



# THE STATELESSNESS CONVENTIONS AND WHY NAMIBIA SHOULD ACCEDE TO THEM

According to UNHCR estimates, there are at least 10 million stateless people worldwide. The problem is particularly acute in Africa. Without a nationality, many fundamental rights and freedoms are out of reach. Namibia has already agreed to a number of international and regional agreements that protect the right to a nationality. Namibia should confirm these existing commitments by becoming a party to the two key international conventions on statelessness: the **1954 Convention Relating to the Status of Stateless Persons** and the **1961 Convention on the Reduction of Statelessness**.

## The problem of statelessness

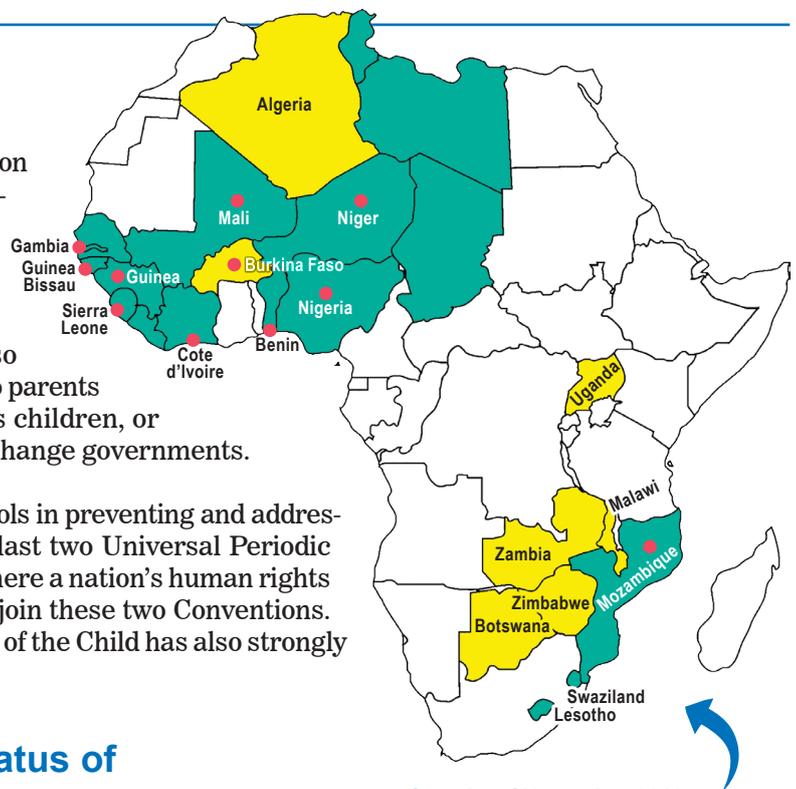
Citizenship laws in most African countries are based on some combination of two concepts: *jus soli* where citizenship is granted to anyone born on the territory and *jus sanguinis* where citizenship is granted to anyone whose parents are citizens. Unfortunately, the citizenship laws of different countries can clash, leaving some people without a nationality. It is also possible for persons to be stateless if they are born to parents who lack documentation, if they are abandoned as children, or due to loss of nationality when nations break up or change governments.

The two Statelessness Conventions are important tools in preventing and addressing statelessness. Namibia has been urged in its last two Universal Periodic Reviews at the United Nations (a regular process where a nation's human rights record is reviewed by other UN Member States) to join these two Conventions. The UN Committee on the Convention on the Rights of the Child has also strongly urged Namibia to join the two Conventions.

## 1954 Convention Relating to the Status of Stateless Persons

The 1954 Convention Relating to the Status of Stateless Persons has a remedial focus. It addresses the legal status of stateless persons. It defines a "stateless person" and provides for basic minimum standards of protection which increase based on the strength of the linkage between the stateless person and the country in question. More specifically, the 1954 Convention:

- requires States Parties to identify stateless persons in their territories and issue them with identity and travel documents and a facilitated path to nationality through naturalisation;
- prohibits the expulsion of stateless persons lawfully in the territory and requires due process protection for any decision to expel a stateless person; and
- grants rights and freedoms to stateless persons on a gradual, conditional scale based on their degree of attachment to the state, regardless of race, religion or country of origin.



