

PAN-AFRICAN PARLIAMENT



PARLEMENT PANAFRICAIN

البرلمان الأفريقي

PARLAMENTO PAN-AFRICANO

Gallagher Convention Centre, Private Bag X16, Midrand 1685, Johannesburg, Republic of South Africa

Tel: (+27) 11 545 5000 - Fax: (+27) 11 545 5136 – Web site: www.pan-african-parliament.org

**REPORT OF THE MEETING OF THE COMMITTEE ON
COOPERATION, INTERNATIONAL RELATIONS AND CONFLICT
RESOLUTION ON A PROPOSED MODEL LAW ON NATIONALITY
AND STATELESSNESS**

Midrand, South-Africa

NOVEMBER 2022

Context

Statelessness is defined as the condition of an individual who is not considered as a national by any State under the operation of its law. It has a grave impact on the lives of individuals and on the harmony of communities.

Statelessness stems from issues related to nationality. Its main causes are gaps in nationality laws. While human rights are in principle universal and inherent, in practice a large range of fundamental human rights are denied to stateless people: they are often unable to obtain identity documents; they may be detained for reasons linked to their statelessness; and often times they are denied access to education and health services or blocked from obtaining employment.

Statelessness is a widespread phenomenon on the African Continent. Most African States do not provide statistics; therefore, the scale of the problem is not defined yet in Southern Africa. Nonetheless, according to the World Bank's data¹, hundreds of millions of people in the region lack identity and nationality documents, a telling indicator of the prevalence of statelessness.

Background

UNHCR and the Pan-African Parliament have a long-standing collaboration in the field of statelessness. UNHCR has delivered several presentations at the Pan-African Parliament on this issue, at the Committee on Justice and Human Rights (2018), at the Committee on Cooperation, International Relations and Conflict Resolutions (2019) and during the Regional Parliamentary Conference organized by the Inter-Parliamentary Union and the Pan-African Parliament (November 2019). Acknowledging that statelessness is a serious human rights problem affecting the life of many Africans, the Pan-African Parliament adopted on 17 May 2019 a Resolution on the Eradication of Statelessness in Africa, which, inter alia, calls upon member states to reform their nationality legislations so as to prevent the occurrence of statelessness.

Arising from the 2019 Parliamentarians engagement, it was recommended that UNHCR would assist the Pan-African Parliament to draft a model law on nationality and statelessness

1.1. Partnership Between UNHCR and the Pan-African Parliament

The Pan-African Parliament signed a Memorandum of Understanding (MOU) with UNHCR in 2019, acknowledging that UNHCR is the UN agency mandated to work on prevention and reduction of statelessness as well as the protection of stateless individuals.

¹ <https://datacatalog.worldbank.org/dataset/identification-development-global-dataset>

Amongst others, UNHCR and PAP agreed to collaborate in (i) resolving existing major situations of Statelessness (ii) preventing new cases of statelessness from emerging and (iii) protecting stateless populations or those at risk thereof.

1.2. Statelessness challenges in Africa

The African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child have confirmed that statelessness is a violation of the right to human dignity and to legal status established by Article 5 of the African Charter on Human and Peoples' Rights. They further confirmed that the right to nationality is a fundamental condition for the enjoyment and protection of the full range of other human rights

The African on Human and Peoples' Rights released a report on the Right to a Nationality in Africa² in 2014, acknowledging that statelessness is a vast problem in the continent. Furthermore, the report identifies that the main sources of statelessness in Africa are the gaps in nationality laws. The report concludes that the right to a nationality is still not fully recognized as a fundamental human right on the African continent. As a result, national legislations are crafted with little or no attention to the prevention and reduction of statelessness

Many nationality laws do not fully comply with contemporary international standards on prevention and reduction of statelessness, as per, inter alia, the 1990 African Charter on the Rights and Welfare of the Child, and the 1999 Protocol on the Rights of Women. In particular, the following international norms are not adequately reflected and embodied in the nationality legislation of various African States.

i) Acquisition of Nationality by Children Born on the State Territory:

According to international and regional standards, safeguards should be provided in domestic laws to ensure that children born on the territory who would otherwise be stateless are granted nationality. The large majority of nationality laws in Africa do not comport with this standard. The majority of nationality laws restrict acquisition of nationality to children born to parents who are nationals (*jus sanguinis*). This absence of safeguard is contrary to article 6 of the African Charter on the Rights and Welfare of the Child. Furthermore some laws establish discriminatory criteria for acquisition or transmission of nationality. Such requirements are not consistent with the non-discrimination and equality clauses contained in several international and regional instruments, including the African Charter on Human and People's Rights (art 2).

