MEMORANDUM

FROM: CIVIL SOCIETY LEGISLATIVE ADVOCACY CENTRE (**CISLAC**) AND
THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (**UNHCR**)

TO: THE SENATE COMMITTEE ON THE REVIEW OF THE 1999 CONSTITUTION, NATIONAL ASSEMBLY COMPLEX, ABUJA

SUBJECT: DISCREPANCIES BETWEEN THE INTERNATIONAL LEGAL OBLIGATIONS AND THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA RELATING TO THE PREVENTION AND REDUCTION OF STATELESSNESS

VENUE: ROOM NO SG10 WHITE HOUSE, NATIONAL ASSEMBLY COMPLEX

DATE: 29 JUNE 2012

Outline

1. Introduction

There is a significant body of national and international law that has elaborated the principles of prevention and reduction of statelessness. To the extent that statelessness is a result of discrimination it should moreover be noted that non-discrimination is a non-derogable norm that prohibits discrimination on the basis of race, ethnicity, gender, circumstance of birth, and related criteria. However, the current provisions of the 1999 Constitution regarding citizenship lacks several important safeguards against statelessness which have been set out in international law, including the 1961 Convention on the Reduction of Statelessness, to which Nigeria acceded in 2011. The Review of the 1999 Constitution presents an opportunity to address the discrepancies between the provisions of international treaties to which the Republic of Nigeria has acceded and national law provisions regarding citizenship.

CISLAC and **UNHCR** welcome the open invitation this Committee has issued to the general public, government institutions and civil society groups, professional bodies and other interest groups to submit a memorandum on selected subject themes, and congratulate the Committee on this participatory initiative of good governance. **CISLAC** and **UNHCR** believe that this is a strategic avenue to address some of the constitutional and legal constraints facing Nigerian citizens and their families in Nigeria today. The three issues identified by CISLAC and UNHCR as in need of urgent

attention are i) the lack of a safeguard to ensure that children born on Nigerian territory who would otherwise be stateless are granted Nigerian citizenship; ii) the fact that women and men do not enjoy equal rights to transmit their nationality through marriage; and iii) the lack of adequate safeguards to prevent statelessness in situations of loss or deprivation of nationality.

This review is undertaken in light of the international obligations of the Federal Republic of Nigeria under the 1961 Convention on the Reduction of Statelessness and international and regional human rights treaties, in particular the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination Against Women and the African Charter on the Rights and Welfare of the Child. Insight is also drawn from recent efforts by African countries to reform their nationality legislation to introduce safeguards to prevent and reduce statelessness.

2. Basis for Provision of Comments

The UN General Assembly has entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and for preventing and reducing statelessness.[i] It has specifically requested UNHCR "to provide technical and advisory services pertaining to the preparation and implementation of nationalitylegislation to interested States".[ii] The General Assembly has also entrusted UNHCR with the specific role foreseen in article 11 of the 1961 Convention on the Reduction of Statelessness.[iii]

Furthermore, UNHCR's Executive Committee has requested UNHCR to provide technical advice with respect to nationality legislation and other relevant legislation with a view to ensuring adoption and implementation of safeguards, consistent with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality.[iv] UNHCR thus has a direct interest in the constitutional provisions and national legislation of countries impacting on the prevention or reduction of statelessness, including implementation of safeguards contained in international human rights treaties as well as those set out in the 1961 Convention on the Reduction of Statelessness.

3. Definition of Statelessness

The 1954 Convention relating to the Status of Stateless Persons, which Nigeria also acceded to in 2011, establishes the international legal status for stateless persons. Article 1 of the Convention defines a "stateless person" as a person who is "not considered as a national by any State under the operation of its law."If, after having examined the nationality legislation and practice of States with which an individual enjoys a relevant link (in particular by birth on the territory, descent, marriage or habitual residence) the individual concerned is not found to have the nationality of any of those States, then he or she should be considered to satisfy the definition of a stateless person in Article 1 (1) of the 1954 Convention. It is estimated that up to 12 million people are

affected by statelessness worldwide.

