that it should remain the state's responsibility. Some people find the nominal fee and inaccessibility of related services in some parts of the country a major barrier. Accessibility across the country and distances to travel are a concern. There is an attempt to bring the services to communities through decentralization, but it could be improved. Right now there is a short prescribed period (60 days) within which newborns are supposed to be registered – a question has been raised as to whether this is encouraging or inhibiting registration? Currently newborns are not registered at hospital before checkout. This practice was once piloted but the documentation was not being disseminated to the relevant government office and the parents and as such it was stopped. Cultural issue: In traditional households, it is taboo for the mother and child to leave the household for about three months. Within that period the mother will not travel, so she cannot go to the hospital or government offices to do paperwork, etc. The World Bank estimates that 47% of the population does not have birth registrations, but this figure is locally disputed. There has been a particular effort over the past few years to increase birth registration. The Ministry of Home Affairs believes that the birth registration rate is higher. There is also a challenge children born out of wedlock as it is sometimes perceived as a disincentive for the mother to go for birth registration without the father. It is unclear if there is a process for the newborns of undocumented migrants and stateless persons to get birth certificates. Unclear what the process is for ensuring foundlings have birth certificates, including foundlings above seven years old. A process must be outlined for securing a birth certificate for a child born abroad to parents with documentation when family returns.

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Action 7: Ensure birth registration for the prevention of statelessness		
Starting Point	Goal	Milestones
<p>The World Bank estimates that 47% of the population does not have birth registrations, but this figure is locally disputed. A need for a review of the statistics has been identified.</p>	<ul style="list-style-type: none"> <li>• All children are registered immediately after birth by 2021.</li> <li>• Register all unregistered children by 2023 with Technical and Financial support from UNHCR, Law Society, Min of Justice, Civil Society Organisations, Deputy Prime Minister</li> </ul>	<ul style="list-style-type: none"> <li>• hospitals resume providing birth certificates to newborns before newborn is checked out of hospital</li> <li>• mobile registration units provide birth certificates</li> <li>• sensitization campaign launched</li> </ul>
	<p><b>Performance Indicator:</b></p> <ul style="list-style-type: none"> <li>• Increase in registration demonstrated in ongoing surveys by Ministry of Labor</li> <li>• Amendment of regulation requiring birth certificate fee and changing the timeframe for registration</li> <li>• Authorities trained on policy for providing birth registration to children of undocumented migrants, stateless persons, and foundlings</li> </ul>	

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Activities	Responsible Authority	Support from UNHCR/ Other Stakeholders
Conduct study on birth registration certificates at childbirth in hospital and registration rate for births outside the hospital, completed in one-year time and ensure data is shared/available to the public.	Ministry of Health and Ministry of Home Affairs	UNHCR, World Bank, Ministry of Economic Planning (Dept Statistics), UNICEF
Sensitization campaign on importance of and ways to secure birth certificates and documentation for parents. (Start in 6 months and run 6-12 months)	Ministry of Home Affairs with the assistance Tinkhundla	UNICEF, UNHCR, World Bank

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<p>Integrate questions regarding birth registration and identity documentation into regular surveys and ensure data is shared with Ministry of Home Affairs and Health, and public (6 months)</p>	<p>Ministry of Labour and Ministry of Economic Planning Statistics Departments</p>	<p>Statelessness Secretariat/Working Group</p>
<p>Fully integrate national registration system – birth registration linked with national pin number, to national id card, proof of residence, marriage certificate, death certificate (By 2022)</p>	<p>Ministry of Health, Home Affairs, and ICT</p>	
<p>Restart practice of universal birth registration at birth in hospital (within 1 year is goal)</p>	<p>Ministry of Health and Home Affairs</p>	<p>UNICEF/UNHCR/ Statelessness Secretariat/Working Group</p>
	<p>Ministry of Home Affairs</p>	<p>UNICEF/UNHCR/ Statelessness Secretariat/Working Group</p>



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Mobile birth registration units in all regions (with two years)		
Amend regulation re birth certificate to remove fee (within a year)	Ministry of Home Affairs	Statelessness Secretariat/Working Group
Clarify and sensitize local bureaucrats regarding the process for ensuring birth certificates for the newborns of undocumented migrants, stateless persons, foundlings (up to 18) (within a year)	Ministry of Home Affairs	Statelessness Secretariat/Working Group
Review and integrate existing action plans to enhance birth registration (action plan was potentially developed in a recent meeting with Civil Registry) (within a year)	Statelessness Secretariat/Working Group	UNICEF/UNHCR

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### Action 6: Issuing Documents to people with entitlement to it

Issuing Documents to people with entitlement to it		
Starting Point	Goal	Milestones
<p>According to the World Bank, up to 47 % of the population in Eswatini has no identity and nationality documentation, ie over 650, 000 persons</p>	<p>Every individual who meets the criteria set out in the Eswatini nationality legislation is able to acquire documentary proof thereof.</p>	<p>Baseline study available in the first semester of 2020</p> <p>Based on study, concrete and time-bound recommendations to ensure issuance to documentation to everyone with entitlement to documents</p>
	<p>Performance Indicator:                      Number number of people previously undocumented who receive documentary proof                      Accessible, simplified and affordable procedure in place                      Numbernumberof communication tools and coverage of the information campaign</p>	

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Activities	Responsible Authority	Support from UNHCR/ Other Stakeholders
<p>Conducting a study on access to documentation by people with entitlement to it, identifying gaps and formulating recommendations</p>	<p>Ministry of Home Affairs</p>	<p><b>UNHCR financial and technical assistance</b></p>