

**REGIONAL CIVIL SOCIETY ENGAGEMENT ON THE ERADICATION OF STATELESSNESS IN SOUTHERN AFRICA**

**29 September 2021 – 30 September 2021**

**(virtual)**

**I. INTRODUCTION**

The Southern African Nationality Network (SANN) and the United Nations High Commissioner for Refugees (UNHCR) Regional Bureau for Southern Africa co-organised a two-day regional civil society engagement on the eradication of statelessness in Southern Africa. The objective of the engagement was:

- to share information on the situation and development at country and regional level and share best practices on addressing statelessness
- to complement actions and initiatives at both country and regional level between NGOs and UNHCR to implement the #IBelong Campaign
- to take stock of pledge implementation, galvanize additional commitments and support States in the implementation of their pledges; and
- to draft a concrete regional action plan for NGOs in the Region.

**II. PARTICIPATION**

Participants from various national, regional and international civil society organisations across Southern Africa joined the meeting. Including representatives from almost all Southern African countries except Comoros, Seychelles, eSwatini and Angola.

**III. OPENING REMARKS:**

The opening remarks were delivered by **Ms. Angele Dikongue-Atangana, Deputy Director for the UNHCR Regional Bureau for Southern Africa.**

The United Nations High Commissioner for Refugees (UNHCR) has been mandated since 1974 to address statelessness.

To maximize efforts, on 4 November 2014, UNHCR launched a 10 year communications and legal advocacy campaign, the [#IBelong campaign](#), encompassing [a global action plan](#) with ten set targets, aimed at bringing an end to statelessness across the world, by 2024.

To take stock of global efforts (to end statelessness) and muster the support of all stakeholders' the UNHCR has organized a [High-Level Engagement on Refugees and Stateless Persons](#) in 2011, a [High Level Segment on Statelessness](#) in October 2019, followed by a Global Refugee Forum in December of the same year. At these fora, states, and civil society from across the globe, including from Southern Africa, made various commitments, pledging to take action to end statelessness in their respective states. States in the region demonstrated political will to end statelessness through the various pledges.

In her opening remarks, Angele Dikongue-Atangana reflected on UNHCR's statelessness mandate; achievements in Southern Africa; obstacles such as gaps in several nationality laws in the region which lead to statelessness; and the need for states in the region to accede to and domesticate [the 1954 Convention on the Status of Stateless persons](#) and [the 1961 Convention on the Reduction of Statelessness](#), in order to effectively address statelessness. She further highlighted the crucial role of civil society in the region and specifically that of the Southern African Nationality Network (SANN), towards the eradication of statelessness in the region.

With three more years to the campaign's 10 year mark, Ms Dikongue-Atangana commended NGO's in the region on all efforts to address statelessness in their respective countries and through SANN ,encouraging those in attendance and not yet members, to join the network. She provided recommendations on how civil society can support UNHCR and their respective governments in the following 6 areas: (1) advocacy with government and parliament, particularly for the reform of nationality laws and accession to the conventions; (2) supporting States in reviewing and redrafting relevant regulations; (3) advocacy with governments on strengthening birth registration, and , and sensitization of the population on the importance of birth registration; (4) information campaign on statelessness to educate the public and influence governments; (5) creation of national networks on the provision of legal aid to stateless persons and persons at risk of statelessness; and (6) research and data collection on statelessness.

#### **IV. KEYNOTE ADDRESSES**

The keynote address on day one was delivered by **Sihle Nxumalo**, a formerly stateless person. Sihle, shared on his personal story of growing up in abject poverty which forced his mother, a South African national to leave him at an orphanage. He was born in South Africa but was not registered at birth. Without a birth certificate, he was unable to further his studies and was forced to drop out of school. Without an ID or formal education, he was unable to progress in life and

has been limited in terms of opportunities to make an income. For many years, all efforts to obtain birth registration from the Department of Home Affairs were unsuccessful due to administrative barriers. He eventually succeeded in the first quarter of 2021, following interventions from Lawyers for Human Rights, UNHCR and the Morning Live Show. When his birth certificate was finally issued, he learnt for the first time, that one of his several attempts to apply for a birth certificate had been captured, and ID number issued but his application was never finalized and thus the birth certificate not issued. Equipped with a birth certificate and ID, he will now further his studies, he plans to study law, and help others in a similar situation.

