

**Regional Conference on Statelessness in ECOWAS Member States  
23-25 February 2015 - Abidjan**

**BACKGROUND NOTE ON THE AGENDA  
Meeting of Experts**

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## **1. Introduction**

This background note was prepared to facilitate the round table discussions during the Meeting of Experts. Before each round table, a panel of experts outlines the themes and opens the plenary discussions. These discussions are followed by round tables. Suggested topics for discussion are provided for each round table.

A list of source materials is included at the end of this document.

## **2. Panel 1 and Round Tables A, B, & C**

### **A. Background**

Panel 1 focuses on the sources of statelessness.

To date, hundreds of thousands of stateless persons have been identified in West Africa. In addition, a large portion of the population is exposed to risks of statelessness. Sharing data and information on statelessness as well as identifying the causes of statelessness are essential to the effort to curb the phenomenon.

There are several factors contributing to statelessness in West Africa. Gaps in nationality legislation can lead to statelessness, either at birth or later in life. Low birth registration rates and unclear or complicated procedures for confirming the acquisition of nationality can make it difficult to obtain proof of nationality, and further contribute to statelessness. State succession and border disputes can also complicate the acquisition or confirmation of the nationality of affected populations. Finally, conflicts of laws, prolonged residence outside the country of origin and the complex procedures to which a person living abroad may be subjected can lead to statelessness in the context of migration.

At the very outset, a major challenge in the search for solutions is the lack of awareness of the problems generated by statelessness, on the part of the general public and of more immediately responsible persons alike. As statelessness raises complex and interrelated issues, finding solutions thereto also requires the establishment of partnerships. This is another challenge, as partnerships remain underdeveloped in West Africa.

As part of this theme, the participants will discuss the regional causes of statelessness. The discussions will address how these causes can be eliminated, given the political will, notably through legal reforms and amending administrative practices related to nationality. The discussions will also broach the question how prevention of statelessness can be improved through partnership mechanisms, information-sharing and campaigns of public awareness.

### **B. Round Tables - Discussion questions**

#### **i. Round Table A: *Preventing new cases of statelessness through law reform.***

Restrictive nationality legislation is considered as the principal source of statelessness. In addition, the varying legal traditions and histories of the several Member States of ECOWAS inherently present inconsistent bases for attributing nationality, which increase the risk of statelessness in the context of the intense migrations that characterize the region.

To prepare for this round table and make relevant contributions, participants can consider, among others, the following issues:

- a) The two universal Conventions on Statelessness contain important rules to prevent statelessness, and protect stateless persons. The number of State parties is steadily increasing, but the implementation of these instruments in domestic law has not kept pace with the accessions. What national mechanisms can be used to ensure that States follow up on their acceptance of the conventions and give full effect to their provisions?
- b) UNHCR estimates that children represent 60% of the global stateless population. It is thus essential to tackle the problem at its root and ensure that each child begins life with a nationality, regardless of whether the child is born or found on the territory, or born abroad to citizen parents. What are the relevant regional and international provisions and how should they be implemented at the national level? What circumstances best ensure that safeguards against statelessness are put in place?
- c) The various laws of the region were adopted in the period immediately following the independence of West African nations and have barely been altered, despite the steady evolution of global standards and the international law of human rights. What are the main gaps in the nationality laws of the various countries of West Africa that put people at risk of statelessness? How are those gaps to be remedied?
- d) Rules relating to the attribution of nationality in ECOWAS countries vary. The heterogeneity of these laws can lead to conflicts of laws and can ultimately generate statelessness. Therefore it is important to discuss measures that can be adopted to resolve situations of conflict of laws in the region so that statelessness can be avoided in the context of migrations. Participants can also discuss whether to conduct a comparative study of the region's nationality laws with a view to isolating risks of statelessness and promoting regional harmonization measures to address the identified gaps, by providing, for example, a rule of nationality of last resort. They may also consider what might be an appropriate forum for such a project.
- e) Certain situations of statelessness in the region are rooted in state succession, whether during decolonization or in instances where the resolution of a border dispute did not include transitional measures to guarantee the right to a nationality for affected persons. Are there measures that States could implement to prevent statelessness from arising in the case of state succession, or effective remedies when the succession has already occurred? What are the best practices that States could replicate and adapt to new circumstances?
- f) The ECOWAS Protocol on Citizenship adopted in 1982 establishes a community citizenship. Possession of the nationality of an ECOWAS State is a precondition to the enjoyment of this citizenship. Does this instrument effectively help to protect the right to a nationality and the right of integration of ECOWAS citizens in the region? Can it be strengthened in that regard, being read as a mandate, legal or moral, to each Member State to ensure that the precondition is satisfied?
- g) What is needed by States in terms of increased administrative capacity in order to ensure that their laws effectively prevent statelessness? How can UNHCR and ECOWAS help build the required capacity? What sub-regional or regional initiative could ensure sustained efforts to fight against statelessness, notably by ensuring that States adopt common norms to prevent Statelessness?

