

Statelessness in West Africa: An Assessment of Stateless Populations and Legal, Policy, and Administrative Frameworks in Ghana

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Executive Summary

Drawing on qualitative interviews that are complemented by the analysis of government policy documents, this study examines statelessness in Ghana. It addresses a range of policy, legal, institutional, administrative, and other politico-socioeconomic matters attendant to the concept. The study defines statelessness in its strict legal sense. It recognizes populations at risk of statelessness that may be restricted from benefiting from the protection and privileges of their host state. Persons identified by the study as stateless or at risk of statelessness include persons from traditionally nomadic migratory communities, former refugees, persons residing in border communities, members of Zongo communities, trafficked persons, and those affected by gaps in previous constitutions. The study also identifies the consequences of statelessness, including lack of access to healthcare, education, justice, and work. The study offers several recommendations to prevent and reduce statelessness in Ghana.

Keywords

statelessness, constitution, refugees, Ghana

Introduction

Individuals residing in a number of countries are being denied the privileges and rights given to the rest of the population because they have no documents to prove their citizenship (Kerwin and Warren 2019). Many of these people have difficulty proving they possess links to a state due to lack of birth registration and other documentation that could confirm their nationality. Stateless persons may find it difficult to access job opportunities and health and educational facilities, and to undertake

international travel. The Universal Declaration of Human Rights (UDHR)¹ affirms that everyone has the right to a nationality, thereby acknowledging the legal and practical importance of nationality for the enjoyment of human rights. It is, therefore, essential that the citizenship laws of Ghana work to make certain that everyone in Ghana holds a nationality.

¹United Nations Universal Declaration of Human Rights (UDHR), 1948.

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The importance of statelessness on the African Continent is exhibited in the initiatives of organizations such as the Pan African Citizens Network (PACIN), a Kenyan-based nongovernmental organization (NGO) that takes a keen interest in the “African Citizen” and her ability to live a peaceful and fulfilling life (PACIN 2019). On October 31, 2017, the group commemorated the 61st Ordinary Session of the African Commission on Human and People’s Rights (ACHPR) with a program themed “30 Years On: Innovation or Necessity? A Case Study of How the ACHPR Has Addressed Gaps in Rights Protection on the Right to a Nationality.” The program examined regional efforts toward improving the right to a nationality, eradicating statelessness in West Africa and East Africa, the stakes of youth in matters of statelessness, the right to nationality, and continental trends in gender discrimination by nationality.

On the larger global front, the United Nations High Commissioner for Refugees (UNHCR) is mandated to assist states to provide international protection to those in need of asylum and to support durable solutions for refugees. The UNHCR also has a mandate to provide protection to stateless persons and prevent situations of statelessness. Around the world, 60 percent of stateless persons are children. According to the UNHCR, the problem of statelessness has a devastating impact on the lives of at least 1 million people in West Africa (Odeyemi 2017).

The first ministerial subregional conference on statelessness in West Africa was held in Abidjan, Côte d’Ivoire, in February 2015. The two statelessness conventions are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These two treaties form the foundation of the international legal framework to address statelessness. Ghana committed to accede to the two statelessness conventions, but by the end of 2019, it had not done so. This is the case even though heads of state and governments of member states of the Economic Community of West African States (ECOWAS) adopted the Abidjan Declaration on May 19, 2015, in Accra, Ghana, under the chairmanship of Ghana’s former president, His Excellency John Dramani Mahama. At the time of this study, Ghana and Togo were the only ECOWAS states not to accede to either of the two conventions (Folley 2018).

Notwithstanding that Ghana is yet to accede to the two conventions and has no laws on statelessness, its

citizenship laws are very progressive. Gaps exist in citizenship legislation, however, and there are flaws in the administrative practices of key state institutions, which increase the risk of statelessness. In addition, lack of proper documentation of births and deaths, administrative errors, and the wrongful exercise of executive discretion have rendered residents stateless. This article offers a comprehensive assessment of the legal, policy, institutional, and administrative frameworks, and the processes and practices affecting access to nationality in Ghana, with the ultimate aim of identifying the causes, risk factors, and consequences of statelessness. It also recommends measures or actions necessary to prevent or reduce statelessness in Ghana.

Methodology for the Study

The study used both primary and secondary data. The methods used for this study included an initial key stakeholders’ meeting, a literature review, and field interviews. Details of the primary data collected are discussed below.

Field Interviews

The research team conducted interviews with officials at relevant ministries, departments, agencies, and other entities.² These included relevant officials of the Ministry of the Interior, the Ministry of Foreign Affairs and Regional Integration, the Department of Social Welfare, the Ghana Statistical Service, the Births and Deaths Registry, the Legal Aid Scheme, the Ghana Refugee Board, the National Identification Authority, the Passport Office, the Ghana Immigration Service, the Ghana Education Service, and the Driver and Vehicle Licensing Authority (DVLA), as well as officials of the National Health Insurance Authority (NHIA), the Electoral Commission (EC), the Commission on Human Rights and Administrative Justice (CHRAJ), and the Ghana Police Service. We interviewed officials from these different state agencies because in one way or another, people who are affected by or at risk of statelessness seek their services.

Officials of the UNHCR Representation in Ghana, the United Nations Children’s Fund (UNICEF), the International Organization for Migration (IOM), and the

²Interviews for the study took place from November 2016 to April 2017.

Human Rights Advocacy Centre (HRAC) were also interviewed. Officials from these institutions were interviewed because they represent the international community in Ghana and often work to address refugee, migration, human rights, and statelessness issues.

