

Nationality and Statelessness in West Africa Background Note



and Statelessness

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“The stateless person is an anomaly (...) [they are] defenceless beings, who have no clearly defined rights and live by virtue of good-will and tolerance.”¹

1. Introduction

Statelessness refers to the condition of an individual who is not considered as a national by any State under the operation of its law.² Although stateless people may sometimes also be refugees, the two categories are distinct in international law.

Statelessness stems from issues related to nationality. Its main causes are gaps in nationality laws, arbitrary deprivation of nationality, processes relating to State succession and restrictive administrative practices, for example in relation to issuance of documents which prove nationality. While human rights are in principle universal and inherent, in practice a large range of fundamental human rights are denied to stateless people: they are often unable to obtain identity documents; they may be detained for reasons linked to their statelessness; and often times they are denied access to education and health services or blocked from obtaining employment.

Under resolutions adopted by the United Nations General Assembly, UNHCR has been requested to lead global efforts to address statelessness, particularly by supporting identification of stateless populations and the protection of stateless persons, as well as promoting efforts to prevent and reduce statelessness.

According to UNHCR estimates, statelessness affects up to 10 million

¹ *A Study on Statelessness*, United Nations, New York, 1949, E/1112/E/1112/Add.1.

² Art 1 of the *1954 Convention on the Status of Statelessness*.

people worldwide, about 750,000 of which are in West Africa.³ There are many factors contributing to the risk of statelessness in the region, which suggest that the population at risk is very large.

The States of West Africa have acknowledged the importance of the fight against statelessness. Indeed, in 2011 during the high-level conference in Geneva they made the largest number of pledges to improve their position on statelessness, compared to other regions in Africa and the rest of the world.⁴

In an effort to reduce the phenomenon, UNHCR has particularly focused on building the capacity both of governments and of organizations of civil society, carrying out advocacy and training efforts. UNHCR has also provided technical advice to authorities to address the situation of populations at risk of statelessness as well as stateless persons and find adequate solutions. Several regional seminars were organized from 2011-2013 in order to sensitize states on the significance of the issue and to develop their capacity to address it. A major event in December 2013 gathered National Commissions on Human Rights, the ECOWAS Court of Justice and the judicial and quasi-judicial institutions of the African Union. It resulted in the Banjul Appeal, which lays the foundations for partnership between those institutions and calls upon States and other stakeholders, including UNHCR and ECOWAS, to take additional steps towards the eradication of statelessness in West Africa.

2. International and Regional Legal Framework

The right to a nationality is enshrined in the Universal Declaration of Human Rights,⁵ and in many other international instruments.⁶

The United Nations adopted two conventions that provide practical steps to assist States in realizing the right to a nationality. The 1961 Convention on the Reduction of Statelessness (hereafter the 1961

³ This estimate is based on government figures, UNHCR studies and country specific reports. Governments in the region, ECOWAS and UNHCR still lack procedures and mechanisms to systematically collect information on statelessness.

⁴ Six States pledged to reform their legislation and seven States pledged to accede to one or both conventions. Additional pledges were made during the Universal Periodic Review process, where several States agreed with recommendations related to accession.

⁵ Art 15 of the *Universal Declaration of Human Rights* (10 December 1948).

⁶ Inter alia: Articles 2, 3, 24, 26 of the *International Covenant on Civil and Political Rights* (16 December 1966); art 18 of the *Convention on the Rights of Persons with Disabilities* (13 December 2006); art 29 of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (18 December 1990); articles 7, 8 of the *Convention on the Rights of the Child* (20 November 1989); articles 9, 16 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (18 December 1979); art 15 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (21 December 1965).

Convention) establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life.⁷ The 1954 Convention on the Status of Stateless Persons (hereafter the 1954 Convention) is an important instrument to ensure enjoyment of human rights by stateless persons as it establishes an internationally recognized status for them.⁸

At the continental level, there is no reference to the right to a nationality in the African Charter for Human Rights. The 1990 African Charter for the Rights and the Welfare of the Child partly addresses this gap, as it provides for the acquisition of nationality of the country of birth if the child would otherwise be rendered stateless.⁹ This right to a nationality was further elaborated in 2003, with the adoption of the Protocol on the Rights of Women in Africa, which acknowledges their right to acquire a nationality and, in the event of their marriage, to acquire their husband's nationality.¹⁰

The African Commission of Human and People's Rights has addressed both general and country-specific issues related to nationality and statelessness in communications and resolutions. In its Resolution 234, the Commission affirms that the right to a nationality is implied with the provisions of article 5 of the African Charter on Human and People's Rights and is essential to the enjoyment of other fundamental rights and freedoms under the Charter.¹¹

The resolution confirms the case law of the Commission. In the case of John K. Modise the Commission considers that the applicant's lack of nationality constituted a denial of specific human rights enshrined in the

⁷ As of 1 January 2014, eight States in West Africa are parties to the *1961 Convention on the Reduction of Statelessness*: Guinea, The Gambia, Nigeria, Niger, Senegal, Benin, Côte d'Ivoire, Liberia. The following States pledged to ratify during and following the Intergovernmental Ministerial Event of December 2011 in Geneva: Sierra Leone, Burkina Faso, Guinea Bissau, Mali.

⁸ As of 1 September 2014, eight States in West Africa are parties to the *1954 Convention on the Status of Stateless Persons*: Benin, Burkina Faso, Côte d'Ivoire, The Gambia, Guinea, Liberia, Nigeria, Senegal. The following States have pledged to ratify: Sierra Leone, Niger, Guinea Bissau, Togo.

⁹ Art 6: "1. Every Child shall have the right from his birth to a name; 2. Every child shall be registered immediately at birth; 3. Every child has to acquire a nationality; 4. States parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles 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."

¹⁰ Art 6(g): "A women shall have the right to retain her nationality or acquire the nationality of her husband"; art 6(h): "A woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interest."