4. Causes and Consequences of Statelessness

Statelessness often occurs as a result of conflict of laws, for instance where children are born to foreign parents in countries which limit grant of nationality to children born to nationals, and the parents are unable to transmit their foreign nationality under the nationality laws of their country. In other situations it results from discrimination, such as when laws fail to grant female citizens the right to transmit nationality to their children, or when nationality is denied to entire populations on the basis of race, ethnicity, religion or language. The greatest cause of statelessness in numerical terms is, however, State succession, because of the way States in such situations often have defined who acquires their citizenship to exclude certain populations which are habitually resident or otherwise have an appropriate connection with the country.

While stateless people enjoy human rights under international law, they often face barriers that prevent them from enjoying these rights. For example, they may face difficulties exercising the right to establish a legal residence, travel, work in the formal economy, send children to school, access basic health services, purchase or own property, vote, hold elected office, and enjoy the protection and security of a country. Consequently, stateless persons are more vulnerable to arbitrary treatment, forced displacement and social

marginalization.

Recognition as a stateless person is not a substitute for acquisition of nationality. Indeed, ensuring that stateless persons are granted a citizenship is the only solution to statelessness.

5. International Legal Framework

Article 15 of the Universal Declaration of Human Rights establishes the right of every person to a nationality. This right is fundamental for the enjoyment of the full range of human rights.

Two separate UN Conventions focus specifically on statelessness: the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Nigeria is party to both Conventions.

The object and purpose of the 1961 Convention is to prevent and reduce statelessness. The Convention does so by establishing rules for Contracting States on acquisition, renunciation, loss and deprivation of nationality. The below analysis draws mainly on the principles set out in this Convention.

International human rights treaties, such as the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the 1989 Convention on the

Rights of the Child (CRC) and the 2006 Convention on the Rights of Persons with Disabilities are also of relevance, as each of them contains provisions on citizenship. Regional human rights instruments, such as the 1990 African Charter on the Rights and Welfare of the Child and the 2005 Covenant on the Rights of the Child in Islam also include relevant provisions.

6. Constitutional Provisions on Citizenship in Nigeria

Sections 25 to 32 of the 1999 Constitution of the Federal Republic of Nigeria as amended cover provisions governing the citizenship rights, criteria for eligibility, method of acquisition (whether by *jus sangunis [acquisition by blood]*or *jus soli [acquisition by birth in the territory]*),and procedures for naturalization, registration, renunciation, loss and deprivation of citizenship.

Section 25 of the Constitution defines the following categories as citizens of Nigeria:

'25. (1) The following persons are citizens of Nigeria by birth- namely-

(a) every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria; Provided that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents nor any of his grandparents was born in Nigeria.

(b) every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and

(c) every person born outside Nigeria either of whose parents is a citizen of Nigeria.

(2) In this section, "the date of independence" means the 1st day of October 1960.

7. Acquisition of citizenship at birth

According to Article 1 of the 1961 Convention, Contracting States prevent statelessness by granting citizenship to children who would otherwise be stateless, and who are either:

1. born on their territories or
2. born abroad to parents who are nationals

Article 7 of the Convention on the Rights of the Child (CRC) and Article 24.3 of the International Covenant on Civil and Political Rights (ICCPR) also guarantee that every child has the right to acquire a nationality, as does Article 6 of the African Charter on the Rights and Welfare of the Child. Importantly, the African Charter also stipulates that "States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws" (Article 6.4)

The 1999 Nigerian Constitution grants citizenship at birth to persons born in Nigerian territory, either of whose parents or any of whose grandparents is a citizen of Nigeria (Section 25(1)(b). It also grants citizenship to persons born outside Nigeria either of whose parents is a citizen of Nigeria (Section 25(1)(c).

The Constitution fails to prevent children from becoming stateless where they are born in Nigeria to stateless parents, or to parents who are unable to transmit their foreign nationality to children who are born abroad.

