

LAWYERS FOR HUMAN RIGHTS
SUBMISSION TO THE NATIONAL CONFERENCE ON MIGRATION AND URBANISATION IN
SOUTH AFRICA

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Topic: Measuring Statelessness in South Africa

I. Introduction

1. Lawyers for Human Rights (“LHR”) is an independent human rights organisation with a 40-year track record of human rights activism and public interest litigation in South Africa. In 2011, LHR launched the Statelessness Project in collaboration with the United Nations High Commissioner for Refugees (“UNHCR”). The Statelessness Project has a specialist focus on access to nationality issues and has done pioneering work on this subject in South Africa and the SADC region through direct legal assistance, strategic litigation and advocacy.

II. Statelessness in the context of South Africa

2. Citizenship is the legal link an individual has with a State and is a fundamental human right.¹ Statelessness is the most acute violation of the right to citizenship and is a well-entrenched principle of international human rights law.
3. In terms of Article 1(1) of the United Nations Convention Relating to the Status of Stateless Persons, a stateless person is someone who is not considered as a national by any state, under the operation of its law.² Some people are born stateless and others can become stateless; stateless people may be migrants but in some scenarios, stateless people have never crossed a border and are stateless ‘in their own country’ (this is also known as *in situ* statelessness).
4. Statelessness across Southern Africa is primarily linked to; colonial history, border changes, migration, poor civil registration systems, arbitrary deprivation of nationality, gaps or conflict in nationality laws and discrimination against particular ethnic or religious groups, or based on gender or race.
5. Statelessness has a devastating impact on affected persons, as citizenship is a fundamental prerequisite to have complete access to civil, political and socio-economic rights. Stateless people can face a lifetime of discrimination, social injustices and denial of basic human rights. They often live in precarious conditions on the margins of society without access to education, healthcare, housing or employment. They are unable able to obtain identity documents, travel documents or to register births, deaths or marriages and attain access to justice. Stateless

¹ See Article 15 of the Universal Declaration of Human Rights 1948; Article 24 of the International Covenant on Civil and Political Rights 1966; Article 7 and 8 of the United Nations Convention on the Rights of the Child 1989; Article 6 of the African Charter on the Rights and Welfare of Children 1999; Section 20 and 28 of the Constitution of the Republic of South Africa 1996.

² See: Article 1(1) of the United Nations Convention Relating to the Status of Stateless Persons (1954). Available at: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtmsg_no=V-3&chapter=5&Temp=mtmsg2&clang=en

people are typically excluded from accessing legal or sustainable employment, or financial assistance to help them make a decent or dignified living. This marginalisation can force them and their families into a vicious cycle of poverty.

III. Measuring Statelessness in South Africa

6. The exact number of stateless people worldwide is unknown, but according to the UNHCR, **4.2 million** people are known to be stateless as of 2019.³ The true extent of statelessness is estimated to be much higher as the World Bank states that approximately **1 billion** people worldwide lack **proof of legal identity** and are thus undocumented.⁴ Being undocumented is not synonymous with statelessness; however, being unable to prove legal identity and nationality due to a lack of documentation can place an individual at risk of statelessness.
7. In South Africa, the scope of statelessness is also unknown because there is no established [Statelessness Determination Mechanism](#) to capture the relevant data.⁵ Nonetheless, there are indicative estimations of the prevalence of stateless persons or persons at risk of statelessness in the country. According to the World Bank approximately **15 million** people in South Africa are undocumented - this figure is inclusive of citizens and non-citizens and measured by the number of people in possession of birth certificates and/or identity documents.⁶
8. Through its Statelessness Project, LHR has identified that South Africa encompasses both *in situ* stateless persons and stateless migrants. LHR has further identified that statelessness or the risk of statelessness is more prevalent amongst the following populations of concern:
 - a) undocumented South Africans;
 - b) undocumented or irregular migrants;
 - c) orphaned and abandoned children and foundling children; and
 - d) unaccompanied and separated migrant children.

IV. Conclusion

9. While there is substantial literature on migration in South Africa, there is scarce and uncoordinated data on statelessness despite the inter-relation between the two. Measuring statelessness is important because States need to understand the full scope of the problem in order to develop adequate interventions to identify and protect stateless persons, and to

³ Note that this data is drawn from less than half of all countries (76) in the world that have reported data on statelessness to UNHCR. The 2020 World Statelessness Report by the Institute on Statelessness and Inclusion (ISI) estimates that 15 million persons are to be considered stateless worldwide: <https://www.institutesi.org/resources/statelessness-in-numbers-2020-an-overview-and-analysis>

⁴ See: World Bank Identification for Identity - Data-set (2018). Available at: <https://datacatalog.worldbank.org/dataset/identification-development-global-dataset - 13>. - the undocumented population comprises mostly of members of the poorest and most vulnerable groups in society; including marginalized women and girls, migrants, refugees, asylum seekers, stateless persons, people with disabilities, and people living in rural and remote areas.

⁵ Eg. Something similar to the Refugee Determination Mechanism adopted in the asylum protection system.

⁶ See: World Bank Identification for Identity - Data-set (2018). Available at: <https://datacatalog.worldbank.org/dataset/identification-development-global-dataset - 13>.

prevent and resolve situations of statelessness (enhanced identification of cases is necessary for informing the development of legislative safeguards and nationality procedures, and monitoring their implementation).⁷

10. Measuring statelessness is not only relevant in the context of human rights but also in the sustainable development agenda. Both the global 2030 Agenda for Sustainable Development Goals (SDG 16.9) and regional Africa's Agenda 2063 call for "*legal identity for all*" in their aspiration to "*leave no one behind*". Legal identity is instrumental to realising the development goals as it ensures that everyone is counted and considered in government policies and programmes.⁸

In order to obtain both quantitative and qualitative data on statelessness in South Africa, the following is necessary:

- a) an analysis of the scale of the problem (i.e. a determination or estimate of the number of stateless people in South Africa and their geographical spread);
- b) an assessment of the profile of the affected population (including its demographic composition and data disaggregated by; e.g. gender, age, country of origin, ethnicity);
- c) an analysis of the causes and consequences of statelessness (including in terms of civil, political and socio-economic rights); and
- d) an overview of the obstacles to and potential for solutions to statelessness in South Africa.⁹

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⁷ See Action 10 of UNHCR's Global Action to End Statelessness: <https://www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>

⁸ Institute on Statelessness and Inclusion "Legal Identity, Nationality and Statelessness" 2018. Available at: <https://www.refworld.org/publisher/ISI,,50ffbce5268,,0.html>.

⁹ UNHCR Guidance document on measuring stateless populations, May 2011, (available at: <https://www.refworld.org/docid/4f6887672.html>); UNHCR Statistical Reporting on Statelessness paper under the Statistical Technical Series: 2019 (available at: <https://www.unhcr.org/5d9e182e7.pdf>