¹¹ Art 5: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

Charter.¹² This position is reiterated in the case *Amnesty International vs. Zambia*, in which the Commission ruled that “ by forcing (the applicants) to live as stateless persons under degrading conditions, the government of Zambia has deprived them of their family and is depriving their families of the men's support, and this constitutes a violation of the dignity of a human being (thereby) violating Article 5 of the Charter, which guarantees the right to: the respect of the dignity inherent in a human being and to the recognition of his legal status.”¹³

At the ECOWAS level, Community law does not provide for the right to a nationality. Community law does, however, establish a Community citizenship,¹⁴ a unique status that contributes to the population's integration at the regional level, and in particular to its freedom of movement and enhanced protection.

Community citizenship is dependent on holding or acquiring the nationality of a member State of ECOWAS. Community citizenship is granted automatically to individuals who are nationals of an ECOWAS State by descent or by birth on the territory. Community citizenship is not, however, automatic for naturalized citizens; in order to qualify for it, they must have resided in a member State for a continuous period of 15 years.¹⁵ Community citizenship may also be withdrawn in the case of a loss of member State nationality, permanent settlement in a non-ECOWAS State or the acquisition of a nationality of a non-ECOWAS State.¹⁶

ECOWAS citizens are entitled to the enjoyment of the rights set out in the Community Law. The enforcement of these rights is guaranteed by the ECOWAS Court of Justice,¹⁷ which Community citizens may directly access. As withdrawal of, or refusal to confer, an ECOWAS State nationality prevents the enjoyment of Community citizenship, the ECOWAS Court could in theory consider that conditions for the acquisition and loss of nationality fall within the scope of Community Law.¹⁸

¹² *John K. Modise v. Botswana*, Communication No. 97/93(2000) referring to the right to protection by the law, respect of dignity, freedom of movement, right to leave and return to his own country, right to participate in his government, right to access public services, right to property and right to a family life.

¹³ *Amnesty International v. Zambia*, Communication No. 212/98 (1999) § 58.

¹⁴ Protocol A/P.3/5/82 relating to the Definition of Community Citizen.

¹⁵ See art 1(d)(ii) of the Protocol relating to the Definition of Community Citizen.

¹⁶ Art 2 of the Protocol relating to the Definition of Community Citizen.

¹⁷ Protocol A/P1/7/91 on the Community Court of Justice.

¹⁸ This position has been adopted by the European Court of Justice. As for the ECOWAS zone, European Union Law does not provide for the right to a nationality but establishes a Union Citizenship. The European Court of Justice holds that it has jurisdiction as regulation of nationality falls within the scope of the Union. See Case C-135/08 *Janko Rottmann v Freistaat Bayern* [2010] ECR nyp, para 42: “It is clear that the situation of a citizen of the Union who [...] is faced with a decision withdrawing his

3. Causes of Statelessness

Statelessness in West Africa occurs for a variety of reasons, including discrimination against specific groups or, more systemically, gaps in nationality legislation (3.1), administrative practices complicating or obstructing access to documentation (3.2), conflicts of laws between States and other incidents related to migration (3.3), and failure to include all residents in the body of citizens when a State becomes independent, or when part of a territory is annexed to a new State (3.4).

3.1 Nationality Legislation and Statelessness

The absence of general rules for the attribution of nationality and the discrepancies between the various national laws constitute a permanent source of statelessness in the region.

Many nationality laws, adopted in the 1960s, do not fully comply with contemporary international standards on prevention and reduction of statelessness, as per, inter alia, the 1961 Convention, the 1990 African Charter on the Rights and Welfare of the Child, and the 1999 Protocol on the Rights of Women.

In particular, the following international norms are not adequately reflected and embodied in the nationality legislation of various regional States.

3.1.1 Acquisition of Nationality by Children Born on the State Territory

According to international and regional standards, safeguards should be provided in domestic laws to ensure that children born on the territory who would otherwise be stateless are granted nationality, preferably automatically at birth, or at the least according to a non-discretionary application procedure.

The large majority of nationality laws in West Africa do not comport with this standard, as they prevent many children born in the territory who would otherwise be stateless from acquiring the nationality of the

naturalization, adopted by the authorities of one Member State, and placing him, after he has lost the nationality of another Member State that he originally possessed, in a position capable of causing him to lose the status conferred by Article 17 EC [Article 20 TFEU] and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law.”

country of birth.¹⁹ A few countries allow children born in the territory to acquire the nationality but limit it to the situation of children born to unknown parents or to parents who have no nationality.²⁰ This provision does not cover all situations of children born in the territory who would be rendered stateless if they do not acquire the nationality of the country of birth. In particular, such a provision does not constitute a safeguard against statelessness for children born to foreign parents who cannot transmit their nationality to them because, for instance, they originate from *jus soli*²¹ countries.

The majority of nationality laws restrict acquisition of nationality to children born to parents who are nationals (*jus sanguinis*²²), or in some cases, parents who were also born in the territory (*double jus soli*).²³ This absence of safeguard is contrary to art 1 of the 1961 Convention and art 6 of the African Charter on the Rights and Welfare of the Child.

Some laws establish discriminatory criteria for acquisition or transmission of nationality. A few laws restrict eligibility for nationality to children based on a racial or ethnic criterion.²⁴ Such requirements are not consistent with the non-discrimination and equality clauses contained in several international and regional instruments, including the African Charter on Human and People's Rights (art 2).

On the other hand, some countries have generous policies that allow individuals who have always been regarded and treated as nationals to be officially confirmed as citizens without any further proof. This is the principle of *possession d'Etat* or possession of apparent status. This mode of acquisition is provided in the nationality laws of Benin, Togo and Senegal.

3.1.2 Acquisition of Nationality for Children Born Abroad

¹⁹ Adequate safeguards are found in only four laws, as follows: art 143 of the Burkina Faso Nationality Legislation; art 8(c),(d) of the Cape Verde Nationality Legislation (Loi No. 80/III/90); art 5(1)(a-d) of the Guinea Bissau Legislation; art 2 of the Togo Nationality Code.

²⁰ See art 9 of the Benin Nationality Law.

²¹ Right of the soil, that is the principle of nationality law by which citizenship is determined by the place of birth.

²² Right of blood, that is a principle of nationality law by which citizenship is not determined by place of birth but by having one or both parents who are a national of the State.

²³ Nationality Laws of Niger, Senegal and Sierra Leone.