Interviews with populations at risk of statelessness were conducted by focusing on a border community — Aflao in the Volta Region. For migrants at risk of statelessness, the study focused on Fulanis in Agogo, Hohoe, and Accra; and Zongo communities in Ho, Hohoe, Tamale, Kumasi, and Accra. Former Liberian refugees at Budumburam in the Central Region of Ghana and former Sierra Leonean refugees, largely located in a refugee camp in the Western Region, were also identified as populations at risk of statelessness in Ghana, and interviews were conducted with segments of these populations.

Interviews were conducted using both structured and unstructured questionnaires. Interviewees were selected using the purposive sampling technique, which involved the questioning of persons whom the researchers identified as being stateless or at risk of statelessness. The number of interviewees varied from 15 to 20, depending on how many people were willing to participate in the study in each location.

To assess the practices of state institutions, the researchers interviewed officials in five of Ghana's ten regions: the Greater Accra Region, the Ashanti Region, the Northern Region, the Central Region, and the Volta Region. The interviews were held in the capitals of these selected regions with officials with sufficient authority within each institution to provide accurate and relevant information on their mandate and processes. All interviews were conducted with the aid of questionnaires, and the answers given by the respondents were noted and incorporated into this study. In addition, a stakeholders' workshop was held to validate the findings of the study.

Legal and Institutional Frameworks Relating to Statelessness

This section of the article examines the legal and institutional frameworks relating to statelessness. Statelessness as a concept is defined, followed by a brief examination of the international, regional, and national legal and institutional frameworks on statelessness.

De Jure and De Facto Statelessness

Article 15 of the United Nations' UDHR enshrines the universal norm that "everyone has a right to a nationality." The United Nations adopted two conventions that provide practical steps to assist in realizing the right to nationality. The first was the 1954 Convention relating to the Status of Stateless Persons ("1954 UN Convention"). It ensures the enjoyment of human rights by stateless persons by establishing an internationally recognized status for them. The 1954 UN Convention remains the only international treaty aimed specifically at regulating standards of treatment for stateless persons. The second convention, the 1961 UN Convention on the Reduction of Statelessness ("1961 UN 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.

In the strict sense, a person is stateless if he or she is not a national of any state under the operation of its law. This definition of statelessness is known as *de jure* statelessness because it arises from the absence of the formal bond of nationality, in which nationality is determined according to a state's domestic laws. *De jure* stateless persons are persons who are not nationals of any state, either because at birth or subsequently they were not given any nationality, or because during their lifetime they lost their own nationality and did not acquire a new one. The operation of a state's domestic laws may thus leave a person without any nationality.

The concept of *de jure* statelessness has been criticized as being too narrow. Some individuals technically possess a nationality but are unable to enjoy its benefits because they cannot prove their nationality; or because the state of their nationality is not able or willing to offer them protection; or due to practical considerations such as cost, circumstances of civil disorder, or fear of persecution. This is termed *de facto* statelessness. For example, women and children who have been subjected to human trafficking are often held in a foreign country in conditions akin to slavery, with no access to their passports and no practical possibility of seeking the protection of their national state. In *de facto* stateless situations, the person is a national of some state but lacks the protection of the laws of that state (Milbrandt 2012).

Without citizenship, stateless people may lack legal protection and sometimes the right to vote, and they often lack access to education, employment, healthcare,

and marriage, death, and property rights. Stateless persons may also encounter travel restrictions, social exclusion, and heightened vulnerability to sexual and physical violence, exploitation, trafficking in persons, forcible displacement, and other abuses (USDS 2017).

It is relevant to emphasize that refugees are not always stateless, and stateless persons are not always refugees; neither are stateless persons necessarily foreigners. Stateless persons who have fled their countries to escape persecution on grounds of race, religion, nationality, or membership of a particular social group or political opinion are stateless refugees (UNHCR 2014). In contrast, some stateless persons have lived in the country of their birth throughout their lives and have not been subject to any persecution.

International, Regional, and National Legal Frameworks on Statelessness

This section of the study examines the international, regional, and national legal and policy frameworks on statelessness. Both regional and national legal frameworks may draw from the international legal framework for addressing statelessness. Consequently, a discussion of the international legal framework precedes that of the regional and national legal frameworks for addressing statelessness.

The 1954 UN Convention relating to the Status of Stateless Persons

As discussed, the 1954 UN Convention defines a stateless person as a person not considered a national by any state under the operation of its law.³ A stateless person may never have crossed an international border. Other stateless persons, however, are refugees who fall within the scope of the 1951 UN Refugee Convention or are eligible for complementary protection.

Article 2 of the 1954 UN Convention imposes duties on stateless persons to the country in which they reside, requiring them to conform to its laws and regulations, and “to measures taken for the maintenance of public order.” Contracting states to the 1954 UN Convention must apply the provisions of the Convention to stateless

persons without discrimination toward race, religion, or country of origin.⁴ Also, they are to accord stateless persons within their territories freedom to practice their religion and as regards the religious education of their children, at least as favorable as that accorded their nationals.

Article 7 of the 1954 UN Convention is captioned “Exemption from Reciprocity.” “Exemption from Reciprocity” means that a person is to be granted rights that ordinarily are accorded on the basis of reciprocity. The justification for this measure is that stateless persons do not enjoy the protection of a foreign country. Consequently, they do not qualify for rights under the rule of reciprocity.

Article 8 deals with exceptional measures that may be taken against the person, property, or interests of nationals or former nationals of a foreign state. These are measures that, in times of war, threat of war, severance of diplomatic relations, or other tension between states, are taken by a state to curb the rights of the citizens of the other state. They may involve limitation of the freedom of movement; of the right to a free press, assembly, or association; or of disposing of assets or using certain means of communication (Robinson 1955). The contracting states shall not apply such measures to a stateless person solely on account of his or her having previously possessed the nationality of the foreign state in question. Contracting states that, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favor of such stateless persons.