**ii. Round Table B: *Preventing statelessness through civil status registration and access to nationality documents.***

One of the central challenges in the region is to ensure universal birth registration and to implement simple and accessible procedures for the confirmation of nationality.

In light of this, participants will explore the following issues:

- a) The main obstacles to universal and accurate birth registration and solutions to overcome these obstacles, and measures required to facilitate the registration of vulnerable populations, notably nomadic and migrant populations residing in inaccessible or marginalized regions;
- b) Establishing an individual's identity is an essential step to determine his/her nationality. Is a birth certificate regarded as a reliable document to establish the identity of the holder? What are the factors that undermine the authoritative character of this document; how can one mitigate them and guarantee the reliability of birth certificates?
- c) Within its role of coordinating and harmonizing practices, what action could ECOWAS undertake in order to strengthen birth registration mechanisms?
- d) Mechanisms for late birth registration are indispensable to ensure universal registration, as many children are not registered within the time frames set by law. Is the implementation of those mechanisms always appropriate? What are the foreseeable possibilities of abuse? How can those mechanisms be improved?
- e) Regional best practices on how to improve birth registration, notably how to implement simple and accessible procedures and how to mobilize sufficient resources to overcome sociological obstacles such as gender discrimination, poverty and illiteracy.
- f) What are the main local stakeholders who can assist States in strengthening birth registration, and thus participate in increasing registration rate?
- g) States are primarily in charge of ensuring birth registration. However, the reality in West Africa is that State structures often are not adequately developed in rural areas. Is there any regional or sub regional best practice worthy of general adoption?
- h) In order to assess whether a person is eligible for nationality, s/he has to bring evidence. However, legislation is not always clear about what is considered as evidence of nationality. Even when this matter is properly regulated by law, officers in charge of assessing nationality are not clearly designated or adequately trained. In such conditions, inconsistent practices may develop. How can States guarantee that eligibility procedures conform to the rule of law? How can they ensure that administrative mechanisms related to nationality determination are sufficiently accessible? What options are open to those whose application for confirmation of nationality is rejected? Do procedures vary if the application was submitted in the country of origin or abroad? How could intergovernmental coordination be improved to facilitate access to evidence of nationality?
- i) Many individuals automatically entitled to nationality by birth find it difficult to demonstrate their nationality because they do not possess tangible proof of their birth and/or of the nationality of their parents. Therefore participants will discuss how the procedures used to

determine nationality can be improved so that persons without concrete proof of their nationality can nevertheless have their applications for confirmation of nationality treated equitably and objectively. Can alternative rules regulating the determination of nationality be developed for instances where written proof of identity is not available? In case individuals are not able to obtain a birth certificate by normal legal and administrative procedures, due to circumstances beyond their control, what alternatives now exist to establish their identity?

- j) Does a lack of familiarity with the law or of knowledge of administrative procedures related to nationality contribute to statelessness? What are the best ways to ensure populations of concern understand procedures related to the acquisition and confirmation of nationality?
- k) What are the obstacles to the provision of documents attesting to nationality such as certificates of nationality and identity cards? Is cost an obstacle? How may those problems be overcome?
- l) Can ECOWAS' current initiatives on the issuance of biometric identity documents generate risks of statelessness? If so, how can one mitigate those risks? What role(s) can regional organizations play to strengthen administrative procedures related to the confirmation of nationality?

### iii. Round Table C: *Political commitments, partnership and information-sharing.*

Challenges surrounding the resolution of statelessness are important and complex. All strategies designed to address these challenges must include three major aspects: Political commitments, information and awareness-raising campaigns, and establishment of partnerships with the various stakeholders who play a key role in addressing statelessness.