²⁴ See Constitution of the Republic of Liberia, 1986, articles 22 and 27; see also art 2 of the Sierra Leone Citizenship Act, 1973; note also that, though Mali does not generally discriminate in the rules it applies for children with citizen parents, it provides privileged treatment to children born in Mali of a mother or father "of African origin" who was also born in the country—treatment not extended to those without a parent "of African origin".

International standards set out in art 4 of the 1961 Convention provide for the grant of nationality to children born to a national abroad who would otherwise be stateless.

Most West African countries allow transmission of nationality, on a non-discriminatory basis, to a child if either parent is a national. Gambia allows for citizenship to be passed on for only one generation; as such, a Gambian born outside Gambia will not be able to transmit his nationality to his children born outside Gambia.²⁵ Among the most generous countries are Ghana and Cape Verde, providing citizenship if one grandparent is a citizen.

Nevertheless, a few laws restrict the power of transmission to children born abroad to the father alone²⁶ and may also impose additional criteria (for instance the father must also be born in the country of origin, or have resided in the country of origin prior to the birth of the child, etc).²⁷ These provisions increase the risk of statelessness for children born to a national abroad. Benin, Guinea, Mali and Togo permit the transmission of nationality by a mother under limited circumstances, namely when the father is unknown or is stateless.

International standards for the prevention and reduction of statelessness require that the law grant nationality, either at birth or upon application, to children born abroad where either of the parents is a national, if otherwise such child would be stateless. Laws should not impose any additional criteria upon the parent.

3.1.3 Acquisition of Nationality by Foundlings

Many nationality laws do not grant nationality to foundlings, or limit it only to newborn children.²⁸ Art 6 of the African Charter on the Rights and Welfare of the Child, art 7 of the Convention on the Rights of the Child, and art 2 of the 1961 Convention provide that all children found abandoned in the territory are considered nationals. According to UNHCR guidelines, at a minimum nationality should be granted to all

²⁵ Art 10 of the Constitution of the Republic of The Gambia: “A person born outside The Gambia after the coming into force of this constitution shall be a citizen of The Gambia by descent, if at the time of his or her birth either of his or her parents is a citizen of The Gambia otherwise than by virtue of this section or any comparable provision of any earlier constitution.”

²⁶ See art 5 of the Sierra Leone Citizenship Act 9173 and Section 20.1 (Part III) of the Liberia Aliens and Nationality Law.

²⁷ Section 20.1 (Part III) of the Aliens and Nationality Law of Liberia: “The following shall be citizens of Liberia at birth (...) b) A person born outside Liberia whose father (i) was born a citizen of Liberia; (ii) was a citizen of Liberia at the time of the birth of such child, and iii) had resided in Liberia prior to the birth of such child.”

²⁸ Côte d’Ivoire, Liberia, Nigeria, Sierra Leone and Togo have no provision for foundlings.

young children found abandoned who are not yet able to communicate accurate information pertaining to their identity.²⁹

The absence of safeguards for foundlings is an important source of statelessness in West Africa. Its incidence has to be analyzed in light of the recent conflicts in the region. As a result of those events, a large number of children have been abandoned or become orphans, for whom no information is available about place of birth or parents.³⁰ In the absence of provision for the nationality of foundlings, they become stateless.

3.1.4 Equal Treatment between Men and Women Regarding Transmission and Acquisition of Nationality

Contemporary legal standards provide that mothers and fathers shall be treated on an equal basis in terms of transmitting their nationality to their children. They stem from the universal principle of equality and non-discrimination, art 2 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (non-discrimination clause), art 9(1) of the Convention on the Elimination of all Forms of Discrimination Against Women (women and men are on equal footing as regards transmission of nationality to their children), and art 1(3) of the 1961 Convention.

Most nationality laws in the region allow transmission of nationality to children by men and women on an equal footing. Since the 1990s, several laws in the region have been reformed to ensure this equality. The most recent reform on gender equality was enacted by Senegal in June 2013.³¹

Nonetheless, a few nationality laws continue to discriminate between men and women in their right to transmit nationality to their children. Some limit the granting of nationality only to those children born abroad to a citizen father.³² Some restrict the transmission of nationality by mothers, even in the case of birth in the territory.³³

²⁹ See Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04, 21 December 2012, § 58.

³⁰ UNICEF statistics indicate about 13 million orphans in West Africa, see *Africa's Orphaned Generations*, 2003, table 2, p51.

³¹ Loi No 2013-05 portant modifications de la Loi No 61-10 du 7 mars 1961 déterminant nationalité.

³² See nationality legislation in Liberia and Sierra Leone.

³³ See art 7 of the Benin Nationality Law: "Est dahoméen l'individu né au Dahomey d'un père qui y est lui-même né"; art 8: "Est Dahoméen, sauf la faculté de répudier cette qualité dans les six mois précédant sa majorité, l'individu né au Dahomey d'une mère qui y est elle-même née"; art 12: "Est Dahoméen: 1° l'enfant né d'un père dahoméen; 2° l'enfant né d'une mère dahoméenne lorsque le père est inconnu ou n'a pas de nationalité connue"; art 13: "Est Dahoméen, sauf la faculté s'il n'est pas né au Dahomey de répudier cette qualité dans les six mois précédant sa majorité, l'enfant né d'une mère

Universal standards of equity also require equal treatment of men and women in transmitting nationality through marriage. However, some laws provide that foreign women can acquire nationality upon marriage in a facilitated manner while such an option is not provided for men who married female nationals.³⁴ This, in itself, does not generate situations of statelessness, but it certainly does not help solve them. In addition it demonstrates inequality between the treatment of men and women as regards acquisition of nationality.

3.1.5 Safeguards Against Loss of Nationality

The international standard spelled out in art 7.1 (a) of the 1961 Convention provides that individuals can renounce their nationality only if they demonstrate that they possess or will surely acquire another nationality.

Not all nationality laws in West Africa condition renunciation of nationality upon the possession of, or an assurance of acquiring, another nationality.³⁵

Some laws request would-be citizens, as a condition of their applying for naturalization, to provide proof that they renounced their nationality of origin.³⁶ Such proof is not made contingent upon the granting of naturalization. Thus, in the event that the law of the State of origin of the concerned individuals allows them to renounce its nationality outright, while at the same time their application for naturalization is rejected, such individuals become stateless.