Article 9 of the 1954 UN Convention grants contracting states the authority to determine for themselves what measures are essential to their national security, whether a person involved is a stateless person, and whether the continuance of such measures is necessary in his or her case in the interest of national security.

In the case of stateless persons regularly serving as crewmembers on board a ship flying the flag of a contracting state, that state shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.⁵

³UN (United Nations General Assembly), Convention Relating to the Status of Stateless Persons, September 28, 1954, United Nations Treaty Series, vol. 360, p. 117, <https://www.refworld.org/docid/3ae6b3840.html>.

⁴*Ibid.*

⁵*Ibid.*

Articles 12 to 32 of the 1954 UN Convention establish a broad range of civil, economic, social, and cultural rights for states to accord to stateless persons. The 1954 UN Convention divides these rights into the following categories:

- Juridical status (including personal status, property rights, right of association, and access to courts)
- Gainful employment (including wage-earning employment, self-employment, and access to the liberal professions)
- Welfare (including rationing, housing, public education, public relief, labor legislation, and social security)
- Administrative measures (including administrative assistance, freedom of movement, identity papers, travel documents, fiscal charges, transfer of assets, expulsion, and naturalization)

The 1961 UN Convention on the Reduction of Statelessness

The international community recognized the need for a universal instrument that prevents and reduces statelessness well before general human rights treaties began to include measures directed to that end. The 1961 UN Convention⁶ seeks to achieve this goal by requiring state parties to provide a safety net for persons who would otherwise be stateless.

Article 1 of the 1961 UN Convention deals with the grant of nationality. State parties must grant their nationality to a person who would otherwise be stateless if that person was born in their territory, either automatically or at a later time through registration. A contracting state shall grant its nationality to a child born outside its territory if one of its parents was a national of the state at the time of the birth. These provisions recognize both *jus soli* and *jus sanguinis* — a principle of nationality law by which citizenship is determined not by place of birth but by having one or more parents or grandparents who are citizens of the state — as a basis for preventing statelessness. If the citizenship laws of states recognize these

principles, they will, in the medium to long term, eradicate statelessness. Under the provisions of the 1961 UN Convention, children are deemed to be born in the territory of a state if they are found there or are born on a ship or aircraft registered to that state.

Contracting states cannot withdraw their nationality from a person as a result of voluntary renunciation or a change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition, or adoption unless the person concerned possesses or acquires another nationality. If the law of a contracting state provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional on their possession or acquisition of another nationality. The Convention prohibits a contracting state from depriving a person of his or her nationality if this would render the person stateless. To this general principle, there are only limited exceptions, including when the nationality was obtained by misrepresentation or fraud, when the person has acted inconsistently with his or her duty of loyalty to the state, or when the person has made a declaration of allegiance to another state. Article 9 of the 1961 UN Convention prevents the deprivation of nationality on discriminatory grounds such as racial, ethnic, religious, or political grounds.

When territory is transferred between states that are parties to the 1961 UN Convention, they must include treaty provisions designed to ensure that no person becomes stateless as a result of the transfer. A contracting state shall use its best endeavors to ensure that any such treaty it enters into with a state that is not a party to the Convention includes such provisions. In the absence of such provisions, a contracting state to which territory is transferred must confer their nationality on persons who would otherwise become stateless as a result of the transfer.

Regional Legal Framework on Statelessness

At the continental level, there is no express reference to the right to a nationality in the African Charter for Human and People's Rights. The 1990 African Charter on the Rights and Welfare of the Child (ACRC) partly addresses this gap, because it provides for the acquisition of nationality of the country of birth if the child would otherwise be rendered stateless (ACRC 1990). This right

⁶UN (United Nations General Assembly), Convention on the Reduction of Statelessness, August 30, 1961, United Nations Treaty Series, vol. 989, p. 175, <https://www.refworld.org/docid/3ae6b39620.html>.

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 husbands' nationality (ACRC 1990; Protocol 2003).

The African Commission on Human and People's Rights has addressed both general and country-specific issues related to nationality and statelessness in communications and resolutions. In its resolutions, the commission has affirmed that the right to a nationality is implied within the provisions of Article 5 of the African Charter on Human and People's Rights on legal status and is essential for the enjoyment of other fundamental rights and freedoms under the charter.

In February 2015, government representatives in charge of nationality issues of the ECOWAS member states met in Abidjan for the subregional ministerial conference on statelessness in West Africa, jointly organized by UNHCR and ECOWAS. As a result of the conference, the ministers adopted a declaration on the eradication of statelessness, the Abidjan Declaration, in which they committed to identify and protect stateless persons as well as prevent and reduce statelessness. All heads of states in the ECOWAS region endorsed this declaration during the summit meeting held in Accra, Ghana, on May 19, 2015 (UNHCR and ECOWAS 2015).

The Abidjan Declaration recognizes that statelessness is a significant issue in the region and sets out 25 measures or commitments covering prevention of statelessness, identification and protection of stateless persons, the resolution of existing situations of statelessness, and strategies and partnerships for fighting statelessness. It seeks to put an end to statelessness by 2024. The declaration seeks to ensure that all children acquire nationality at birth and recognizes the impact of gender discrimination in nationality laws. It also addresses the need to improve civil registration systems and to tackle migration as a factor in creating statelessness. The conference also resulted in the adoption of 62 recommendations on how to implement the commitments made.

All ECOWAS states are parties to treaties that provide for the right to a nationality, such as the United Nations Convention on the Rights of the Child (November 20, 1989), the ACRC (July 1, 1990), the International Covenant on Civil and Political Rights (December 19, 1966),

and nondiscrimination treaties.⁷ In the civil law countries, these treaties have direct effects, and the nationality codes frequently provide that treaty provisions prevail over national law (Manby 2015).