UNCHR and CISLAC would recommend the inclusion of a safeguard in the Nigerian Constitution, whereby children born in Nigeria are granted Nigerian citizenship if they do not have the citizenship of any other State. Such a provision would apply to a limited number of children who would otherwise be stateless, in furtherance of the objective of preventing child statelessness as set out in Article 1 of the *1961 Convention*, Article 7 of the CRC, Article 24 of the ICCPR and Article 6.4 of the *African Charter on the Rights and Welfare of the Child*. In the African continent, similar provisions can be found for instance in the South African Citizenship Act, the Constitution of Namibia, the Burkina Faso Family and Nationality Code, and the Rwandan Nationality Code.

8. Acquisition of citizenship by foundlings

According to the 1961 Convention, children found abandoned on the territory of the Contracting State must be treated as foundlings and accordingly acquire the nationality of the country where they are found. This is based on a presumption that the child is born in the territory of the State, to nationals of that State.

Article 2 of the 1961 Convention does not define an age at which a child can be considered a foundling. State practice reveals a broad range of ages within which this provision is applied; several Contracting States limit granting nationality to foundlings that are very young (12 months or younger) while most Contracting States apply their rules in favour of foundlings to older children, including in some cases up to the age of majority. At a minimum, nationality should be granted to all foundlings who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth. This flows from the object and purpose of the 1961 Convention and also from the right of every child to acquire a nationality.

The current Constitution does not include a provision granting Nigerian citizenship to children who are found on Nigerian territory, without knowledge of their nationality or parentage, and who are stateless. UNHCR and CISLAC would recommend the inclusion of a specific provision to this effect in the Nigerian Constitution.

A growing number of nationality laws around the world include a specific safeguard to grant citizenship to foundlings, in line with Article 2 of the 1961 Convention. An example is the new Kenyan Constitution which was adopted in 2010 and includes a provision whereby: "A child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth" (Section 14(4)).

9. Acquisition of citizenship by registration

According to Article 9.1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), women and men shall be granted equal rights to acquire, change or retain their nationality.

Within the legal framework on citizenship contained in section 26 of the Nigerian Constitution (as amended) are provisions that make available the possibility for spouses of Nigerian men to apply for Nigerian citizenship by registration.

Section 26 provides as follows:

'Subject to the provisions of section 28 of this Constitution, a person to whom the provisions of this section apply ***may be registered as a citizen of Nigeria, if the President is satisfied that -***

(a) he is a person of good character;

(b) he has shown a clear intention of his desire to be domiciled in Nigeria; and

(c) he has taken the Oath of Allegiance prescribed in the Seventh Schedule to this Constitution.

(2) the provisions of this section shall apply to-

(a) any woman who is or has been married to a citizen of Nigeria; or

(b) every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria.'

Section 26(2) makes provision that any woman, who is or has been married to a citizen of Nigeria and meets the defined criteria, may apply for registration as a citizen of Nigeria, subject to the satisfaction of the President.

However, the Constitution does not allow non-Nigerian spouses of Nigerian women to apply for Nigerian citizenship by registration. They may apply for citizenship only by naturalisation. Naturalisation, however, sets further conditions:

'27. (1) Subject to the provisions of section 28 of this Constitution, any person who is qualified in accordance with the provisions of this section may apply to the President for the same of a certificate of naturalisation.

(2) No person shall be qualified to apply for the grant of a certificate or naturalisation, unless he satisfies the President that -

(a) he is a person of full age and capacity;

(b) he is a person of good character;

(c) he has shown a clear intention of his desire to be domiciled in Nigeria;

(d) he is, in the opinion of the Governor of the State where he is or he proposes to be resident, acceptable to the local community in which he is to live permanently, and has been assimilated into the way of life of Nigerians in that part of the Federation;

(e) he is a person who has made or is capable of making useful contribution to the advancement; progress and well-being of Nigeria;

(f) he has taken the Oath of Allegiance prescribed in the Seventh Schedule to this Constitution; and

(g) he has, immediately preceding the date of his application, either-

(i) resided in Nigeria for a continuous period of fifteen years; or

(ii) resided in Nigeria continuously for a period of twelve months, and during the period of twenty years immediately preceding that period of twelve months has resided in Nigeria for periods amounting in the aggregate to not less than fifteen years.'