A few laws provide that in case of change of civil status, a foreign woman who naturalized through marriage would lose her nationality upon divorce³⁷. In such situation, if the woman cannot reacquire her nationality of origin, she becomes stateless.

dahoméenne et d'un père de nationalité étrangère" (Loi 65-17, 1965). Similar provisions are to be found in the citizenship laws of Guinea, Togo and Mali.

³⁴ See nationality legislation in Benin (art 18), Guinea (art 49), Mali (art 23), Niger (art 14), Nigeria (art 26(1)(a)), Sierra Leone (art 7), and Togo (art 5).

³⁵ Burkina Faso (art 186 of the nationality law), Liberia (art 22.1 of the nationality law), Nigeria (art 29 of the Constitution) and Togo (art 23 of the nationality law).

³⁶ See in particular art 11 of the Togo Nationality Law.

³⁷ See Law of Togo, art 23.3: "perd la nationalité Togolaise (..) la femme étrangère, séparée de son mari togolais."

Some nationality laws provide for the loss of nationality acquired by naturalization on account of residence abroad.³⁸ If such loss is permitted in international law, circumstances in which it can occur are limited.³⁹

However, a few laws that provide for such loss do not fully comply with international standards and notably with the time-lapse requirement laid down in the 1961 Convention, i.e. a minimum of seven years of residence abroad, during which time the individual has not contacted the authorities (e.g., to renew a passport).⁴⁰

3.1.6 Safeguards Against Deprivation of Nationality

The 1961 Convention provides that a Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless (art 8(1)). The 1961 Convention does however spell out a limited set of exceptions to this principle in art 8(3) where a 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.*

As deprivation of nationality resulting in statelessness infringes upon the fundamental human right to a nationality, any exception to the principle has to be strictly interpreted, and the exceptions laid down in the 1961 Convention should be considered exhaustive.

Some nationality laws, however, establish criteria for deprivation of nationality that are wider than those laid down in international law. For instance, they allow deprivation of nationality in case of ordinary crimes, while the Convention only provides for a situation where a person “has conducted himself in a manner seriously prejudicial to the vital interests

³⁸ Art 9.3 of the Gambia Nationality Law; art 21.51 of the Liberia National Law; art 18 of the Sierra Leone Nationality Law.

³⁹ Art 7(4) of the 1961 Convention: “A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.”

⁴⁰ Section 21.51 of Liberia Nationality Law provides for the withdrawal of nationality “if any person who has been naturalized shall go to the country of which he was a citizen or subject at the time he was naturalized and maintain residence there for 2 years, or go to any other foreign country and maintain residence there for five years.”

of the State.”⁴¹ Other laws have recourse to the vague notion of an “act incompatible with being a national”⁴² or similarly to a broad concept of disloyalty.⁴³ In practice, these provisions have rarely been used in any countries of the region. A low threshold for deprivation and the wide discretion granted by these laws could result in biased and unfair exclusion of individuals from the benefit of nationality and render them stateless.⁴⁴

Finally, the deprivation of nationality should never be automatic but should contain procedural guarantees, as per the requirement of the 1961 Convention and the due process of law. Such requirement should at a minimum include written notification, a right to a fair hearing and a right of appeal.

3.2 Gaps in Civil Registration and Documentation Systems and Risks of Statelessness

Ineffective civil registration and documentation systems create a marked risk of statelessness in every country of West Africa. Common problems include poor infrastructure, lack of awareness and education of parents on the need to register their children, and poor data-management systems.

The birth certificate is an essential, indeed primordial, tool to establish an individual’s identity. The paramount importance of this formality is established in regional law, as the right to birth registration is enshrined in the Charter on the Rights and Welfare of the Child.⁴⁵ The lack thereof is a severe obstacle to the establishment of one’s nationality.

⁴¹ Art 17(c) of the Sierra Leone Nationality Law provides for deprivation of the status of a naturalized citizen if he “has, within 7 years of his becoming a citizen of Sierra Leone, been sentenced in any country to imprisonment for a term of not less than 12 months for an offence involving fraud and dishonesty”. A similar provision is found in art 30(1) of the Nigerian Constitution. Art 43(2) of the Code of Nationality of Mali provides that a naturalized citizen may be deprived of his nationality within a period of ten years from the date of its original acquisition “s’il a été condamné pour acte qualifié de crime par la loi malienne et ayant entraîné une peine supérieure à 5 ans d’emprisonnement.” Art 29 of the Togo Nationality Law, art 189(4) of the Burkina Faso Nationality Law, and art 54(4) of the Cote d’Ivoire Nationality Law contain similar provisions. Art 13(d) of Gambia’s Nationality Law provides for withdrawal of nationality if the person “has within 7 years (...) been convicted (...) of an offence involving fraud, dishonesty or moral turpitude.”

⁴² Art 43(4) of the Mali Code of Nationality, art 21 of the Senegal Nationality Law, art 51(3) of the Benin Nationality Law.

⁴³ Art 17(a) of the Sierra Leone Nationality Law: “(a citizen) has shown himself by act or speech to be disloyal to the republic or its government”; see similar provision in art 30(2)(a) of the Nigeria Constitution.

⁴⁴ “The wide discretion granted by many of these laws has often been exploited by governments to prevent opposition politicians from running for office and critics from publishing their opinions.” (*Citizenship Law in Africa, A Comparative Study*, Bronwen Manby, Africa Governance Monitoring and Advocacy Project (AfriMAP), Open Society, p83)

⁴⁵ Art 6(2): “Every child shall be registered immediately after birth.”

Birth registration is theoretically mandatory in the region. Some States have provisions for lateness penalties regarding birth registration. Legal and administrative systems accommodate late birth registration; they generally include recourse to judicial procedures, and provision for additional evidentiary requirements (e.g., use of two or more witnesses, plus documentary proof). Despite these policies, birth registration rates remain low in all countries in West Africa. They are critically low in rural areas, where in general no specific or realistic arrangements have been made for nomadic populations or populations residing in remote areas.