In West Africa, only Guinea Bissau provides in its constitution that every person has the right to a nationality.⁸ Benin, Burkina Faso, Côte d'Ivoire, Mali, and Niger, however, specifically provide in their nationality codes that the terms of treaties on nationality to which the state is a party apply even if they are contradicted by national law.

The Banjul Plan of Action (ECOWAS 2017) is based on the commitments and recommendations made in the Abidjan Declaration. Thus, it strictly follows the spirit of the Abidjan Declaration. The Plan of Action entails support measures that ECOWAS and UNHCR can provide to member states in accordance with Articles 22 and 25 of the Abidjan Declaration. It includes measures that ECOWAS will adopt to follow up on the requests made by member states in the Abidjan Declaration, and it spells out mechanisms for monitoring the implementation of the Abidjan Declaration.

National Legal Framework on Statelessness

In Ghana, the question of who is legally entitled to citizenship — meaning persons who do not have to register or naturalize to claim Ghanaian citizenship — is answered in Article 6 of the 1992 Constitution of Ghana, which provides that (1) every person who was a citizen of Ghana at the time the Constitution became enforceable continued to be a citizen of Ghana; and (2) any person, whether born in or outside Ghana, is a citizen of Ghana if any of his parents or grandparents is or was a citizen of Ghana. Furthermore, children younger than seven years who are found within Ghana and whose parents are not known are presumed to be citizens of Ghana. Finally, children younger than sixteen years who are adopted by citizens of Ghana acquire Ghanaian citizenship.

Ghana is not a signatory to and has not ratified either the 1954 UN Convention or the 1961 UN Convention on

⁷The nondiscrimination treaties include the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities.

⁸Guinée-Bissau Constitution, 1984.

statelessness. Consequently, it does not include in its legislation the main safeguard against statelessness at birth, that is, allowing children born in a country to acquire the nationality of that country if they would otherwise be stateless. Strictly speaking, therefore, Ghana is in contravention of Article 6 of the ACRC and Article 2 of the 1961 UN Convention. Ghana is, however, involved in regional efforts to eradicate statelessness by 2024. To this end, Ghana is following through on its commitment to the Abidjan Declaration and the Banjul Plan of Action on the eradication of statelessness.

Furthermore, some of Ghana's laws are very progressive in addressing statelessness. As discussed below, these include provisions regarding: (1) the acquisition of Ghanaian citizenship for foundlings and adopted children, (2) nondiscrimination against women in their right to transfer their nationality to their children, (3) prohibitions against arbitrary deprivation of citizenship, (4) the acquisition of Ghanaian citizenship after a Ghanaian loses the same due to marriage, and (5) other means of protecting women from the risk of statelessness.

Citizenship for Foundlings. According to Ghana's 1992 Constitution, a child not older than seven years of age who is found in Ghana is considered a foundling and is accorded Ghanaian citizenship. The age limit may be considered as a negative aspect of this provision, in light of international efforts to provide nationality to children of all ages. The Hague Convention established one of the longest standing norms relating to the prevention of statelessness for those who cannot acquire their parents' nationality — the right to a nationality in the state where they were found for children of unknown parents.⁹

Conferring Citizenship by Adoption. Ghana's law on citizenship by adoption, although more progressive than the laws of other jurisdictions, is also restricted by age. The 1992 Constitution extends citizenship by virtue of his or her adoption by a Ghanaian to a child not older than 16 years of age, neither of whose parents is a Ghanaian.

Acquisition of Citizenship by Naturalization and Registration. There are provisions in the 1992 Constitution that allow for the acquisition of citizenship by registration following a marriage between an applicant who is not a citizen of Ghana and a spouse who is a citizen of Ghana.

Stateless persons may therefore be able to acquire Ghanaian citizenship through registration by being married to Ghanaians and on satisfying other statutory requirements (Constitution of Ghana 1992). The 1992 Constitution of Ghana states that a person could also independently apply for citizenship by naturalization, if they satisfy the residency and other requirements and pay the applicable fees.

Gender Discrimination and Statelessness in Ghana. Ghana does not discriminate against women in their ability to transfer citizenship to their children. Thus, a child born in or outside Ghana, one of whose parents or grandparents is a citizen of Ghana, becomes a citizen of Ghana (Constitution of Ghana 1992). This provision accords both men and women an equal right to transfer the citizenship of Ghana to their children.

Provisions in Ghana's citizenship law, however, discriminate in favor of women and against men. Both men and women who are not Ghanaian citizens can become citizens following marriage to a Ghanaian citizen. A man, however, must be a permanent resident in Ghana at the time of application, according to Ghana's 1992 Constitution, but this provision does not apply to a woman. In addition, Section 10(3) of the Citizenship Act, 2000 (Act 591), allows a surviving spouse to register as a citizen of Ghana if, during the lifetime of the deceased spouse and during the marriage, the surviving spouse neglected to apply for and obtain Ghanaian citizenship. The death of the Ghanaian spouse does not preclude the surviving spouse from applying for and obtaining citizenship of Ghana by registration. No similar provision is available to a man in these circumstances.

The 1992 Constitution of Ghana states that a woman who obtains Ghanaian citizenship through marriage to a Ghanaian citizen continues to be a Ghanaian citizen after the annulment of the marriage or the grant of a divorce order, unless she renounces her citizenship of Ghana. Such a woman can continue to transfer citizenship of Ghana to her children, even in cases in which the other parent of the child is unknown or is not a citizen of Ghana. This has the potential of reducing the risk of statelessness. In addition, a child of a marriage of a woman registered as a citizen of Ghana shall continue to be a citizen of Ghana unless he or she renounces that citizenship. This is also a safeguard against statelessness.