² <https://www.refworld.org/pdfid/54cb3c8f4.pdf>

ii) Acquisition of Nationality for Children Born Abroad:

International standards provide for the grant of nationality to children born to a national abroad who would otherwise be stateless. Some African countries laws restrict the power of transmission to children born abroad to the father alone and may also impose additional criteria (for instance the father must also be born in the country of origin, or have resided in the country of origin prior to the birth of the child, etc). These provisions increase the risk of statelessness for children born to a national abroad.

iii) Acquisition of Nationality by Foundlings:

International standards provide that all children found abandoned in the territory are considered nationals. Many nationality laws do not grant nationality to foundlings or limit it only to newborn children. The absence of safeguards for foundlings is an important source of statelessness in Africa. Its incidence must be analyzed in light of the recent conflicts in the region. As a result of those events, many children have been abandoned or become orphans, for whom no information is available about place of birth or parents. In the absence of provision for the nationality of foundlings, they become stateless.

iv) Equal Treatment between Men and Women Regarding Transmission and Acquisition of Nationality:

Contemporary legal standards provide that men and women shall be treated on an equal basis in terms of transmitting their nationality to their children or their spouses. They stem from the universal principle of equality and non-discrimination, and art 2 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (non-discrimination clause). In contravention with this principle, some nationality laws continue to discriminate between men and women in their right to transmit nationality to their children and/or spouses.

v) Safeguards Against Loss of Nationality

The international standard spelled out in art 7.1 (a) of the 1961 Convention provides that individuals can renounce their nationality only if they demonstrate that they possess or will surely acquire another nationality. Not all nationality laws in Africa condition renunciation of nationality upon the possession of, or an assurance of acquiring, another nationality. Furthermore, some nationality laws provide for the loss of nationality acquired by naturalization on account of residence abroad. If such loss is permitted in international law, circumstances in which it can occur are limited, so as to avoid the occurrence of statelessness.

vi) Safeguards Against Deprivation of Nationality:

Under international Law individuals should be protected against the arbitrary withdrawal of their nationality. The 1961 Convention on the Reduction of Statelessness provides that a Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless (art 8(1)). The 1961 Convention does however spell out a limited set of exceptions to this principle. As

deprivation of nationality resulting in statelessness infringes upon the fundamental human right to a nationality, any exception to the principle has to be strictly interpreted, and the exceptions laid down in the 1961 Convention should be considered exhaustive. Some nationality laws, however, establish criteria for deprivation of nationality that are wider than those laid down in international law. A low threshold for deprivation and the wide discretion granted by these laws could result in biased and unfair exclusion of individuals from the benefit of nationality and render them stateless.

vii) Proof of the elements entitling a person to nationality:

Proof of the elements entitling a person to nationality is necessary for any person who claims a nationality. The birth certificate is an essential, indeed primordial, tool to establish an individual's identity. Often a birth certificate will not be sufficient per se to establish nationality. In jus sanguinis countries, the administration will require the nationality certificate or other document proving the nationality of the parent with whom filiation is established. If the parents were never registered at birth, and thus have never officially held a nationality document, or when the records of such documents have been destroyed, the concerned individual will face considerable problems in attempting to establish his or her nationality. It should not be forgotten that birth registration continues to pose a major challenge in Africa where 50% of annual births are not systematically registered. In order to ensure that everyone has the right to an identity and nationality, it is important that, in addition to registration of birth, other means of proof are also permitted to show that an individual satisfies the criteria for nationality

viii) Determination of statelessness and protection of stateless persons:

Although statelessness is a widespread phenomenon in the continent, States have not established mechanisms to identify and protect stateless persons. The only exception in the continent is Cote d'Ivoire. As a result, stateless persons remain invisible, unprotected, vulnerable to a wide range of abuse and unable to access their fundamental rights.

2. Benefits of the Model law to African States

The assessment carried out by the African Commission on Human and People's Rights (ACHPR Report on the Right to Nationality³) demonstrates that, although African States are parties to conventions that spell out safeguards against statelessness, their legislations do not include those safeguards. In addition, the lack of harmonization of nationality laws in the continent results in conflict of laws that directly generates statelessness. Typically, a person ends up statelessness despite having relevant links with two countries, because they apply different eligibility criteria that the said person does not meet. For instance, a child is born in country X to a mother holding the nationality of country Y; Country X only grants nationality to children born to nationals while Country Y only grants nationality to children of

³ <https://www.refworld.org/pdfid/54cb3c8f4.pdf>

mothers born in the territory; as a result of this negative conflict of law, the child is rendered stateless.