In light of these challenges, discussions will focus on:

- (a) Statelessness is a legal anomaly that can be remedied. As states set the rules for nationality, they have also a primary responsibility in preventing and reducing statelessness through their legislation and other actions. UNHCR released a Global Action Plan that sets out a clear and practical strategy comprised of Ten Actions which need to be undertaken to end statelessness. A few States have already taken steps in that direction. How can countries make it a priority to develop and implement robust plans of action, and which stakeholders need to be involved?
- (b) Statelessness is sometimes referred to as an *invisible problem*, because stateless people often remain unseen and unheard. It is essential to spread awareness about the issue, change perceptions about statelessness and push for action to resolve the problem. To which groups of persons, entities or institutions should awareness-raising campaigns most effectively be directed; who may best lead these campaigns; and how should the campaigns be adapted in respect to different categories of stateless persons?
- (c) How can responsible bodies ensure that stateless people or people at risk of statelessness are informed about their situation and the means by which, if the possibility is open, they can regularize their nationalities?
- (d) Conversely, how should one inform and instruct the population of host countries in order to fight against risks of discrimination and social exclusion of stateless people?

- (e) Which initiative could help continuously and sustainably to raise awareness on statelessness issues at regional, continental and Global level?
- (f) Statelessness is an overarching issue, which affects interests or directly pertains to the mandate of many actors. As such, effective responses to statelessness require a partnership approach. How may one strengthen the dialogue and partnership between States, regional and international organizations and other stakeholders, as well as enhance cooperation and coordination mechanisms? What actors can play a major role in the fight against statelessness? What key regional and international organizations should be involved?
- (g) Is there a need to establish regional and/or sub-regional frameworks to improve cooperation between States in the fight against statelessness? What forms should these mechanisms have? What role could ECOWAS and UNHCR play in these mechanisms?
- (h) Statelessness raises legal issues, including the conformity of nationality law to international instruments on nationality and statelessness. Which legal actors at municipal level can be engaged in advocating and following up on those issues, and how may they be given the requisite authority and influence? What national and regional mechanisms are available to address issues of inconsistency between national law and international law?
- (i) What mechanisms can be established to coordinate and follow up on the outcome of the conference? Which actors should be involved?
- (j) In this connection, sharing experiences is always a good strategy. Which actors should be involved to identify, compile and disseminate best practices in the fight against statelessness?

### **3. Panel 2 and Round Tables D, E, F**

#### **A. Background**

The panel will focus on the identification and protection of stateless persons, and on pragmatic solutions to statelessness.

In order to craft effective rules and policies related to statelessness, it is essential to understand the concrete consequences of statelessness for the lives of individuals and for the socio-economic development of States. Human rights are universal and inherent to the existence of every individual; in practice, however, many basic civil, economic, and social rights are denied to stateless persons. Stateless persons often live on the margins of society and cannot fully participate in the development of their communities. Stateless migrants are especially vulnerable as they face a high risk of human trafficking, arbitrary detention, and involuntary deportation.

As part of this theme, discussions will focus on how the identification and protection of stateless persons can be improved. Particular attention will be given to political and legal responses. Discussions will also bear on how groups at acute risks of statelessness can regularize their status.

## **B. Round Tables & Discussion questions**

### **i. Round Table D: *Identification of stateless persons.***

Given the existence of known risk factors, statelessness may very well be widespread across West Africa. Nevertheless, without methods of identifying stateless persons, many questions remain unanswered. Information gaps lead to erratic responses and reduce the likelihood of implementing coordinated and effective programs to protect stateless populations.

Against this background, the discussions will address the following issues:

- (a) Only 5 % of the States in the ECOWAS region provide statistics on statelessness. What role can ECOWAS play in the data collection processes, and what should be the nature of the data collected?
- (b) What are the existing national mechanisms that directly or indirectly assemble data on statelessness? Can these mechanisms be adapted to fulfill this role in a more systematic manner? What governmental or intergovernmental measures can be harnessed to extract and collate information on statelessness? How can studies and censuses be better used to capture such information? Can regional or international organizations aid in designing and launching appropriate systems?
- (c) Context specific identification measures. What are the advantages gained by a determination procedure for statelessness? Which bodies can play a role in identification? In what contexts should determination procedures for statelessness be implemented?
- (d) The role assumed by National Human Rights Institutions, civil society and other actors in the identification of stateless populations and risks of statelessness, and how these roles can be improved and better coordinated.