Sihle had the following recommendations for the Department of Home Affairs: (1) establish measures to ensure complete and equal access to birth registration;(2) address administrative gaps that pose as barriers to birth registration.

The keynote address on day two was delivered by **H.E Archbishop Buti Tlhagale (O.M.I), Liaison Bishop Southern African Bishops Confernce, the Southern African Catholic Bishop's Conference (SACBC) liaison Bishop for Migrants and Refugees, #IBelong Campaign High Profile Supporter for South Africa**. In his remarks, the Archbishop Buti Tlhagale applauded Southern Africa on positive steps to address statelessness in the region and made the following observations:

- birth registration in the region is very low. Reference was made to South Africa which has the highest rate of birth registration in Southern Africa. However, though it is common practice and a legal obligation, discriminatory practices prevent access to birth registration by undocumented nationals and non-nationals. This in turn impacts access to basic rights including access to education.
- despite pledges made by the South African Government in 2011 and 2019, South Africa is yet to accede to both the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

With three more years to mark the end of #IBelong Campaign, there is a need to critically review achievements and aim to do better. In conclusion Archbishop Tlhagale made the following recommendations, calling on:

- the government of South Africa to ensure access to universal birth registration and access to education; and for states to take note of the SDG's which make provision for legal identity for all, including birth registration.

- SANN to develop communication to religious sector, to seek their support in campaign efforts to end statelessness; and
- strengthened collaboration and sharing of information in communities in which SANN members work in.

## V. PRESENTATIONS BY THE UNHCR (REGIONAL BUREAU FOR SOUTHERN AFRICA)

### **Presentation on the implementation of the #IBelong Campaign, the GRF platform and pledges: Emmanuelle Mitte, Senior Protection Officer, UNHCR**

On the implementation level of the #IBelong Campaign, the following progress was noted:

- 4 States are parties to both statelessness conventions, 4 more are parties to the 1954 convention only. Almost all states in the region, which are not yet parties to both conventions, have pledged to accede
- there are gaps in the nationality laws of all countries in the region, albeit to various degrees. 8 countries have pledged to reform their legislations, and 3 have initiated the reform process
- birth registration remains a challenge in most countries. While several countries have pledged to strengthen their system, on the Democratic Republic of Congo has initiated a comprehensive project to ensure universal birth registration.
- data collection also remains a challenge. While several countries have initiated qualitative data collection exercise, there is no comprehensive project to collect quantitative data. Nonetheless, Zimbabwe has included questions in its upcoming population census with the aim of capturing data on the number of stateless persons on its territory.

Civil society was invited to consider the following recommendations:

- to advocate towards the development and implementation of a National Action Plan by their respective States
- to engage into robust communication strategy
- to enhance access to legal assistance to persons affected by statelessness.
- SANN network to expand and develop concrete action plan
- CSOs at country level to form national networks on nationality and statelessness

On the GRF Platform and Pledges delivered by States and Non States actors in 2019, the following was noted:

### **State Pledges:**

In 2011 at the High-Level Engagement on Statelessness (HLE), only 4 countries in Southern Africa submitted pledges on statelessness. In October 2019 at the High-Level Segment (HLS) on statelessness and in December at the Global Refugee Forum (GRF), 14 out of 16 SADC countries (all States but Mauritius and Seychelles) submitted pledges related to Statelessness. The highest number of state pledges were in respect of (1) Accession to Statelessness Conventions; (2) Data Collection; (3) Strengthen birth registration. In addition, States committed to engage in law reform; awareness raising and sensitization; establish statelessness determination procedures; facilitate access to naturalization; and to develop a National Action Plan to end statelessness.