UNHCR and CISLAC are of the view that granting women facilitated access to acquire nationality on the basis of marriage is contrary to the principles of non-discrimination contained in all international human rights treaties, and specifically Article 9.1 of the CEDAW. Increasingly, States replace similar discriminatory provisions in their

nationality legislation with provisions granting men and women equal rights to acquire nationality through marriage. Examples of African countries where gender equality has been introduced in this area in recent years include Kenya, Zimbabwe, and Botswana. For instance, Section 15 (1) of the 2010 Kenyan Constitution states that:

'A person who has been married to a citizen for a period of at least seven years be entitled on application to be registered as a citizen.'

10. Loss of citizenship through renunciation

According to Article 7.1.(a) of the 1961 Convention on the Reduction of Statelessness, "If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality." Moreover, according to the second paragraph of the same article, "a national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country."

The 1999 Nigerian Constitution provides that "Any citizen of Nigeria of full age who wishes to renounce his Nigerian citizenship shall make a declaration in the prescribed manner for the renunciation." It does not, however, condition such renunciation on the possession or acquisition of a foreign nationality. UNHCR and CISLAC would

encourage the inclusion of such a safeguard in the Constitution. An example of an African country where the relevant legislation already contains adequate safeguards in this regard is Ethiopia. Article 19.1 of The 2003 Proclamation on Ethiopian Nationality states that "Any Ethiopian who has acquired or has been guaranteed the acquisition of the nationality of another state shall have the right to renounce his Ethiopian nationality."

11. Deprivation of citizenship

The 1961 Convention sets out as a general principle that no one shall be deprived by his or her nationality if such deprivation renders him or her stateless (Article 8.1). It goes on to stipulate certain grounds whereby a State may deprive persons of their citizenship if at the time of signature, ratification or accession it specifies its retention of such right of deprivation on one or more grounds existing in its national law at that time (Article 8.3). These grounds include:

'(..) that, inconsistently with his duty of loyalty to the Contracting State, the person
(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State,
or
(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.'

The Nigerian Constitution states in Section 30 that:

'(1)The President may deprive a person, other than a person who is a citizen of Nigeria by birth or by registration, of his citizenship, if he is satisfied that such a person has, within a period of seven years after becoming naturalised, been sentenced to imprisonment for a term of not less than three years.

(2) The President shall deprive a person, other than a person who is citizen of Nigeria by birth, of his citizenship, if he is satisfied from the records of proceedings of a court of law or other tribunal or after due inquiry in accordance with regulations made by him, that -

(a) the person has shown himself by act or speech to be disloyal towards the Federal Republic of Nigeria; or

(b) the person has, during any war in which Nigeria was engaged, unlawfully traded with the enemy or been engaged in or associated with any business that was in the opinion of the president carried on in such a manner as to assist the enemy of Nigeria in that war, or unlawfully communicated with such enemy to the detriment of or with intent to cause damage to the interest of Nigeria.'

The 1961 Convention does not permit deprivation of citizenship on the basis of ordinary crimes and Section 30(1) is not in compliance with Convention standards also for this reason.

On the occasion of Nigeria's accession to the 1961 Convention, it did not submit a declaration to retain any of the above grounds for deprivation of nationality in its legislation.

Nigeria may retain provisions for deprivation of nationality but based on the foregoing, it must ensure that their application does not lead to statelessness.

UNHCR and CISLAC would encourage the inclusion of a safeguard whereby persons are not deprived of their citizenship if this would render them stateless. An example of an existing provision of this kind can be found in the British Nationality Act 1981, Section 40(4), whereby:

'The Secretary of State may not make an order under subsection (2) if he is satisfied that the order would make a person stateless.'

12. Recent examples of best practice

Kenya: The new Constitution of Kenya, approved by referendum in March 2010, together with the 2011 Kenya Citizenship and Immigration Act adopted a gender neutral approach in relation to citizen's ability to pass his or her nationality to his or her spouse

and child.

