

INTRODUCTION

The African Union for the adoption of the Protocol to the African Charter on Human and People's Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa last weekend during the 37th Ordinary Session of the AU Assembly of the Heads of State and Governments. We call on AU member states to ratify this protocol. The Protocol aims to provide solutions to legal barriers that will ensure that stateless people and those at risk of statelessness can exercise their right to a nationality and, in turn, have better access to fundamental human rights, as well as national services such as health, education, and formal employment.

Statelessness refers to an individual who is not considered a national under the operation of the laws of any state. In principle, human rights are universal and inherent, but in practice, stateless people are denied several fundamental human rights because they lack a nationality.

According to UNHCR, in mid-2023, in 97 countries, an estimate of 4.4 million people were stateless persons, this in itself is not the actual number of stateless persons as this number is greater given the complexities in data collection and the relative invisibility of stateless persons in national statistical exercises. From the beginning of the UNHCR IBelong campaign to end statelessness in 2014 to date, 25 and 17 countries respectively, have acceded to the Convention on the Reduction of Statelessness and the Convention Relating to the Status of Stateless Persons. However, implementation is still a challenge. According to the United Nations High Commissioner for Refugees (UNHCR), progress in ending statelessness since 2014 globally is slow. It is very concerning. While there have been significant progress, much still needs to be done.

Statelessness still occurs globally as a result of discriminatory laws on the basis of ethnicity, gender, race and religion, lack of birth registration and birth certificates, gaps in nationality legislations, administrative barriers in form of officials not implementing nationality laws, procedural issues, legal conflicts between countries, destruction of official records can also lead to individuals losing their nationality, arbitral deprivation of nationality, xenophobia, migration, birth to stateless persons etc.

Discriminatory laws on the basis of ethnicity, gender, race and religion/ legal conflicts between countries

Discriminatory laws take the form of total exclusion without safeguards from statelessness or exclusion with some exceptions. Some Countries still maintain unequal laws in terms of women conferring their nationality onto their children and foreign spouses. As of 2023, UNHCR's survey of nationality legislation reveals that equality between men and women relating to conferral of nationality upon children has not yet been attained in 24 countries, and these countries are located in almost all parts of the world. Some countries in the Middle East and North Africa (MENA) region do not grant equality to women with regard to the right to pass their nationality to their children. In Qatar, Qatari mothers are totally excluded from passing their nationality on their children. In Kuwaiti, where a Kuwaiti mother has a child with a father who is unknown or whose paternity has not been established, the individual concerned may apply for Kuwaiti citizenship at majority. The child remains stateless until majority. In Southeast Asia, Brunei Darussalam national women cannot confer their nationality to their children at all. This results in statelessness for a child whose father is a foreign national, if the child cannot acquire the nationality of the father and for single mothers. In Malaysia, children born outside Malaysia to Malaysian mothers may only acquire Malaysian citizenship at the discretion of the government by registering at a Malaysian Consulate or the National Registration Department in Malaysia and applying through article 15(2) – citizenship by registration – which is a process fraught with delays, repeated rejections without reasons and no guarantee of approval. This can lead to statelessness if the child is not eligible for nationality through the father or the child is not conferred nationality in the country born according to the principle of *jus soli*. Other countries include Nigeria, and Madagascar which prevent women from conferring their nationality to their spouses, even when stateless. Countries such as Madagascar, Lebanon, Syria, Somalia, Kiribati, apply gender discriminatory laws in the transfer of nationality to children, hence resulting in a new generation of stateless individuals. In many countries, there is no discriminatory element in the law itself, but discrimination is pervasive in practice.