### **CSO pledges:**

There are 15 pledges related to statelessness from NGOs in the region such as (1) Legal advocates/civil society in the region (1 pledge); (2) Pro Bono.Org (SA) (4 pledges); (3) Scalabrini Centre (Cape Town) (2 pledges); (4) Southern African Nationality Network (6 pledges).

As a way forward, the following recommendations were made:

- CSOs to advocate with States for the implementation of their pledges, and offer their expertise to assist in implementation
- CSOs to submit additional pledges, considering that the GRF platform remains open

## **VI. PRESENTATIONS BY THE SOUTHERN AFRICAN NATIONALITY NETWORK**

**Presentation on the SANN network and the SANN GRF pledge (2019): Thandeka Chauke, Statelessness Project Head, LHR and Tshegofatso Mothapo, Statelessness Project Researcher, LHR**

SANN is a collective of civil society organisations, individuals and networks working towards universal access to the right to a nationality and the eradication of statelessness in Southern Africa. It was established in July 2016 with the support of the UNHCR and in response to the call of the African Commission for Human and Peoples' Rights (ACHPR) for civil society to support its work on the right to a nationality in Africa. Initially, a continent wide campaign was launched ([Right2Nationality Campaign](#)) culminating in regional networks in West, East and Southern Africa.

Secretariat and Steering Committee:

Lawyers for Human Rights (LHR) acts as Secretariat of the network and is responsible for the administration and co-ordination of the network with the support of the Steering Committee. Current Steering Committee members include, Cathy Rutivi (Terre des Hommes), Amanda Shivamba (Southern Africa Litigation Centre) and Liesl Muller (independent consultant).

#### Membership:

At the inception of SANN in 2016, the network consisted of 20 civil society organisations and 4 regional organisations from 11 SADC countries. In the last 5 years, it has since expanded its reach to almost all countries in the region (save for Comoros, the Democratic Republic of Congo and Seychelles).

The network is also supported by “Friends of SANN”. These include certain regional and international agencies , institutions or initiatives that provide technical, advisory or advocacy support to the network such as UNHCR, UNICEF, the Institute on Statelessness and Inclusion (ISI), the Global Campaign for Equal Nationality Rights and the Citizenship Rights in Africa Initiative (CRAI).

#### SANN GRF pledge implementation:

At the 2019 GRF, SANN pledged to contribute to the fight to end statelessness through seven actions. An update on each of these actions is provided below.

- 1. To conduct research on stateless persons to improve the availability of data on statelessness in Southern Africa and to establish an online SADC database*

Update: in 2020, LHR developed the “Nationality Rights Index in Africa”. This is a comparative tool that measures access to nationality rights in Africa by assessing law, policy and practice on the protection of stateless people and the prevention of statelessness in the continent, against international norms and good practice. The tool has been piloted in South Africa, eSwatini and Botswana and the intention is to conduct testing in additional SADC countries before an official launch and expansion to the rest of the continent.

- 2. To promote and support legal assistance to stateless persons in Southern Africa by training, advising and assisting legal partners in the region*

Update: SANN organizes an annual meeting of its members to take stock of the network’s progress, share information on legal developments on statelessness at a country or regional level, exchange best practices and to identify opportunities for collaboration. SANN further collaborates with

members to draft and submit thematic reports on the right to a nationality to treaty bodies such as the UN Committee on the Rights of the Child, the UN Human Rights Council and the African Committee of Experts on the Rights and Welfare of the Child. Reports covering Lesotho, Botswana, Mozambique and South Africa have been submitted between 2016 and 2020.