### **ii. Round Table E: *Protection of stateless persons.***

A major challenge facing States is how to secure their borders against illegal immigration and human trafficking while simultaneously ensuring an internationally required standard of protection for stateless individuals. The implementation of a regional and national protection regime for stateless persons is a related imperative. In the absence of a solution to these interdependent challenges, a stateless person is constantly at risk of expulsion and/or indefinite detention.

As part of this theme, discussions will address the following issues:

- (a) The implementation of the 1954 Convention. All stateless persons should be treated in accordance with international norms; their statuses may, however, vary depending on the particular circumstances giving rise to statelessness. Certain persons are stateless within their own country, despite having habitually resided in that country since their birth, or even since the establishment of the country itself. The deep bond such stateless persons share with their country of residence should be reflected in proposed solutions. This raises the question: What mechanisms of protection are appropriate for stateless persons with a relevant link to the territory, and do they differ from those adapted to the case of stateless pure migrants? Are there relevant regional best practices?
- (b) The laws and policies of West African States do not differentiate between stateless migrants and other migrants. Since stateless persons are unlikely to possess required travel documents as a

consequence of their status, they are frequently classified as irregular migrants. Therefore, the manner in which the protection needs of stateless populations can be met in the context of border management will be discussed. How can the exposure of stateless persons to the risk of expulsion or detention at borders be avoided? How can entry procedures be improved in order to collect data on the undocumented and to ensure that stateless persons are identified and protected? Are there applicable regional best practices?

- (c) Do States need to devote more resources and attention to ensuring that border management practices meet both national and international protection requirements? How could intergovernmental coordination be strengthened so that border management information related to protection and security is shared between relevant stakeholders? How can regional and international organizations assist governments in achieving this goal?
- (d) The 1954 Convention ordains a legal regime for the protection of stateless persons. Over half of ECOWAS States are parties to this instrument, yet in all too many instances, it has not been implemented in practical terms. How can UNHCR and ECOWAS assist States concretely to meet their obligations under the 1954 Convention?
- (e) What structures or services need to be established or strengthened at country level in order to better protect stateless persons? What should be the specific role and mission of such structures?
- (f) Although ECOWAS has established a regional framework to facilitate the free movement of persons within West Africa, ECOWAS' laws and policies fail to distinguish stateless persons from other migrants. How can ECOWAS account for the particular protection needs of stateless persons in regional agreements relating to the freedom of movement? How can existing and future regional migration agreements complement national policies of migration management?

#### **iv. Round Table F: *Solutions for stateless persons and risks of statelessness.***

This Round Table will look at the challenges faced by the affected population groups, and discuss risks of statelessness for which a search of solutions should be prioritized.

Some persons are stateless in their own countries and others, namely migrants are stateless outside their countries of origin. Many other individuals are of undetermined nationality. They lack documentary evidence of their nationality and for that reason they are in the same situation as formally stateless persons. In all cases, statelessness engenders a type of exclusion that carries significant consequences for the personal development of the stateless person, as well as the advancement of the country. In the absence of favorable integration efforts, stateless populations must rely solely on the tolerance of others and thus remain at risk of detention or expulsion.

Situations of statelessness are generally of a protracted nature. Some situations are rooted in decolonization: many people who migrated to their places of residence prior to the moment of decolonization, as well as their descendants, never acquired the nationality of the successor State. Others groups because of their lifestyle, in particular nomads, were also affected by the delineation of borders in the aftermath of decolonization, and face difficulties in proving their legal link to a State.

Street children, long-term and stranded migrants constitute other groups at risk. Many face difficulties in accessing procedures relating to issuance of documentation, and cannot establish their bond with any specific country.