⁹Hague Convention, 1930.

For all states that adopted the *jus soli* principle, statelessness at birth would not arise because all children are born in the territory of one state or another. Yet Ghana has adopted the *jus sanguinis* principle, which can lead to statelessness in various ways. For example, a child born in a *jus sanguinis* state to parents who are stateless cannot receive a nationality from his or her parents. Instead, the child inherits the parents' statelessness, perpetuating social and economic disadvantages from one generation to another.

A typical example is a child born in Ghana to a Liberian mother, with the father of the child being unknown. The Liberian mother cannot pass on her nationality to a child born outside Liberia, and Ghana does not have a *jus soli* safeguard as per Article 6 of the ACRC and Article 1 of the 1961 UN Convention. Thus, the child is stateless.

No Arbitrary Deprivation of Citizenship. There are no provisions under the laws of Ghana that allow for arbitrary deprivation of Ghanaian citizenship. According to the 1992 Constitution of Ghana, a citizen of Ghana by birth cannot be deprived of his or her Ghanaian citizenship under any circumstance by a court of law. This is a very strong safeguard against statelessness.

The 1992 Constitution, however, provides that a person who has acquired citizenship in Ghana through any means other than birth may be deprived of citizenship by the High Court on application by the attorney general, if it is proven that the activities of this person are inimical to the security of the state or prejudicial to public morality or the public interest, or that the citizenship was acquired by fraud, misrepresentation, or any other improper or irregular practice. Vesting the power to deprive a person of Ghanaian citizenship with the High Court ensures that such deprivation is not arbitrary, since the court must act in accordance with the law and must exercise proper discretion.

In the 1969 decision *Olympio v. Commissioner for the Interior*, the plaintiff received a letter from the principal secretary of the Ministry of Interior stating that his permission to remain in Ghana had been withdrawn and that he must leave within 48 hours. Consequently, the plaintiff initiated an action in the High Court seeking a declaration that he was a citizen of Ghana by descent, could not therefore be deported from Ghana, and required no permission from the defendant to remain in Ghana. The plaintiff presented the following evidence: his father was born in Kpandu, his paternal

grandmother was born and baptized in Keta, his mother was born and baptized in Keta, his maternal grandmother was born in Keta, and he was born in Lomé, Togo, on April 1, 1933. The High Court found that the plaintiff's mother, grandmother, and great-grandmother were all born in Keta and were British and Ghanaian citizens by virtue of National Liberation Council Degree (N.L.C.D. 191) para. 1(a) No.1 of 1957, s.4 (1) and the British Nationality Act 1948, and found that the plaintiff was a Ghanaian citizen by descent. As a result, he could not be deported from Ghana and required no permission from the defendant to remain in Ghana. Olympio's case illustrates the protection of having an irrefutable nationality, as well as the importance of the rights conferred on citizens by descent in Ghana.

The 1992 Constitution of Ghana also provides safeguards against the loss of Ghanaian citizenship that would result in statelessness. For instance, if a Ghanaian citizen loses his or her Ghanaian citizenship as a result of the acquisition or possession of the citizenship of a country other than Ghana, such a person, on renunciation of that other citizenship, once again becomes a citizen of Ghana. Furthermore, a citizen of Ghana who loses his or her Ghanaian citizenship as a result of being married to a citizen of another country regains, on the dissolution of that marriage, his or her Ghanaian citizenship if the effect of the dissolution is to deprive him or her of the other country's citizenship. Section 17 of the Citizenship Act of 2000 (Act 591)¹⁰ provides for renunciation of Ghanaian citizenship and allows any citizen of Ghana who is a citizen of another country to make a declaration of renunciation of Ghanaian citizenship and for the minister to register the renunciation.

Causes of Statelessness

The Institute on Statelessness and Inclusion (2019) has identified some of the causes of statelessness, including discrimination, state succession, arbitrary deprivation of nationality, administrative barriers and lack of documentation, conflict of laws, and the inheritance of statelessness (www.isi.org; see also Blitz 2009).

Gender and discrimination in transferring nationality to children: It is discriminatory for a woman to

¹⁰Citizenship Act, 2000 (Act 591).

automatically lose nationality when she acquires the citizenship of her husband through marriage. The citizenship laws of Ghana do not discriminate against women in their quest to transfer their nationality to their children. Ghana's 1992 Constitution allows for both men and women to transfer their citizenship to a child. In addition, a Ghanaian man or woman has an equal right to confer Ghanaian nationality following the adoption of a child younger than 16 years.

The 1992 Constitution of Ghana states that a woman who acquires Ghanaian citizenship by registration, and whose marriage to a Ghanaian is subsequently annulled or dissolved, can continue to be a citizen of Ghana unless she renounces her Ghanaian citizenship. In contrast, a man who applies for citizenship in Ghana by registration is subject to much scrutiny. Therefore, when it appears to the registration authorities that the marriage of a male applicant has been entered into primarily with a view to obtaining citizenship, the authority may request the applicant to prove that the marriage was entered into for good cause.

Arbitrary deprivation of nationality: According to Ghana's 1992 Constitution, a person may not be arbitrarily deprived of his or her Ghanaian nationality in Ghana. A person who is a Ghanaian by birth shall not be deprived of his or her nationality by a court of law. Deprivation of Ghanaian nationality acquired by any other means may be done only by the High Court on application by the attorney general, when such a person has been proven to engage in illicit activities or conduct inimical or prejudicial to public morality or the public interest.