On foundlings, the new constitution provides in section 14(4) that:

'a child found in Kenya, who is or appears to be less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen at birth.'

Rwanda: Following Rwanda's accession to the two Conventions on statelessness in 2008, the country enacted the Organic Law N° 30/2008 of 25/07/2008 relating to Rwandan Nationality. Revised legislation brought in several safeguards against statelessness, and is generally compliant with the 1961 Convention.

13. Conclusion

Nigeria, through this Committee on Constitutional Amendment and Reform, is at a threshold of history. UNHCR and CISLAC hereby submit the request that the Committee recommend changes to the present legal provisions on citizenship in the 1999 Constitution to eliminate critical sources of discrimination and take action to prevent and reduce statelessness in line with its international obligations under the 1961 Convention on Reduction of Stateless and related UN and African Human Rights treaties. The authors furthermore recommend that such an initiative would look at all provisions in the current Constitution that may cause statelessness, including the lack of a safeguard for children who are otherwise

stateless; the discriminatory provisions pertaining to acquisition of citizenship through registration by non-Nigerian spouses to women of Nigerian nationality; and safeguards regarding Nigerian nationals who renounce or are deprived of their nationality.

SIGNED

Auwal Ibrahim Musa (Rafsanjani)
Executive Director
Civil Society Legislative
Advocacy Centre
(CISLAC)

SIGNED

Gogo Hukportie
Country Representative
United Nations High Commissioner for Refugees

UNITED NATIONS
ABUJA
REPRESENTATION IN NIGERIA
HIGH COMMISSIONER FOR REFUGEES

14. References

- Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: http://www.unhcr.org/refworld/docid/3ae6b3840.html
- Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: http://www.unhcr.org/refworld/docid/3ae6b39620.html
- UN High Commissioner for Refugees, Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children: Summary Conclusions, September 2011, available at: http://www.unhcr.org/refworld/docid/4e8423a72.html
- UN High Commissioner for Refugees, Extracts relating to nationality and statelessness from selected universal and regional human rights instruments, November 2009, available at: http://www.unhcr.org/refworld/docid/4c29aec02.html
- Nationality and Statelessness: Handbook for Parliamentarians (2005) Inter Parliamentary Union available at http://www.ipu.org/pdf/publications/nationality_en.pdf
- Nubia v Kenya (2011) Decision by the African Committee of Experts on the Rights and Welfare of the Child **(ACERWC)** on the Communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) Against the Government of Kenya.
- Open Society Initiative for West Africa Briefing on Settling the

Citizenship Question (May 2012)

- The Kenyan Constitution 2010 available at: www.attorney-general.go.ke
- Organic Law No 30/2008 of 25/07/2008 Relating to Rwandan Nationality, available at: http://www.migration.gov.rw/IMG/pdf/Organic_Law_relating_to_Rwandan_Nationality-2.pdf
- Other national legislation is available at: http://www.unhcr.org/refworld/topic,4565c2252,459d2ecd2,,0,,LEGISLATION,.html

---

[i]UN General Assembly Resolution A/RES/50/152, 9 February 1996, available at http://www.unhcr.org/refworld/docid/3b00f31d24.html. Reiterated in subsequent resolutions, ,*inter alia*, A/RES/61/137 of 25 January 2007, available at http://www.unhcr.org/refworld/docid/45fa902d2.html, A/RES/62/124 of 24 January 2008, available at http://www.unhcr.org/refworld/docid/47b2fa642.html, and A/RES/63/148 of 27 January 2009, available at http://www.unhcr.org/refworld/docid/4989619e2.html.

[ii]UN General Assembly Resolution A/RES/50/152.

[iii]UNGA Resolutions 3274(XXIX) of 1974 and 31/26 of 1976.Article 11 of the 1961 Convention provides for the creation of a "*body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.*"

[iv] Executive Committee of the High Commissioner's Programme, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006, paragraphs (i) and (j), available at: http://www.unhcr.org/refworld/docid/453497302.html .