3. *To advocate for prompt adoption and implementation of Draft Protocol on Eradication on Statelessness in Africa*

Update: in commemoration of the 40<sup>th</sup> anniversary of the African Charter, the theme for the 2021 SANN annual meeting is “The Right to a Nationality in Africa”. The aim of the meeting is to galvanize support for the adoption and implementation of the Draft Protocol on Eradication on Statelessness in Africa and to advocate for the fulfilment of commitments to adopt the protocol that have already been made at e.g. the [Migration Dialogue for Southern Africa \(MIDSA\)](#), the [SADC Parliamentary Forum](#) and the [Pan African Parliament](#).

4. *To encourage its members in SADC to mainstream statelessness into their organisations work*

Update: SANN membership includes organisations that do not necessarily exclusively work on statelessness, but on human rights issues that intersect with statelessness e.g. organisations working on child protection and working with unaccompanied and separated migrant children, organisations working on refugee and migrant rights, organisations working with migrant workers (farm or mine workers), organisations working on children’s rights and birth registration issues etc. SANN provides a platform for such organisations to access more information and resources on statelessness to enable them to mainstream statelessness into their organisations work.

5. *To advocate for and support SADC in creating a regional action plan to end statelessness in SADC*

Update: SANN has participated in and supported various regional initiatives towards the adoption of a Ministerial Declaration and regional action plan to end statelessness in SADC. In August 2016, the [Migration Dialogue for Southern Africa \(MIDSA\)](#), which convenes member states to discuss migration governance adopted conclusions and recommendations on statelessness that include the development and adoption of a SADC Ministerial Declaration and regional action plan to end statelessness. In November 2016, SANN conducted a briefing at the [SADC Parliamentary Forum](#). A

resolution for the prevention of statelessness and the protection of statelessness people in the region was adopted, calling for parliamentarians and governments in the region to “work towards the development and adoption of a SADC Ministerial Declaration and Action Plan on statelessness”. In May 2019, SANN conducted a briefing at the [Pan African Parliament](#). A resolution on the eradication of statelessness in Africa was adopted, urging Member States to commit to the fight against statelessness. In 2018, UNHCR and the Department of International Relations and Cooperation (DIRCO), South Africa, co-hosted a meeting of SADC experts to discuss statelessness in the region and the adoption of a SADC Ministerial Declaration and regional action plan to address it. Some SANN members, including LHR, participated in this meeting and supported the proposed draft Ministerial Declaration and regional action plan to end statelessness in SADC that was proposed at the meeting.

*6. To provide training on statelessness and access to nationality to government and civil society stakeholders*

Update: SANN has conducted parliamentary advocacy on statelessness at a country (South Africa) and regional level (Pan African Parliament and SADC Parliamentary Forum). SANN has also participated in workshops on statelessness with parliamentarians and government officials to explore ways that parliamentarians and other branches of government can prevent statelessness through legislative reform and establishment of statelessness determination procedures. Such workshops have been conducted in eSwatini, Mozambique, Malawi, Namibia, Zambia and South Africa.

*7. To conduct fundraising campaigns to support activities that aim to protect stateless persons and to end statelessness*

Update: SANN distributes information on funding opportunities to its members. Most recently, SANN invited the Institute on Statelessness and Inclusion to its last annual meeting in 2020 to speak about its Covid-19 Emergency Statelessness Fund (CESF).

## **VII. BREAK OUT DISCUSSIONS**

**How NGOs can contribute to accession to the 1954 and 1961 Conventions and law reform (moderated by Sabrina Maonde, LHR)**

The 1954 Convention relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are key international treaties designed to ensure that every person has a nationality and that stateless people can enjoy a basic set of human rights. The 1954 Convention establishes minimum standards of treatment for stateless people in respect of a various rights e.g. the right to education, employment and housing. It also guarantees stateless people a right to identity and travel documents and to administrative assistance. The 1961 Convention establishes an international framework to ensure the right of every person to a nationality. It requires that States establish safeguards in their nationality laws to prevent statelessness at birth and later in life. Eight SADC States have acceded to the 1954 Convention and only four SADC States have acceded to the 1961 Convention. The group noted that low accession in Southern Africa is attributed to misconceptions about the nature of obligations imposed on States by the treaties and the notion that nationality issues are a matter of state sovereignty. The group noted that NGOs could contribute to accession through various initiatives including; strategic litigation, engaging government to understand reasons why States are reluctant to accede to the Conventions, drafting position papers and recommendation for legislative reform, undertaking research to highlight statelessness as a development issue rather than a humanitarian issue and to highlight the economic incentives associated with the eradication of statelessness. Further advocacy around State pledges to accede to the conventions may also be impactful.