The inheritance of statelessness: Another cause of statelessness is the inheritance of statelessness. A stateless person may transfer the status of statelessness to his or her child if the child does not acquire the nationality of either parent before the parent became stateless, or of a grandparent, or if such a child is born in a country that does not practice *jus soli* (the right of anyone born in the territory of a state to nationality or citizenship of that state).

In Ghana, the risk of the inheritance of statelessness is very real. The nation's citizenship laws are based on the *jus sanguinis* (citizenship by parentage) principle. As such, when a child is unable to establish that at least one parent or grandparent has or had Ghanaian citizenship, the child is not considered by law to be Ghanaian. When that child cannot claim the citizenship of any other

nation, that child is at risk of statelessness. This also means that the stateless parents of a child born in Ghana pass on that statelessness to the child.

Migration: Very often, migrants are forced to leave their home nations and even their communities within Ghana due to economic failings, famine, or conflict. Such forcibly displaced persons typically would have either lost or forgotten to carry their identity documents. In the absence of such documentation, proving their nationality may be a real challenge (even for those who may be genuinely Ghanaian), and such persons may be considered at risk of statelessness. This is especially the case if they stay outside their home countries or regions for a long period.

Administrative barriers and lack of documentation: As seen with migration, administrative barriers and lack of documentation regrettably lead to statelessness. Certain administrative practices such as discrimination on the basis of race, religion, color, national origin, ethnicity, language, and physical traits may cause persons to be stateless or at least put them in danger of suffering the consequences of statelessness. Fortunately, in Ghana, discrimination is prohibited by the 1992 Constitution. That said, officials of various state institutions often discriminate against people on these prohibited grounds.

Failure or the inability to register births in particular territories and the consequent lack of a birth certificate may also put a person at risk of statelessness. Similarly, the lack of a passport or other identity document that proves nationality may cause persons to be stateless or at risk of statelessness.

Unfortunately, a number of administrative barriers exist in Ghana, including a lack of adequate training and capacity building of the civil servants who interact with stateless or at-risk persons. Many do not understand the concept of statelessness and the dilemma facing persons at risk of statelessness. They are, therefore, unable to provide support or proper direction to the stateless and to those at risk. Thus, the officers of government institutions who should be helping the stateless and persons at risk of statelessness add to their plight.

Services in Ghana can be expensive. For stateless persons and persons at risk of statelessness, the government and its institutions do not provide free or reduced cost services, which would better enable stateless and at-risk persons to access essential services. This restricted access to services also arises because Ghana, in large

part, still relies on sharing physical copies of documents among government institutions and departments. This makes it difficult to readily find relevant information or to transfer such information between agencies. Many government institutions suffer missing or destroyed documents, some of which could possibly benefit stateless persons or persons at risk of being stateless.

State succession: Following the exercise of self-determination, colonies and subdivisions within a state may secede and may be given de facto or de jure recognition as independent states. In furtherance of their exercise of sovereignty, these new states do not recognize themselves as subjects of the old state, and persons occupying these new states are usually recognized as citizens of the new state and are no longer citizens of the old state. The geography of the new state may be such that certain persons may find themselves in the new state but may not be recognized as its citizens, and such persons would have effectively lost the assistance and protection of the old state. In effect, such persons become stateless or at risk of statelessness. By the same logic, certain persons in the old state who share common ties with the persons in the new state may be stateless, because they would not be recognized by the old state as its citizens and they would not benefit from the assistance and protection of the new state.

Populations at Risk of Statelessness in Ghana

From the research conducted for this study, the following populations were found to be at risk of statelessness in Ghana: nomadic Fulanis and other undocumented migrants, former Liberian and Sierra Leonean refugees, members of border communities in Ghana, Zongo communities in Ghana, trafficked persons, persons of Lebanese origin in Ghana, persons who are stateless as a result of gaps in previous constitutions, descendants of persons who lived near the colonial castles, and children of all the persons identified as being at risk of statelessness.

Nomadic Fulanis and Other Undocumented Migrants

The first population identified as being at risk of statelessness in Ghana are migrants who enter the country without any identity documentation or stay in the country for extended periods without ever returning to their countries of origin; descendants of such persons are

included in this group. It is estimated that immigrants constitute more than 7% of Ghana's total population of about 30.42 million people, with the majority of these immigrants coming from other ECOWAS countries (World Population Review 2019).

Most immigrants in Ghana who do not obtain citizenship of Ghana may be living in Ghana "unlawfully" or may have permanent residence or residence permits. Information retrieved from the Ghana Immigration Service indicates that there are increasing populations of Chinese, Indians, Nigerians, Nigeriens, Togolese, and Ivorians who live and work in Ghana. A random sample of 20 persons originating from these countries revealed that 70 percent had one form of identity documentation showing their nationality. The risk of statelessness, however, increased as these persons continued to live in Ghana for extended periods, with some not intending to return to their home countries. The loss or expiration of identity documents for these persons puts them at risk of becoming stateless. For example:

Memunatu Fulani, who was born and bred in the Western Region of Ghana, applied for a Republic of Ghana passport. She was required to produce an official identity document (ID card). She had a birth certificate as well as a voter's ID card. Both parents of Memunatu Fulani were born in Ghana, and her grandparents were in Ghana before Ghana gained independence from Great Britain on March 6, 1957. She has never traveled outside Ghana. Her application for a passport was, however, denied. She was said not to be a citizen of Ghana and thus not entitled to the Republic of Ghana passport. Memunatu Fulani was required to furnish further documentation to prove that one of her parents or grandparents was a citizen of Ghana. Her inability to get any documentation to prove this led to her jettisoning her application for a Republic of Ghana passport.