Most of the civil registries are not computerized. Records are made manually and kept on paper. Conditions of storage are not always adequate and may lead to the destruction of records over time.⁴⁶ In some cases, civil status records have been damaged during the wars and crises that affected certain countries in the region.

Those conflicts have also, to say the very least, seriously impeded birth registrations.⁴⁷ The poor functioning of public services at times of conflict prevented children from being registered, as a result of which birth registration rates declined dramatically. Similarly, populations in exile did not systematically register births in the country of asylum.⁴⁸ For instance, children born to Ivorian refugees in exile in Liberia typically were not registered at birth. They face problems when they return to their country of nationality, as they lack documents to prove their identity and thereby acquire their parents' nationality by *jus sanguinis*. Côte d'Ivoire does have mechanisms in place for late birth registration, but they only apply to births that occurred on its territory.

As explained above, the nationality law of the majority of countries in West Africa is based on the *jus sanguinis* principle, with only a few adhering to the rule of *double jus soli*. A birth certificate, proving birth in the territory and filiation is essential to prove one's identity and nationality. Often a birth certificate will not be sufficient *per se* to establish nationality. In *jus sanguinis* countries, the administration will require the nationality certificate or other document proving the nationality of the parent with whom filiation is established. If the parents were never registered at birth, and thus have never officially held a nationality document, or when the records of such documents have been

⁴⁶ Records may be destroyed by termites, mice, by humidity, etc.

⁴⁷ In Côte d'Ivoire for instance, the birth registration rate dropped by 20 points during the period of conflict and is currently around 50%. In Liberia, the registration rate was at the end of 2013 about 4%.

⁴⁸ According to UNHCR baseline data from Global Strategic Priorities, in 103 camps, only 46% of newborns are issued a birth certificate, while in 94 urban areas, only 49% of newborns are issued a birth certificate.

destroyed, the concerned individual will face considerable problems in attempting to establish his or her nationality.

In conclusion, as current civil registry systems are not functioning properly, many individuals in West Africa are prevented from proving their nationality because they lack the civil status documentation necessary to establish their descent and/or their place of birth. As such, they face an acute risk of statelessness, and in their day-to-day life, they often face the same predicament as *de jure* stateless persons.

3.3 Migration and Risk of Statelessness

West Africa has always been a region prone to intense migration from, within and into the region. Based on data furnished by the International Organization for Migration, about nine to ten million migrants reside in the West Africa region.⁴⁹ This figure only reflects the number of legal migrants. The total number of people on the move may be very much higher than the ten million or so with official status.

Migration poses a risk of statelessness when migrants rupture their link with their countries of origin. It can be a factual and practical rupture, in which migrants lose all records and evidence of their nationality, their legal link with the country of origin. Or it can be a rupture by virtue of the law of the country of origin, when it provides for withdrawal of nationality on account of residence abroad.

Many migrants have settled as refugees or migrant workers for long years outside their country of origin. In the process of migration or forced displacement, their documents may be lost, forfeited or destroyed. Not having evidence of their link with the country places them at risk of statelessness. This risk is exacerbated by the destruction of civil status records in the country of origin, and by the length of their displacement. This is illustrated by the situation of refugees from Sierra Leone and Liberia. After the invocation of a cessation clause, they have turned to their respective countries for national protection. In this process, they face difficulties in establishing their nationality, for simple want of documentary proof. The situation is often complex as many departed from their country of origin during childhood, they no longer speak colloquially (or in some cases, even at all) the language of the country of their youth, and they equally have no recollection of their places of origin.

⁴⁹ See <www.oim.int>.

A few nationality laws in the region, namely, those of The Gambia, Liberia, Nigeria, and Sierra Leone, provide for the withdrawal of nationality on account of residence abroad, and under specific circumstances. In some cases, procedures are in place for the retention of nationality following emigration—for instance through registration at the embassy of the country of nationality located in the new country of residence. However, these legal requirements are not always known to migrants and there might well be situations in which there is no consular representation available in the country of immigration.

Conflict of laws is an important source of statelessness in West Africa. With increased migration causing a rise of intermarriages between citizens of two states and births in countries other than that of the origin of one or even either parent, individuals are confronted with complex legal and procedural requirements to establish their nationality. More critically, some individuals, by operation of the conflict of laws, fall through the gaps between citizenship laws, and become stateless. For instance, children whose parents are nationals of a *jus soli* country will become stateless if born in a *jus sanguinis* country. This could apply for instance to the situation of a child born abroad in most countries of the region to a Liberian mother and to an unknown father or a father who has no nationality (this country is used as an example as it experienced large emigration in the 1990s and 2000s, followed by major returns). The legislation of Liberia does not provide for a mother's transmission of nationality to her child born abroad, while the overwhelming majority of States in the region do not allow acquisition of nationality by *jus soli*.

3.4. Lack of Nationality as a Result of State Succession

State succession and border disputes throughout West Africa, and indeed throughout the African continent, are mostly a legacy of decolonization. Attribution of nationality and administration of a territory are intrinsically coupled with State sovereignty. Thus a change of administration over a territory or a dispute over a territory is likely to affect the nationality status of the resident population.

State succession occurs when an existing State is replaced by two or more States, when part of a State separates to form a new State, when territory is transferred from one State to another, or when two or more States unite to form a new State. State succession can create stateless populations when individuals fail or are unable to secure citizenship in the successor States. Because State succession frequently arises due to political or other differences between populations within the original State, the resulting statelessness is often also related to discrimination.

