

The Right to Nationality and its Implications for Inclusive ID Systems in Africa

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The Right to Nationality in Africa

- The right to nationality is a human right enshrined in international and regional human rights instruments.
- Article 15 of the Universal Declaration of Human Rights states that *“everyone has the right to a nationality”* and that *“no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”*

The Right to Nationality in Africa

- Paramount importance to the realization of fundamental human rights, civil rights and access to public services.
- Allows the individual to acquire and exercise rights and obligations inherent in membership in a political community.
- Legal relationship between a person and a State.
- Possession of a nationality carries with it the diplomatic protection of the country of nationality and is a legal or practical requirement for the exercise of fundamental rights.

The Right to Nationality in Africa

- Statelessness refers to a situation where a person does not have a nationality.
- Results in exclusion and possible exploitation, and is therefore a cause of human suffering.
- Without proof that an individual is a national of a State, s/he will not be able to access any services, such as healthcare and other social structures, nor get any legal protection.

African Union Agenda 2063

- A vision of “an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in the international arena”.
- Aspiration 2 “An integrated continent, politically united and based on the ideals of Pan Africanism and the vision of Africa’s Renaissance”-a continent where the free movement of persons, capital, goods and services will result in significant increases in trade and investments amongst African countries rising to unprecedented levels, and strengthening Africa’s place in global trade.

The AU Flagship Project

- An African Passport, issued by Member States, capitalising on the global migration towards e-passports, and with the abolishment of visa requirements for all African citizens in all African countries by 2018.

Engagement of the African Union

The **African Commission on Human and Peoples Rights (ACHPR)** an organ of the African Union, has undertaken ground-breaking initiatives to address the right to nationality in Africa:

- Resolution 234, adopted at the 53rd session held in April 2013 in Banjul, the Gambia, decided to carry out an in-depth research/study on issues relating to the right to nationality and assigned the task to the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa.
- Resolution 277, adopted at the 55th Ordinary Session held in May 2014 in Luanda Angola, at which the final version of the study on the Right to Nationality in Africa was presented, assigned to the Special Rapporteur the task of drafting a Protocol to the African Charter on the Right to a Nationality.

Engagement of the African Union

- The African Commission's Study on the Right to a Nationality
 - launched in the margins of the 24th Ordinary Session of the Assembly of the African Union held in January 2015 in Addis Ababa, Ethiopia.
 - The study undertakes a comprehensive analysis of legislative and administrative frameworks linked to nationality,
 - identifies the many political, legal and sociological hurdles that have to be overcome to exercise the effective right to citizenship in Africa.
 - highlights the risks of statelessness in Africa and concludes that there is a need to adopt an additional protocol to the African Charter on Human and Peoples Rights related to the right to nationality.
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Engagement of the African Union

- A Draft Protocol to the African Charter on the Right to Nationality and the eradication of Statelessness in Africa
 - was adopted by the African Commission on Human and Peoples rights during its 18th extraordinary session on 2 August 2015 in Nairobi, Kenya.
 - The text is now entered in a phase of examination by various bodies habilitated by the African Union, before being eventually submitted for the approval of Member States.

Engagement of the African Union

- The African Committee of Experts on the Rights and Welfare of the Child
 - provided guidance to African States through the General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child.
 - Three interlinked rights: *the right to a name, the right to birth registration and the right to a nationality.*
 - The purpose - to provide guidance on the meaning and scope of these rights;
 - explain the corresponding obligations of the States, parties to the Charter for the implementation.

The Free Movement of People and the African Passport

The Development of the Protocol on Free Movement of Persons is the cornerstone for institutionalising free movement of people and putting in place the African Passport.

Coordination with other processes:

- AUC will ensure the linking of the free movement of persons with the following flagship projects of Agenda 2063:
 - the Continental Free Trade Area (CFTA)
 - the Pan-African Integrated High Speed Train Network
 - the implementation of the Common African Perspective on Migration (EU Summit in Valetta, 2015)

Drafting and Consultation processes:

- Drafting will involve RECs, CSOs Partners and other relevant partners at national, regional and continental level.
- Once the draft protocol is ready, it will be considered by AUC relevant departments, the **RECs**, Partners and Independent Experts within a forum of Independent Experts meetings.

The Free Movement of People and the African Passport (cont.)

- the Right to Residence and the Right of Establishment as provided for in Article 43 of the 1991 Abuja Treaty.
- Conference of Intellectuals of Africa and the Diaspora, October 2004, Dakar, Senegal,
 - called for the promotion of the concept of African citizenship and the establishment of the African Passport.

The Free Movement of People and the African Passport (cont.)

- In June 2005 the African Union Conference of Ministers on Immigration held in Tripoli, Libya, considered possible options to facilitate free movement for African nationals within the continent.
- On **25 May 2007**, the African Union Diplomatic and Service Passport was launched, in Addis Ababa, Ethiopia by H.E John Kuffor, President of the Republic of Ghana and Chairperson of the African Union.

Benefits of continental integration (free movement, inclusive IDs)

- Fosters tourism, intra-Africa trade and investment,
- Promotes intra-Africa and cross-border labor mobility, cultural integration and people-to-people cooperation,
- A true test for the advancement of Pan-Africanism and African Renaissance,
- Reduces incentive for Africans to migrate to other continents such as Europe,
- Stimulates remittance flows in Africa.

Challenges of continental integration

- Reluctance of African states to surrender aspects of their national sovereignty to regional/continental supranational authority.
- Transnational security threats (conflicts, drug trafficking, human trafficking, terrorism)
- Bureaucratic red tape, high visa/work permit fees and corruption
- Negative attitudes to migrants leading to xenophobia
- Disharmony and inconsistency between regional protocols on free movement and national level policies.

Thank You!