The case of Memunatu Fulani is a classic case of abuse of discretion and a manifest display of the incapacity and technical incompetence of officials of the Passport Office to properly determine the nationality of certain persons who come before it applying for a Republic of Ghana passport. Physical traits, name, language or the inability to speak an indigenous Ghanaian language, and other idiosyncrasies of applicants can lead to unlawful denials of qualified persons to certain services of the state that can be considered essential and imperative for the exercise of one's rights as a citizen.

In addition, children who are born to such persons and who do not otherwise acquire Ghanaian citizenship through the *jus sanguinis* principle also risk being stateless. If these births are not registered with the nationality of their parents, these children may be at risk of statelessness.

Even when these births are registered, future generations of the children of these migrants may be at risk of statelessness if they continue to live in Ghana and have children with noncitizens of Ghana whose home countries practice *jus soli*. The risk of statelessness is also heightened if the laws of the home country of these immigrants require them to return to their countries within a specified time, failing which they may lose their citizenship.

Nomadic Fulanis and their descendants constitute part of the migratory population that is at risk of statelessness in Ghana because they usually do not carry with them appropriate identity documentation evidencing their nationality. Fulanis are an ethnic group that can be found everywhere in West Africa. A large number are nomadic and are associated with animal husbandry, while others have settled within the borders of particular nations (interview with Prof. Sheikh Osman Bari, president of the Fulani Association of Ghana, 2017). Due to the nature of nomadic tribes, they move from one country to another in search of pastures to feed their cattle and do not often return to their countries of origin. While in Ghana, they live in remote areas, where access to healthcare and education is often a challenge. As a result of where they live and the fact that they shy away from indigenous Ghanaians, births in this community often go unregistered, and the children born are often not issued birth certificates, which is a means of preventing statelessness among these children (interview with the Fulani Association of Ghana).

Liberian, Sierra Leonean, and Togolese Refugees in Ghana

Former Liberian and Sierra Leonean refugees in Ghana and their descendants fled civil wars in their countries between the early 1990s and 2000s with few possessions, and they have little to no documentation (UNHCR 2011). They have lived in various parts of Ghana. Some have naturalized as Ghanaians; others have integrated into communities in Ghana. During our fieldwork, some of them explained their situations:

Thomas was born in Liberia. He has no birth certificate, and he does not speak any of the indigenous languages of Liberia. His uncle brought him to Ghana in 1996 during the conflict in Liberia. Thomas had a mental incapacity at the time his uncle brought him to Ghana, after he witnessed his own father being murdered in cold blood in Liberia. Thomas does not want to go back to Liberia because the person who slayed his father is still alive and lives in Liberia. (Interview with Thomas, a Liberian refugee in Ghana)

Without documentation, refugees lack proof of their nationality. In Ghana, many refugees are in protracted situations — some arrived in Ghana when very young, and some were born in Ghana to refugee parents. For instance:

Sandra was born in Ghana at the Budumburam Refugee Camp; both of her parents, however, were Liberians. Her father passed away some years ago, while her mother is still alive and lives in Ghana. Her parents came to Ghana during the war in Liberia. The family has since never returned to Liberia. Sandra speaks only English and is unable to speak any of the indigenous Liberian languages. She has never traveled to Liberia or out of Ghana. (Interview with Sandra, a Liberian refugee in Ghana)

Any child born in Ghana is entitled to a birth certificate, regardless of their parents' nationality. The birth certificate states the parents' nationality, and while it does not constitute a nationality document issued by their country of origin, it provides proof of the child's nationality. As such, it protects the child from statelessness, even in the event that their parents die and leave behind no proof of their own nationality. UNHCR and the Ghana Refugee Board make efforts to ensure that children of refugees born in Ghana obtain birth certificates to prevent the children from becoming stateless.

The Ghana Refugee Board estimates that there are also approximately 3,000 Togolese refugees in Ghana, of which approximately 2,700 reside in the Volta Region (Ghana Refugee Board 2017). While cessation will likely be implemented for Togolese in the near future, few Togolese refugees have nationality documentation from Togo. In a 2015 survey conducted by UNHCR and partners, only 30 percent of Togolese respondents claimed they had some form of nationality document (UNHCR 2008). Because most respondents did not carry the documents on their person, UNHCR could not

confirm their possession or the validity of the documents. For those in possession of national identity cards or national passports, it was generally observed that the documents were expired. Furthermore, some respondents indicated they had only copies but not the originals of the documentation. Of the 115 individuals possessing Togolese nationality documentation, 100 claimed to have a birth certificate. Of those 100, just 50 stated they also had an additional document. Some 15 respondents claimed to possess a nationality document other than a birth certificate. Given the limited documentation in Togolese refugees' possession, it will be particularly important that, when cessation is implemented, due consideration is given to ensuring that they can access nationality documentation and be educated on the consequences of failing to obtain nationality documentation.

Doh is a 31-year-old man who was born in Togo to a Togolese father and a Ghanaian mother. His birth was not registered. Following the death of his father, his mother brought him to Ghana. He has no documentation that confirms his nationality. His mother does not have any documentation confirming her nationality either. As a result, Doh is at risk of being stateless. (Interview with Doh, a Togolese refugee)

For refugees who lack nationality documentation, durable solutions must give due consideration to ensuring refugees obtaining solutions do not face a risk of statelessness in the future. For refugees who do not wish to return to their country of origin, local integration in Ghana may be an option. Both naturalization and indefinite residence status — resulting in country of origin nationality documents — would eliminate the risk of statelessness. Naturalization would bestow a new citizenship (Ghanaian) on the refugee, also ending their refugee situation:

[I]t is the most durable and often most desirable long-term solution for recognized refugees wishing to end their refugee status and integrate in their host country. Indeed, while refugee status offers certain guarantees, refugees continue to be vulnerable in that they lack an effective nationality. (UNHCR 2006)

While naturalization in Ghana requires identification documents, it is an open question whether naturalization could provide an opportunity for refugees to gain Ghanaian nationality documents without having to interact

with the government of their country of origin. In the aforementioned 2015 UNHCR survey, one of the reasons for respondents who chose naturalization as a preferred durable solution was that they would not have to obtain a nationality document from Togo to do so. The main reason why survey respondents were unwilling to request nationality documents from the Togolese government was that they feared being targeted should they have contact with the Togolese authorities. Indefinite residence often leads to a durable legal status in Ghana, while the accompanying issuance of a nationality document from the country of origin provides proof of nationality.

