



# IMPROVING NAMIBIAN LAW TO PREVENT STATELESSNESS AND TO PROTECT STATELESS PERSONS

The Namibian Constitution gives some attention to the issue of possible statelessness, but its protections are not sufficiently comprehensive to cover all situations of statelessness in Namibia. It has been recommended in many international and regional forums that Namibia should join the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Accession to these two Statelessness Conventions would require some adjustments to Namibian law to make Namibia fully compliant. Namibia would also need to institute practical and accessible procedures to ensure that statelessness is identified and remedied in the most expedient and accessible way possible.

- 1. Namibia needs to broaden the existing protection statelessness in the Namibian Constitution, by providing that the rules on citizenship by birth will be applied to ensure that no child born in Namibia is stateless.** This could be done through legislation. Amendment of the Namibian Constitution is not required.
- 2. Namibia needs to re-examine the exceptions to citizenship by descent, and to provide that no exceptions may be applied if the result would be statelessness.**
- 3. Namibia needs to extend the period for registration of citizenship by descent inside the country to at least age 23.** For example, the registration requirement for a person born to a Namibian parent abroad who subsequently enters Namibia could be within one year of entry or by age 23, whichever is later.
- 4. Namibian law needs to provide that foundlings discovered in Namibia will be presumed to have been born in Namibia to parents who are Namibian citizens.** Foundlings are abandoned children who are not able to communicate accurately information pertaining to the identity of their parents or their place of birth. Namibia should enact regulations to ensure that foundlings are registered as Namibian citizens in practice - thus enshrining Namibia's current policy on abandoned children in law.
- 5. Namibia needs to enact additional protections against statelessness where loss of citizenship occurs.** A blanket exception in cases where loss of citizenship would produce statelessness would be best practice.
- 6. To be compliant with the minimal safeguards of the 1961 Convention, Namibia must change the period of residence abroad which can result in loss of citizenship by registration or naturalisation from 2 years to 7 years, and incorporate a procedure for declaring to an appropriate authority an intention to retain Namibian citizenship in such circumstances.** However, to ensure compliance with more recent human rights commitments on the avoidance and eradication of statelessness, Namibia should eliminate automatic loss of citizenship resulting from residence abroad.
- 7. There is a need for more comprehensive statutory safeguards to ensure that a child will not be rendered stateless if the parent renounces, loses, or is deprived of his or her Namibian citizenship.** It is permissible to require the child to apply for his or her parents' nationality if he or she is eligible. However, a child who is not successful in acquiring that nationality should be allowed to resume Namibian nationality before reaching the age of 18 years if he or she would otherwise be stateless. This would avoid a situation where a child is stateless until attaining the age of 18 years, when he or she can apply to resume Namibian citizenship under existing law.

8. **Namibia should have a clear statutory procedure in place to deal with applications for the determination of statelessness, and provide appropriate assistance to persons determined to be stateless.** This would require legal protections similar to those already offered to persons seeking refugee status in Namibia. In particular, a person should be allowed to remain in Namibia pending final determination of his or her citizenship status. Once it is determined that a person is stateless, the minimum protections specified by the Conventions would need to be applied. Individuals officially recognised as being stateless should generally be considered to be lawfully present in Namibia.
9. **The identification of stateless persons should be supplemented by a citizenship determination procedure for those whose citizenship is in doubt.** This occurs in many instances where persons in Namibia have no documentation of their birth or of the citizenship of their parents. This procedure would ideally incorporate a mechanism for collaboration with neighbouring countries on this issue.
10. **Namibian law should provide that a child born in Namibia to a person officially determined to be stateless is automatically a Namibian citizen, without requiring any further determination procedures.** This is important to break the chain of statelessness.
11. **Namibia should add a provision in the Namibian Citizenship Act to expedite the naturalisation of stateless individuals.** This would allow stateless persons to integrate into society quicker and have access to the benefits that come with citizenship. Namibia's laws on citizenship by naturalisation currently require the applicant to have been lawfully admitted into Namibia for residence. However, lawful entry may well have been impossible for a stateless person. If Namibia accedes to the Statelessness Conventions, the expedited path to naturalisation for stateless persons must allow for an exception to the usual rule about lawful residence.
12. **No applicant for citizenship by marriage or naturalisation should be required to renounce any other citizenship before the decision on Namibian citizenship is final.** The safest route to avoiding statelessness in such cases is to allow dual citizenship, since requiring an individual to renounce all other citizenships in order to gain Namibian citizenship could result in statelessness if the Namibian citizenship is later revoked. However, the Statelessness Conventions do not require expansion of Namibia's existing rules on dual citizenship; this would remain a matter within Namibia's discretion.
13. **There should be a procedural requirement which allows Namibia to deport individuals only if the State knows that they are nationals of the country to which they are being sent.** This will prevent a situation where people are stuck in limbo, without citizenship or a country willing to accept them.
14. **Namibia should ensure that the births of all children born in Namibia are registered.** While the two Statelessness Conventions do not mention birth registration directly, birth registration is an important step in preventing statelessness – and one to which Namibia has already committed through the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The Ministry of Home Affairs and Immigration is at an advanced stage in preparing an improved law on birth registration which should correct gaps in the birth registration process. This law should provide a mechanism for presumption of Namibian citizenship in appropriate cases, to ensure that delays in determining “ordinary residence” (for purposes of ascertaining whether children born in Namibia to non-Namibian parents are Namibian citizens) do not put any child born in Namibia at risk of statelessness.

## Namibia as a leader in combating statelessness

Namibia's treatment of individuals who found themselves part of the new Namibian state, as well as those who could claim descent from Namibian citizens who fled persecution, has been impressive. The provisions for citizenship allowed for a smooth and fair transition at Independence, and were crafted so as to prevent statelessness. They could be cited as examples of best practice. By making a few additional legislative changes, Namibia would assist stateless individuals within its borders as well as setting another international example of how statelessness should be addressed.