Nationality laws may be written or implemented in such a way as to exclude certain groups or make it more difficult for them to acquire or prove their nationality. The dispute between Nigeria and Cameroon for the territory of Bakassi Peninsula resulted in many persons in this territory finding themselves stateless. When the International Court of Justice awarded sovereignty of the Bakassi Peninsula to Cameroon in 2002, it set off a domino effect on the nationalities of the inhabitants. Many residents, especially those who identified as Nigerian, suddenly found themselves stateless. In the absence of clear governance and an adequate

transition plan, many residents faced an identity crisis. Their Nigerian passports were no longer recognised, and obtaining Cameroonian citizenship became a challenge due to bureaucratic hurdles and stringent nationality laws. The Karana people, a minority person of South Asian descent, have lived in Madagascar for over a century. Based on geographic-ethnic discrimination, the Karana people were generally not given citizenship when Madagascar won independence from France in 1960 because they were not considered to be ethnically Malagasy. Their religious identity is linked to this discrimination. The Karana people continue to face discrimination and are stateless. They are only entitled to residence permit to remain in the country legally. In Myanmar, various ethnic and religious minorities have been gradually excluded over the years, either being stripped of their citizenship (as in the case of the Rohingya).

Gap in nationality

Gap in nationality laws such as the renunciation of nationality without safeguards against statelessness, lack of safeguards to prevent derivative loss of nationality and lack of provisions for children found in the territory of states who would otherwise be stateless to acquire nationality of the state on the basis of the *jus soli* principle. Countries such as South Africa, Liberia, Botswana, Sweden, have no provisions in their nationality laws granting nationality to children of unknown origin found in their territory who would otherwise be stateless. Although, some countries presume nationality to foundlings on their territory whose parents are unknown or there are no available documents to trace their nationality, this has only been applicable to infants or newborns. Examples of these countries include Angola Somalia, Austria, Belgium, Ireland, Malta.

Not all countries have provisions granting nationality to persons born in their territory who would otherwise be stateless for example Romania. Although some states have provisions granting nationality based on the principle of *jus soli*, there are no regulations guiding its implementation which makes it challenging. An example of this is South Africa. South Africa has provisions granting nationality to stateless persons born in its territory, however, without regulations, implementation has been a challenge, and this has rendered the grandchildren of Mozambican refugees stateless in South Africa. These are children whose parents fled Mozambique during the civil war in the 1980s to South Africa. At that time, there was no process to regularise their stay and there was absence of refugee legislation. These children are

stateless because Mozambican law does not allow the transfer of citizenship past the first generation born outside of Mozambique and South Africa has refused to grant them nationality.

Lack of birth registration and birth certificates

The lack of a birth certificate does not on its own render a person stateless, but it contains relevant information on parentage, place and time of birth and helps to prove nationality. In certain cases, a birth certificate is a prerequisite for obtaining nationality documentation (such as a national ID card or a passport). Barriers to birth registration include bureaucratic and procedural obstacles, lack of knowledge about or access to services, high costs, and discrimination against certain groups, including women. This heightens the risk of statelessness among certain groups. In some countries, birth registration procedures pose challenges for undocumented and stateless parents to register their children. In South Africa where birth registration is mandatory before conferral of South African nationality, the requirements are onerous. For example, valid documentation (passport and visa or permit) of the child's parents is mandatory and if not met, they can render a person stateless or place a person at risk of statelessness.

Arbitrary deprivation of nationality

Many governments across the continents, strip certain people usually political opponents, minority groups or vocal critics of their citizenship. Concerning the arbitrary deprivation of nationality, in 2023, Nicaragua arbitrarily deprived 222 Nicaraguan political detainees of their nationality which rendered them stateless. These measures were adopted without being stipulated in domestic law and in breach of the principle of legality. South Africa arbitrarily blocks the Identity documents of person's suspected to have obtained their citizenship through fraud or misrepresentation without a lawful and fair administrative process which renders a person *de facto* stateless.

Conclusion

Statelessness is a worldwide issue affecting millions of people. Statelessness often has a severe and lifelong impact on those it affects. The millions of people around the world who are denied a nationality struggle to access basic human rights. Often, they are [excluded](#) from cradle to grave— being denied a legal identity when they are born, access to education, health care, marriage and job opportunities during their lifetime and even the dignity of an official burial and a death certificate when they die. States are encouraged to accelerate progress in tackling

statelessness and address the plight of stateless people. This begins with raising awareness, building the necessary political will and capacity to address the issue, such as reforming nationality laws and policies and most importantly, translating this into concrete real solutions for stateless people. It is pertinent for states to also support the UNHCR's Global Alliance to End Statelessness by 2030, and other initiatives by UNHCR and other international and regional bodies.