As of November 2016, there were 89 parties and 23 additional signatories to the 1954 Convention and 68 parties and 5 additional signatories to the 1961 Convention. African parties (as of 1 October 2016) are indicated on the map above.

Source: UNHCR

- Parties to the 1954 Convention only
- Parties to the 1961 Convention only – none in Africa
- Parties to both the 1954 and 1961 Conventions
- States which have acceded to one or both Conventions since the launch of UNHCR's Accession Campaign in October 2010

## 1961 Convention on the Reduction of Statelessness

The 1961 Convention on the Reduction of Statelessness has a preventative focus. It is aimed at ensuring that national laws and practices do not result in statelessness, by providing minimum safeguards. More specifically, the 1961 Convention:

- requires States Parties to grant nationality to persons born in their territories who would otherwise be stateless;
- requires States Parties to grant nationality to the children of their citizens who would otherwise be stateless;
- requires safeguards against statelessness in any legal provisions covering loss, deprivation or renunciation of nationality; and
- prohibits deprivation of nationality on the basis of race, ethnicity, religious or political grounds.

## Six reasons why Namibia should accede to the Statelessness Conventions

- 1. Stateless persons are among the world's most vulnerable populations.** They often cannot access public services, obtain identification documents, leave or return to their home country, vote, stand for office, enrol their children in school, own property or even work legally. As a result, they often live in poverty. They are often unable to transfer a nationality to their children or spouse, which may continue the cycle of statelessness and poverty.
- 2. The Statelessness Conventions are in line with other human rights instruments Namibia has joined.** For example, the Convention on the Rights of the Child provides in Article 7 for the “right from birth to a name” and the “right to acquire a nationality” and for states to ensure the implementation of these rights, in particular where the child would otherwise be stateless. Article 6 of the African Charter on the Rights and Welfare of the Child provides similar protections. It is also noteworthy that the Universal Declaration of Human Rights (adopted by the UN General Assembly in 1948) provides that, “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality” (Article 15). Even where not stated explicitly, the right to a nationality is a fundamental prerequisite for the enjoyment and exercise of the human rights recognised by the African Charter and many other international treaties Namibia has joined.
- 3. Many instances of statelessness in Namibia are a legacy of the apartheid past which should be remedied.** Some persons in Namibia are stateless because of past racial discrimination in the birth registration system. Children born to parents without documentation may also struggle to prove their right to Namibian citizenship, and so the problem is perpetuated through generations. Statelessness can also be a problem for children born to parents in isolated rural areas who never acquired documents, or to parents who hold only pre-independence identity documents which do not suffice to indicate citizenship. Namibia's commitment to remedy the wrongs of the past points to the need to address such statelessness.
- 4. The Statelessness Conventions combat sex discrimination.** Some countries limit women's ability to transmit nationality to their children by descent. While Namibia does not exercise sex discrimination in respect of citizenship, a child born in Namibia to a mother from a country which does apply discriminatory citizenship laws could be stateless if the mother was not ordinarily resident in Namibia at the time and the child could not access the father's citizenship. By taking steps to eliminate statelessness, Namibia will mitigate the effects of sex discrimination by other countries.
- 5. Statelessness is a big problem in Africa.** Gaps in nationality laws and discriminatory legal provisions in some African countries mean that hundreds of thousands of Africans are stateless. Namibia is not by any means the worst-case scenario, but there are stateless individuals in Namibia. Accession to the treaties on statelessness will assist them, and will make Namibia a regional leader on this issue. It will also send a strong message that Namibia respects the human rights of all persons regardless of nationality and is doing its part to end statelessness.
- 6. Combating statelessness helps to combat problems such as human trafficking, and increases state security.** Stateless persons may be rendered invisible, which increases their vulnerability to harms such as trafficking and exploitation. Conversely, preventing and addressing statelessness enhances state security. Individuals without a nationality must use unauthorised channels to cross borders since they cannot access travel documents. This undermines the ability of states to control entry into their territories and may negatively impact state security.

Since Independence, Namibia has confronted the challenge of building a national identity in a nation composed of highly diverse populations. Part of this challenge is ensuring that nationality rules are appropriate to the Namibian situation, and that no one in Namibia remains stateless because of historical shortcomings in law or practice. The two Statelessness Conventions would be useful tools in accomplishing these goals.