State succession is a recurring phenomenon relevant to the geopolitics of the region. It started with the decolonization process and the creation of new independent States. Most citizens of the predecessor State (a territory under colonial administration) acquired the citizenship of a successor State, typically the State that acquired sovereignty of the territory in which they lived. Some States have inserted transitional measures so as to avoid statelessness.⁵⁰ However, this was not a generalized practice in the region; moreover, certain newly independent States sometimes established nationality criteria that excluded certain individuals or groups, for example on account of not having been born in the territory or not being indigenous.⁵¹

Instances of State succession have not been limited to the immediate aftermath of decolonization. There are more recent examples of State succession that stem from disputes over the delineation of borders, or sovereignty over part of a territory.⁵² Several of those disputes have been brought to the International Court of Justice (ICJ).⁵³ In its decisions, the Court never addresses the nationality attribution of the concerned populations. It does, however, request States to preserve their well-being and interest.⁵⁴ Currently, UNHCR lacks the data to assess the exercise of rights to nationality by the concerned populations, or to conclude whether

⁵⁰ Loi n° 61-70 du 7 mars 1961 déterminant la nationalité sénégalaise, art 28: "Peut opter pour la nationalité sénégalaise: 1°) Toute personne originaire de l'un des États issus des anciens groupes de territoires d'Afrique occidentale française et d'Afrique équatoriale française, du Togo, du Cameroun et de Madagascar qui, à la date d'entrée en vigueur de la présente loi, a sa résidence habituelle au Sénégal."

⁵¹ Code de la nationalité Ivoirienne, Loi n° 61-415 du 14 décembre 1961, art 105: "(...) Les personnes ayant eu leur résidence habituelle en Côte d'Ivoire antérieurement au 7 août 1960 peuvent être naturalisées sans condition de stage si elles formulent leur demande dans le délai d'un an à compter de la mise en vigueur du présent code"; art 106: "Les personnes ayant établi leur domicile en Côte d'Ivoire antérieurement au 7 août 1960 qui n'acquièrent pas la nationalité ivoirienne, soit de plein droit, soit volontairement conservent cependant à titre personnel tous les droits acquis dont elles bénéficient avant cette date à l'exception des droits d'électorat et d'éligibilité aux assemblées politiques."

⁵² The principle of respect for existing borders at the time of independence was adopted by the Organization of African Unity in its Resolution AHG/Res. 16 (I) in 1964 at the first session of the Conference of African Heads of State and Government held in Cairo, Egypt (hereinafter, the "Cairo Resolution"), and later enshrined as Article 4(b) in the Constitutive Act of the African Union.

⁵³ Case concerning the frontier dispute between Burkina Faso and Mali, order of 10 January 1986; Case concerning the land and maritime boundary between Cameroon and Nigeria, judgment of 10 October 2002; Case concerning the frontier dispute (Benin/Niger), Judgment of 12 July 2005; Case concerning the border dispute between Burkina Faso and Niger, judgment of 16 April 2013.

⁵⁴ Case concerning the frontier dispute (Benin/Niger), Judgment of 12 July 2005: "Les Parties s'engagent à préserver la paix, la sécurité et la quiétude au sein des populations des deux Etats." Case concerning the border dispute between Burkina Faso and Niger, judgment of 16 April 2013, para 112: "The Parties undertake to maintain peace, security and tranquillity among the populations of the two States in the frontier region (...) The Court expresses its wish that each Party, in exercising its authority over the portion of the territory under its sovereignty, should have due regard to the needs of the populations concerned, in particular those of the nomadic or semi-nomadic populations, and to the necessity to overcome difficulties that may arise for them because of the frontier."

contemporary instances of State succession in the region have generated statelessness.

There is no legal instrument at the continental or international level that provides safeguards in case of State succession, other than art 10 of the 1961 Convention.⁵⁵ However, in the event of the separation of part of a territory, which is the type of contemporary succession illustrated in the preceding paragraph, guidance may be found in the Draft Articles on Succession enacted by the International Law Commission.⁵⁶ The Draft Articles provide that “persons concerned having their habitual residence in the territory affected by the successor States are presumed to acquire the nationality of the successor State on the date of such succession.”⁵⁷ The successor State shall enact nationality legislation to provide measures to ensure that the concerned population exercise its choice over nationality, so long as this choice does not render them stateless; a typical measure that States may provide in their legislation in this regard is the right of option.⁵⁸

4. Consequences of Statelessness

The population of stateless persons extends across the region, but the large majority is located in Côte d’Ivoire.⁵⁹ Other groups include former refugees and stranded migrants who were denied confirmation of nationality by their country of origin, and further groups who were stripped of their nationality.

The population at risk of statelessness often faces the same predicament as do legally characterized stateless people. Risk factors of statelessness in the region are manifold and affect all countries. Populations without birth certificates, abandoned children and undocumented stranded migrants constitute some of the major groups of people at heightened risk of statelessness.

⁵⁵ Art 10(1): “Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.” Art 10(2): “In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.”

⁵⁶ Draft Articles on Nationality of Natural Persons in relation to the Succession of States, 1999, adopted by the ILC in its 55th session and submitted to the General Assembly.

⁵⁷ Art 5 of the Draft Articles.

⁵⁸ Art 6 of the Draft Articles.

⁵⁹ Note that Côte d’Ivoire is the only country of West Africa that has provided statistics on the stateless population in its territory. In the absence of studies and mapping in other countries, UNHCR is not yet in a position to provide comprehensive statistics on stateless populations in West Africa.

4.1 Statelessness, a Relevant Contemporary Issue

The contemporary changes in West Africa have a bearing on the “exposure” of stateless persons or persons at risk thereof. Those changes are characterized by an increasing, if not constant, interaction between individuals and the administration. Access to some services within a community where one is known as a member does not systematically require proof of identity. However, as States modernize and their administration grows more regular, extensive and formal, individuals are more frequently required to identify themselves in due form in order to participate in social life and to benefit from services; in this context, stateless people become increasingly conscious of their restricted status.

In the same vein, crossing borders may not always require formal documentation in West Africa, particularly for populations residing in border areas. With the rise in threats of terrorism, however, States find it more and more necessary to strengthen their borders and intensify their control over foreigners, while simultaneously working to identify and document the population in their territory. The result is that individuals have to be increasingly prepared to produce on demand identity documents. Indeed, it is usually during the application process for documentation that a person realizes that his or her link with the country cannot be evidenced, or is not legally grounded, and therefore cannot be translated into nationality.

4.2 Statelessness and Human Rights

The decision of the African Commission in *Modize vs. Botswana* illustrates the impact of statelessness on human lives.⁶⁰ The Commission found that the denial of nationality that generated the stateless situation of the applicant, resulted in a violation of several fundamental rights including the right to protection by the law, respect of dignity, freedom of movement, right to leave and return to his own country, right to participate in his government, right to access public services, right to property and right to a family life.