The Model Law solves the key sources of statelessness above described, i.e. contravention with international/regional standards and conflict of laws, by harmonizing approaches to the right of nationality, and by ensuring that those approaches are based on regional and international law. Furthermore, the Model Law provides guidance on procedures for child protection, resolution of cases of undetermined nationality, proof of nationality, and protection of stateless persons.

In doing so, the model law directly contributes to the eradication of statelessness on the African continent, thus securing an enabling environment for human rights, and contributing to development, peace, and security.

3. Rationale for a Continental Model Law

Statelessness is a grave human rights violation. In addition of causing great suffering to affected individuals, due in particular to marginalization and poverty, statelessness also contributes to hampering development, deteriorating human rights environments, generating humanitarian needs, and fueling insecurity and instability notably through illegal migration and forced displacement.

The immediate solution to this grave problem, with multi-dimensional severe consequences at country and regional levels, is within reach, i.e. the crafting of nationality laws with appropriate safeguards against statelessness and adequate protection for stateless persons.

The Committee on Cooperation, International Relations and Conflict Resolution of the Pan-African Parliament decided to advocate for the development of a Model law that will guide parliamentarians and governments on the prevention and the resolution of statelessness.

4. Key Elements of the Model Law

It is imperative to note that the document is a Model Law based on existing regional and international legal standards as well as best practices in the continent. Its objective is to create a common African approach to nationality and statelessness challenges.

- i) Part I relates to definitions which are essentially based on existing sources of regional or international law. This part also provides for the attribution of nationality in the context of succession of states and refers to the 1999 International Law Commission's Articles on Nationality of Natural Persons in relation to the Succession of States.
- ii) Part II provides guidance on the rule of attribution at birth to avoid the occurrence of statelessness. The provisions reflect the commitment of the UN

Charter on Human and People's Rights on non-discrimination as an overarching principle. Part II is based on the Africa Charter on the Right and Welfare of the Child (ACERWC), the ACERWC General Comment on Article 6 and best practices across the continent

- iii) Part III relates to acquisition of citizenship by administrative decision or court order. It essentially elaborates on acquisition of nationality in the context of adoption, marriage, and naturalisation. It based on best practices in the continent related to the avoidance of statelessness
- iv) Part IV relates to loss (by operation of law), deprivation (by decision of the public authorities) and recovery of citizenship: it is essentially based on international standards stemming from the Universal Declaration of Human Rights and the 1961 Convention on the Reduction of Statelessness. It is also based on good practices across the continent.
- v) Part V relates to citizenship administration and adjudication of disputes. This part essentially elaborates on civil registration, the burden of proof, the right to an identity document, the forms of evidence of identity and nationality. It further elaborates on the procedure for the resolution of undetermined citizenship and the protection of stateless persons. It is also based on the African Charter on the Rights and Welfare of the Child and best practices across the continent.

Based on the above scope, the Model Law provides tools and safeguards against statelessness. In doing so, it addresses the blatant gaps observed in African legislation and practices that lead to statelessness. Furthermore, the model law offers key guidance to States on the implementation of their international and regional obligations, particularly under the African Charter on the Rights and Welfare of the Child

5. Recommendations

Based on the above, the Committee on Cooperation, International Relations and Conflict Resolution is recommending to this august house to:

1. **INTENSIFY** parliamentary advocacy and engagement for the domestication of legislations that spell out safeguards against statelessness; and for the ratification, domestication and implementation of the UN Convention relating to the Status of Stateless Persons (1954) and the UN Convention on the Reduction of Statelessness (1961);
2. **STRENGTHEN** the collaboration and exchanges among regional and national parliamentary bodies, with a view to enhancing the capacity of parliamentarians to harmonise conflicting laws at the national level that directly causes;

3. **FORMULATE** a Model Law on Statelessness through the Committee on Cooperation, International Relations and Conflict Resolution as a means to promote legislative frameworks on the prevention and the eradication of statelessness in Africa;
4. **MANDATE** the Committee on Cooperation, International Relations and Conflict Resolution to work with all technical partners and all relevant institutional stakeholders, including civil society organisations, in the formulation of the proposed Model Law on Statelessness.

I SO SUBMIT