As part of this theme, the discussions will address the following issues:



- a) Street children rarely have documentary evidence of their identity and citizenship, and those who are abandoned or have ruptured their links with their families face serious complications for establishing their identity and thus laying claim to a nationality. Participants will discuss what factors prevent street children from proving or acquiring nationality, explore whether there are best practices to mitigate those difficulties and ensure that all children have a right to nationality.
- (a) Nomadism is quite widespread in the region. In the search for solutions, it is essential to take into account the situation of nomads, particularly as regards birth registration, which requires methods adapted to the lifestyle of these populations, and as regards mechanisms for the determination of their nationality. How can their specific needs of documentation be addressed, how can ECOWAS contribute in this process?
- c) West Africa is a region of intensive migration. Numerous individuals in the region find themselves in situations of prolonged migration. The absence of identity or nationality documents combined with a long period of residency in one or multiple foreign countries can lead to situations in which it is exceedingly difficult to determine the nationality of the persons concerned. It is thus important to discuss the national and transnational procedures that can better facilitate verification of identity and determination of nationality. Are there designated representatives in each government or administration who are able to respond rapidly to requests of other States to confirm the nationality of migrants? How should responsibility for the determination of nationality be shared between the host country and the country of origin? Are there existing mechanisms in place to share responsibility?
- d) Some stateless migrants find themselves stranded in foreign countries with no option to return to their country of habitual residence. At the same time, they have developed significant bonds with their new country of residence. What are the best practices for the integration of stateless persons into their present country of residence? What initiatives can be adopted and adapted to different contexts?
- e) Amongst migrants, refugees are a group at heightened risk of statelessness. Many refugees fled their countries without identity documents, and records of those documents are likely to have been damaged or destroyed. The longer the period of asylum is, the harder it is for them to reconstitute their identity. In light of a State's obligations under 1951 Convention, States of asylum can and should assist refugees in obtaining documentation of civil status. How can this responsibility be met effectively? Considering the bond that refugees may have developed over the years with the country of asylum, how can States of asylum, on their side, help refugees better integrate in their territory?
- f) How can regional organizations assist with the integration of stateless populations?
- g) In particular, how can ECOWAS participate in the search of solutions for individuals without a determined nationality but with a relevant bond with a Member State? Could ECOWAS set up a regional mechanism to handle those concerns?

#### 4. Background documents

Note on Statelessness: Report of the High Commissioner, UN Doc. A/AC/96/1098/Add.1, 28 June 2011, available at: <http://www.unhcr.org/4e5611109.html>

Global Plan of Action to End Statelessness, UNHCR, November 2014  
<http://www.unhcr.org/statelesscampaign2014/Global-Action-Plan-eng.pdf>

Special Report, Ending Stateless in 10 Years  
<http://www.unhcr.org/546217229.html>

Pledges 2011 Ministerial intergovernmental event on refugees and stateless persons  
<http://bit.ly/1q97Cvk>

Note on international protection, Addendum, Note on statelessness, Report of the High Commissioner, June 2011, United Nations General Assembly,  
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<http://www.unhcr.org/41b4607c4.html>

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<http://unhcr.org/ecowas2015/>

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<http://unhcr.org/ecowas2015/>

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Citizenship Law in Africa: A Comparative Study, Bronwen Manby, Open Society Institute, 2009,  
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4cf76b192>

UNHCR Handbook on the protection of stateless persons, Under the 1954 Convention relating to the Status of Stateless persons, Geneva, January 2014, <http://www.unhcr.org/53b698ab9.html>

Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, 20 February 2012,  
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4f4371b82>

Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level, 17 July 2012, <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=5005520f2>

Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person, UNHCR, April 2012, available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4f7dafb52>

Banjul Appeal on Statelessness, December 2013, <http://bit.ly/116Oc7x>

Note sur l'apatridie, comité exécutif du programme du haut-commissaire, juin 2013, ec/64/sc/crp.11 disponible sur <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opedocpdf.pdf?reldoc=y&docid=52e2884>

UNHCR Action to address Statelessness: A Strategy Note, 2010, [https://intranet.unhcr.org/intranet/unhcr/en/home/protection\\_and\\_operational/international-protection/refworld/refworld\\_internal.html](https://intranet.unhcr.org/intranet/unhcr/en/home/protection_and_operational/international-protection/refworld/refworld_internal.html)

Measuring Statelessness through Population Census, United Nations Economic and Social Council, ECE/CES/AC.6/2008/SP/5, 13 May 2008 [https://intranet.unhcr.org/intranet/unhcr/en/home/protection\\_and\\_operational/international-protection/refworld/refworld\\_internal.html](https://intranet.unhcr.org/intranet/unhcr/en/home/protection_and_operational/international-protection/refworld/refworld_internal.html)

Statistics on Stateless Persons, Annex to Global Trend Report, 2013, Table 7 on Statelessness <http://www.unhcr.org/546e01319.html>