The rights abuses listed by the Commission are observed amongst the stateless population residing in West Africa. Stateless persons who reside in post-conflict areas face difficulties moving freely in their own countries, because in the absence of documentation they cannot pass checkpoints. Inability to move freely tremendously affects the enjoyment

⁶⁰ *John K. Modise v. Botswana*, African Commission on Human and Peoples' Rights, Comm. No. 97/93 (2000).

of other rights, including the right to education, health, work, etc. As already explained, persons at risk of statelessness frequently face in practice the same obstacles as do stateless persons. In many countries of the region, a child who does not possess a birth certificate will not be able to enter school, while a child without a nationality certificate (or equivalent proof of nationality) will not be able to take school examinations nor to obtain scholarships. In addition, some countries in the region provide free health care services to children under a given age. Those who do not hold any birth certificate can be denied this service, as they cannot prove their age.⁶¹

Stateless migrants are particularly vulnerable to abuses of every form. The organization of the entire legal and economic life of the individual residing in a foreign country, provisional under the best of circumstances, depends upon his or her possession of a nationality. Stateless people, who reside in a country other than that of their notional or long-lost nationality, constantly face risk of deportation and arrest.

In the West African migratory context, a by no means negligible number of migrants have been identified as stateless or with undetermined nationality. Only as those individuals fell within UNHCR and IOM's purview were the issues surrounding their nationality status detected.⁶² None of the functionally stateless persons identified hold a legally recognized status of stateless person. This is explained by the fact that none of the national migration laws provide for a migratory status for stateless persons. Having no definite legal status and thus lacking protection, stateless persons become legally invisible and encounter very great and often insurmountable difficulties, such as indefinite detention or serial expulsions.

4.3 Statelessness and Security Risks

Consequences of statelessness are, plainly, disastrous for the enjoyment of individuals' rights and for individuals' own development. It is important to recognize, however, that the consequences are equally serious for a country and a region. In the absence of clear procedures to prevent statelessness, disputes can occur between States over whether

⁶¹ "N.K, a fisherman cares for his six children (...) Last year, he took his 4-year-old son, also Nicholas, to the state hospital to be treated for malaria, a disease that can be fatal. The state hospital is free for children under five, he says, but his family, like many others, was turned away because he couldn't prove Nicholas's age. He had no birth certificate (...)" <<http://www.voanews.com/content/unicef-say-at-least-60-percent-of-nigerian-children-undocumented/1831507.html>>.

⁶² They are refugees or former refugees under UNHCR mandate, or stranded migrants under IOM mandate. There might be more migrants, who because they do not fall within the mandate of UNHCR and IOM, have not yet been identified as stateless.

specific individuals or populations are nationals. Similarly, tensions may arise where stateless populations are not afforded minimum standards of treatment, which, in turn, may generate instability and displacement. Some of the contemporary conflicts in Africa stem directly from denial of rights of nationality. In Côte d'Ivoire, for example, the 2010-2011 post-electoral crises were partly caused by lack of citizenship rights.

In addition, when States fail to take adequate measures to integrate stateless persons or to remedy their status, this renders stateless people particularly vulnerable to exploitation by criminal groups and organizations, and heightens the risk of trafficking, the danger of radicalization and conditions conducive to a whole range of illegal activities.

5. Solutions

“The improvement of the status of the stateless person is only a temporary solution designed to attenuate the evils resulting from statelessness. The elimination of statelessness, on the contrary, would have the advantage of abolishing the evil itself, and is therefore the final goal.”⁶³

As statelessness is a large phenomenon with serious consequences for the enjoyment of human rights, State development and stability, it is urgently necessary, for the sake of fundamental principles of humanity and the general interest, to find solutions both to protect stateless persons and to eradicate the sources of statelessness.

Consistent with Executive Committee Conclusion No. 106,⁶⁴ UNHCR promotes a multi-partnership approach based on a four-pronged strategy, namely identification, prevention, reduction and protection.

To date, States in the region have not adopted concrete strategies to identify people living in their territory who have never acquired nationality. Nonetheless a few multifunctional teams have been established, such as in Benin and Sierra Leone, where traditional and non-traditional actors have started developing comprehensive long term strategies.⁶⁵

⁶³ *A Study on Statelessness*, United Nations, New York, 1949, E/1112;E/1112/Add.1.

⁶⁴ Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons No. 106 (LVII) – 2006, 6 October 2006.

⁶⁵ In Benin, the statelessness working group comprises UNHCR, UNICEF, civil society, the Ministry of Interior, the Refugee Committee, and journalists.

The starting point of a strategy includes the identification of the sources of statelessness, as well as groups of stateless populations. Without quantified and qualitative information on the factors of statelessness and the demographics of stateless persons in a country, planning for the protection of stateless persons and the reduction of statelessness becomes even more challenging.

To date none of the States in the region have assessed the scale of the problems and profiled the populations affected. Nonetheless, Benin has pledged to conduct a sociological study,⁶⁶ while Côte d'Ivoire is in the process of collecting information on people without a nationality through its nation-wide census. National population censuses indeed offer a unique opportunity for States to capture information on statelessness. However, with the exception of Côte d'Ivoire, none of the States in the region have designed their national census so as to collect information on stateless persons. States should also seize the opportunity of population surveys, be they conducted by the State itself or its partners, to promote the inclusion of specific questions in the survey that permit the identification of stateless persons and the collection of socio-economic data.

The most urgent priority of a strategy is to eradicate the causes of statelessness. Where these relate to constitutional provisions or nationality legislation (as is the case in several countries in West Africa), prevention of statelessness includes a review of the legal framework and, eventually, its reform. The 1961 Convention is an essential tool to ensure that the legal framework efficiently addresses statelessness. This instrument provides the legal foundations for addressing the causes of statelessness, which is not addressed in any other international or regional treaty to date. The 1961 Convention is about preventing statelessness from occurring and thereby reducing it over time. The Convention sets forth clear safeguards against statelessness, which States should translate into their own nationality legislation.

