

Centre for Human Rights and SANN call for the adoption and ratification of the Draft Protocol on Statelessness in Africa

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The Centre for Human Rights, University of Pretoria, and the Southern African Nationality Network (SANN) call on African states, including members of the Southern African Development Community (SADC), to endorse the adoption of the [Draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa](#) (Draft Protocol) and to subsequently ratify it. We also call on the Government of South Africa to take leadership in urging other SADC members to endorse the adoption of the Draft Protocol and to subsequently ratify it.

We note that the consideration and adoption of the Draft Protocol on Statelessness is scheduled for 7 and 8 December 2022 respectively, and urge delegations of African states, particularly those from SADC – where statelessness affects a significant number of people – to endorse the adoption of the Draft Protocol and to ratify it.

Why should the Protocol be adopted?

Statelessness affects a significant number of people in the SADC Region, and in Africa more broadly. Moreover, several people are at risk of statelessness. One of the causes of statelessness is the lack of coherence and harmony between domestic nationality laws in the region, as well as their unconformity with regional and international norms on citizenship and nationality. While most stateless persons are born in the country where they live and have never migrated, historical migration is also a root cause of statelessness in Africa, with most descendants of migrants inheriting their parents' statelessness. We urge African states, including SADC member states to adopt the Draft Protocol and ratify it because it requires all

member states to take legislative measures to eliminate the causes of statelessness. Although the draft Protocol emphasises that states have the primary obligation to prevent and eradicate statelessness, it also addresses the concerns of states by requiring state parties to take steps, individually and collectively, to prevent and eradicate statelessness.¹

We also urge African states to adopt and ratify the Draft Protocol because it is the principal African draft treaty dealing with the right to nationality and the eradication of statelessness. State parties' adherence to it is crucial for the prevention of statelessness and the protection of the rights of stateless persons including their right to nationality.

As nationality is a prerequisite for individuals to exercise a wide range of their human rights, the non-recognition of this right in respect to sections of population leads to statelessness. The impact of statelessness on affected people is severe because it results in the denial of economic, social as well as civil and political rights. For example, affected individuals and populations are often prevented from accessing education, healthcare, employment, birth certificates, and even death certificates. Adopting and ratifying the Draft Protocol is a critical step towards addressing the plights of stateless persons.

Another important reason why African states including SADC members should ratify the Draft Protocol is because it provides for the protection of the right to nationality, and prevention of statelessness of vulnerable sections of society, including women, children, and nomadic and cross-border communities.

In respect of women, the Draft Protocol addresses sex-based discrimination in their right to transmit nationality to their children. Given the fact that a number of African states, including SADC member states, allow only men to pass their nationality to their children, the Protocol addresses this legally sanctioned discrimination against women and its adverse effect on children by obliging states to accord equal treatment to men and women in transmitting nationality.²

¹ Draft Protocol, art 3(2)(c).

² Draft Protocol, art 4(2).

The Draft Protocol also guarantees the right to nationality of children and requires states to take measures to prevent child statelessness.³ It obliges states to register birth⁴ and to ensure that ‘every child is attributed nationality at birth’.⁵ It further recognises the right of children to be heard in decision making procedures concerning their right to nationality. It also prohibits discrimination against children born out of wedlock in nationality determination procedures.

In respect of nomadic and cross-border communities, the Draft Protocol gets rid of one of the adverse legacies of colonialism on these communities. As African borders were drawn arbitrarily without considering the social and cultural realities of African populations, these communities are at heightened risk of statelessness, and many of them are already stateless. The Draft Protocol makes provision for the protection of the right to nationality of nomadic and cross-border communities. It also requires states to cooperate with each other in order to ensure that members of these communities acquire nationality and appropriate documentation attesting their nationality.⁶ By doing so, the Draft Protocol does away with the vulnerability of these populations.

Lastly, the Draft Protocol also builds on existing African soft law instruments, such as the [Abidjan Declaration on the Eradication of Statelessness](#), adopted by the Economic Community of West African States, and [Resolution on the Prevention of Statelessness and the Protection of Stateless Persons in the SADC Region](#). The Draft Protocol transforms these instruments into binding law, thereby strengthening existing frameworks.

In conclusion, we urge African states, including SADC members, to fully endorse the adoption of the Draft Protocol on Statelessness and to ratify it because it provides an African solution to the problem of statelessness, which is a man-made problem originating from colonialism. Statelessness leads to the denial of the rights of a significant number of people in Africa, including in Angola, Cote D’Ivoire, Ethiopia, Kenya, Madagascar, South Africa and Zimbabwe. Adopting and ratifying this Protocol is an important step in addressing the major challenges affecting vulnerable groups including women, children, migrants, and pastoral and

³ Draft Protocol, art 5.

⁴ Draft Protocol, art 10.

⁵ Draft Protocol, art 10(1).

⁶ Draft Protocol, art 8(1).

nomadic communities in Africa, with respect to the acquisition and transmission of nationality.

This statement is endorsed by the following organisations:

Lawyers for Human Rights (South Africa)

Consortium for Refugees and Migrants in South Africa (CoRMSA) (South Africa)

Jesuit Refugee Service (South Africa)

Scalabrini Centre of Cape Town (South Africa)

Save the Children South Africa

terre des hommes- Southern Africa Coordinating Office

The University of Cape Town- Refugee Rights UNIT (Prof. KHAN) (South Africa)

Focus Development Association (Madagascar)

Chapter One Foundation (Zambia)

Child Rights Network for Southern African

Southern Africa Human Rights Defenders Network (SouthernDefenders)

Legal Resources Foundation (Zimbabwe)

Legal Assistance Centre (Namibia)

Youth Sustainable Development Centre (Eswatini)

TALESOW Foundation (Tanzania)

TRM Legal Counsel (Zimbabwe)

Legal Resources Centre (South Africa)

ProBono.Org (South Africa)

Centre for Child Law (University of Pretoria) (South Africa)

Christian Legal Society (Zimbabwe)

Zimbabwe Lawyers for Human Rights (Zimbabwe)

Legal Aid Bureau (Malawi)

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