#### **How NGOs can contribute to legal aid and advocacy (moderated by Tshegofatso Mothapo, LHR)**

Statelessness is a growing and yet largely unaddressed phenomenon. This is partially owing to a limited understanding of the existence and nature of the problem. The group noted that a full understanding of statelessness is sometimes impeded by myths and misconceptions e.g. 'statelessness only affects migrants' or 'statelessness happens by fault'. The group further noted that legal aid is critical in the identification and protection of stateless persons or persons at risk of statelessness but there is limited access to legal aid in the region. Furthermore, NGOs and grassroots organizations often struggle with funding, resources and capacity. The group concluded that NGOs can contribute to legal aid and advocacy through; building networks at a domestic and regional level, partnering with private sector lawyers for pro bono work, sharing resources and exchanging best practices and conducting capacity building workshops.

#### **How NGOs can contribute to strengthening birth registration (moderated by Leya Ouko, UNHCR)**

Birth registration does not necessarily confer nationality, but a birth certificate records key information that assists children to confirm or acquire nationality. Lack of birth registration can therefore create a heightened risk of statelessness. Lack of birth registration has also been identified as one of the main causes of statelessness in the region. During the discussion, participants highlighted some of the barriers to birth registration in their respective countries. These include; stringent requirements such as the requirement to produce parents' documentation (South Africa), excessive fees charged for late registration of birth (DRC and Zimbabwe), inadequate safeguards for unaccompanied and separated migrant children, lack of decentralized birth registration systems (Zimbabwe and Mozambique), poor infrastructure in rural or remote areas, and cultural practices that delay birth registration timelines e.g. naming ceremonies. The group noted that NGOs can contribute to improved birth registration through e.g. parliamentary advocacy towards law reform, awareness raising initiatives and sharing good practices and information.

#### **How NGOs can contribute to improved data collection (moderated by Rebecca Nidete, LHR)**

There are no statistics available on statelessness in the region because States have not established procedures to capture data on statelessness i.e. a statelessness determination mechanism. Measuring statelessness (in both quantitative and qualitative data) is important because States need to understand the full scope of the problem in order to develop adequate interventions. However, it can be challenging given the complex nature of the problem and lack of consensus on whom to include when counting stateless people (i.e. *de jure* or *de facto* stateless). It is also difficult because stateless persons are often unwilling to be identified for fear of persecution and reprisal because they lack a secure legal status. The group discussed the possibilities of improving data collection on statelessness through population census or community surveys. The group noted that improved data collection can only be achieved through collaboration between NGOs and governments. The UNHCR has commissioned a study on statelessness in Southern Africa that provides an assessment of the prevalent causes of statelessness in the region and the populations at risk of statelessness – this provides a baseline for additional data collection efforts.

#### **VIII. CONCLUSION AND WAY FORWARD**

Participants were encouraged to take stock of achievements to end statelessness to date. And over the next 3 years, maximize efforts to achieve the global action plan, through implementation of the



10 targets as applicable. Civil society is encouraged to continue with efforts to sensitize, raise awareness and provide legal assistance to persons affected by statelessness.

**Outcome documents:**

Draft CSO Action Plan on Statelessness in Southern Africa

Draft appeal to be submitted to the SADC Secretariat in October 2021

~ END ~

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**For more information on SANN visit our website:** <http://sann.africa/>