Positive examples are to be found in recent legislative reforms. In June 2013 in Senegal the legislation was amended so as to add safeguards against statelessness; notably, the new law allows women to transmit their nationality to their children, while criteria for deprivation of nationality became stricter.⁶⁷

⁶⁶ Pledge formulated during the 2011 inter-ministerial meeting in Geneva, held during the commemoration of the 50th Anniversary of the *1961 Convention on the Reduction of Statelessness*.

⁶⁷ See Loi No 2013-05 portant modifications de la Loi No 61-10 du 7 mars 1961 déterminant nationalité.

Statelessness in West Africa often results from administrative obstacles to the acquisition or confirmation of nationality and the issuance of relevant documentation proving people's legal status. Civil registration, it cannot be said too often, is a key measure to prevent and reduce situations leading to statelessness or the risk of statelessness in the region. It is thus of capital importance that a comprehensive strategy includes measures to ensure that every individual is given unhindered access to a birth certificate. In West Africa, much remains to be done in the way of concrete action on universal birth registration. In addition, States should ensure that they establish accessible procedures for the issuance of all other needed forms of documentation, for children and adults alike.

Stateless persons are generally denied enjoyment of a range of human rights and prevented from participating fully in society. The 1954 Convention addresses this marginalization by granting stateless persons located in its Contracting States a core set of rights, a baseline of human dignity deriving from conventional international norms rather than from municipal law, while also imposing upon such populations certain correlative obligations to the host State. In finding permanent solutions for stateless persons, it is however important to distinguish those who are stateless in their own countries from other groups of stateless persons.

When *in situ*⁶⁸ stateless individuals are identified in their territory of origin, the concerned States bear responsibility to find adequate solutions for them. Such persons' profound connection with the States in question, often accompanied by an absence of links with other countries, imposes imperatives, both political and moral, on governments to facilitate their full integration into society. States should aim to reduce the number of existing stateless persons by giving them a nationality or restoring it to them, and integrating them into its national life. A positive example of this can be found in a recent legislative reform in Côte d'Ivoire. In September 2013, the Parliament adopted a law that enables a large group of the resident population to acquire nationality through facilitated and expedited procedures.⁶⁹ Amongst the beneficiaries, many are stateless as a result of the combined effect of State succession and gaps in the nationality legislation.

Other stateless persons, who are not in their country of origin, often cannot exercise their right to return to it, however well grounded that may

⁶⁸ Certain stateless persons can be considered to be in their "own country" in the sense envisaged by art 12(4) of the ICCPR. Such persons include individuals who are long-term, habitual residents of a State which is often their country of birth.

⁶⁹ Loi No 2013-653 du 13 septembre 2013 portant dispositions particulières en matière d'acquisition de la nationalité par déclaration.

theoretically be in international and/or municipal law, due to a simple lack of effective, demonstrable nationality. In the absence of any form of recognized or legal status, they are perpetually under threat of exploitation, detention and expulsion. The proper solution for this group of stateless persons is to be found in the 1954 Convention. This instrument provides for an internationally recognized status of stateless person and establishes an obligation to document such persons and grant them a core set of rights. Its provisions, along with applicable standards of international human rights law, establish the minimum rights and the obligations of stateless persons in Contracting States of the 1954 Convention. In West Africa, stateless individuals are particularly marginalized as mechanisms to identify and protect them are so far lacking, including in countries that are signatories to the 1954 Convention. Domestic legal norms to set up national procedures for the determination of the status of stateless persons have yet to be discussed.

Finally, a comprehensive strategy to address statelessness should include elements of public information, sensitization and legal aid. Despite it being widespread, statelessness is underreported and poorly understood by State actors, institutions of civil society, and the general public alike. In an attempt to remedy the problem of the invisibility of stateless populations, UNHCR, in collaboration with various interested institutions (governmental, quasi-governmental and non-governmental) has engaged in a number of activities to raise awareness. At a governmental level, a positive development is illustrated by Côte d'Ivoire where the authorities have developed a large spectrum of public information activities in order to reach every segment of the population, including those who live in remote areas and those who are illiterate. Its communication strategy is based on a full range of outlets, including newspapers, radio, TV, leaflets, and meetings with village elders.

6. Conclusion

UNHCR reiterates its sustained engagement and its availability to provide ECOWAS States regular briefings on statelessness issues, assist them in designing strategies to reduce statelessness and provide technical advice when necessary.

UNHCR
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Comparative matrix on the key instruments relating to human rights and stateless persons in the Economic Community of West African States (ECOWAS)

Country	African Charter on Human and Peoples' Rights 1981	Convention relating to the Status of Stateless Persons (1954)	Convention on the Reduction of Statelessness (1961)
 BENIN	20 January 1986 (ratified)	8 December 2011 (accession)	8 December 2011 (accession)
 BURKINA FASO	6 July 1984 (ratified)	1 May 2012 (accession)	-
 CAPE VERDE	2 June 1987 (ratified)	-	-
 COTE D'IVOIRE	6 January 1992 (ratified)	3 October 2013 (accession)	3 October 2013 (accession)
 GAMBIA	8 June 1983 (ratified)	1 July 2014 (accession)	1 July 2014 (accession)
 GHANA	24 January 1989 (ratified)	-	-
 GUINEA BISSAU	4 December 1985 (ratified)	-	-
 GUINEA	16 February 1982 (ratified)	21 March 1962 (accession)	17 July 2014 (accession)
 LIBERIA	4 August 1982 (ratified)	11 September 1964 (accession)	22 September 2004 (accession)
 MALI	21 December 1981 (ratified)	-	-
 NIGER	15 July 1986 (ratified)	7 November 2014 (accession)	17 June 1985 (accession)
 NIGERIA	22 June 1983 (ratified)	20 September 2011 (accession)	20 September 2011 (accession)
 SENEGAL	15 June 1982 (ratified)	21 September 2005 (accession)	21 September 2005 (accession)
 SIERRA LEONE	21 September 1983 (ratified)	-	-
 TOGO	5 November (ratified) 1982	-	-

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statelessnessinfo@unhcr.org