Residents of Border Communities in Ghana

One other population at risk of statelessness is residents of border communities in Ghana. The Ghana Immigration Service identifies about 42 border communities. Ghana shares borders to the east with Togo, to the west with Côte d'Ivoire, and to the north with Burkina Faso. The Atlantic Ocean is to the south of Ghana. There are three main customs entry points in Ghana, namely, Aflao, Elubo, and Paga, representing Ghana's border with Togo, Côte d'Ivoire, and Burkina Faso, respectively. There are two additional customs points between Ghana and Côte d'Ivoire, namely, Oseekodwokrom and Gonnokuram. Another recognized entry point between Ghana and Burkina Faso is at Hamile in the Upper West Region of Ghana.

Travel to and from Ghana through unapproved borders may also increase the risk of statelessness. There is the need for effective border control and protection to ensure that authorized persons enter the country and that those who do enter the country continue to have the requisite documentation to live in the country. Passage through properly designated border posts usually requires the possession of valid travel documentation. Persons from ECOWAS member countries, pursuant to the ECOWAS protocol on free movement of persons, do not need a visa to travel into or out of Ghana, but they nevertheless need to possess a valid identity card.

By the operation of the *jus sanguinis* principle, two immigrants from countries that practice *jus soli*, neither of whom is a citizen of Ghana, who give birth to a child in Ghana may risk having such a child becoming stateless, since she would be neither a citizen of Ghana nor

a citizen of any of the countries of which either parent is a citizen.

Around Aflao, at Ghana's border with Togo, there is a community called Kologa on the Ghana side of an unauthorized entry point. This community is made up predominantly of people who are considered Nigeriens and not citizens of Ghana. Ghana Immigration Service officials that operate around the Aflao border classify the people of this community as non-Ghanaians.

Residents of Kologa believe they are citizens of Ghana. In an interview for this study, a cross section of these residents revealed that most of them were born in Ghana. In some cases, their grandparents were born in Ghana before Ghana gained independence from the British. In their view, it is unacceptable for persons and institutions in Ghana to continue to identify them as non-Ghanaians and deprive them of many essential services that are ordinarily given to citizens of Ghana. Most of them know no other home but Ghana.

That said, many persons in Kologa may be at risk of statelessness. To the extent that births and deaths that occur in this community are not registered, the potential risk of statelessness is increased, especially if the parents of a child born in Kologa do not have the necessary documentation to prove or confirm their nationality, whether Ghanaian or Nigerien.

Ghana's Migration Policy (2016) recognizes the need for effective border management that aims to prevent irregular migration, human trafficking, smuggling, and other illicit activities. Border enforcement, establishment of a national entry/exit database, and strengthening the capacity of government agencies on migration and national security are also necessary to manage mixed migration flows, combat immigration crime, and manage border movements (Ghana Migration Policy 2016).

Zongo Communities in Ghana

This study found that descendants of persons who lived in Zongo communities, pre- and post-independence, who originated from other countries (particularly other West African countries) might be at risk of statelessness in the absence of identity documentation to prove their Ghanaian citizenship. As stated, Ghana is a *jus sanguinis* nation where nationality is by ancestry, and the descendants of persons in Zongo communities are nationals of other countries. They are also at risk of statelessness as a result of administrative practices of key institutions of

state that discriminate against them on grounds of their origin, religion, language, and physical traits, in violation of the 1992 Constitution of Ghana.

Zongo communities constitute some of the most heterogeneous communities in Ghana. There is a Zongo community in almost every major town in Ghana. During the precolonial era, Zongo communities were the communities most settled in by both non-natives of a town and non-Ghanaian citizens, particularly citizens of other West African countries that found themselves living in Ghana for extended periods of time.

Undoubtedly, the Zongo communities have always been and continue to be part of the most underprivileged and least economically developed communities in Ghana. Their access to education, health, potable water, good sanitation, and other essentials of life has always been quite poor, with serious deleterious effects on these communities.

Historically, the Zongo communities were made up of nationals of other countries as well as non-natives of their towns and villages. The majority of these residents became citizens of Ghana effective March 6, 1957, when Ghana gained independence from Great Britain. All non-nationals of the then-Gold Coast who had apparently lost the assistance and protection of the countries they originated from became citizens of the new country, Ghana. This was the case notwithstanding the heterogeneity of these communities and the fact that persons in these communities could still speak languages that originate in other West African countries.

The main issue, however, is one of documentation. Since there is no database or register of persons who became citizens of Ghana after Ghana gained its independence, we found that it is difficult for such persons to proffer satisfactory evidence that they are citizens of Ghana.

Notwithstanding the grant of Ghanaian nationality to persons in the then-Gold Coast, persons who did not acquire Ghanaian citizenship at the time Ghana gained independence, as well as those who entered Ghana after independence and never acquired Ghanaian citizenship, may be stateless or at risk of statelessness, even if they have fully integrated in Ghana, adopted the culture of these communities, consider themselves to be citizens of Ghana, and have lost the assistance and protection of their home countries. Recent arrivals to the Zongo communities from abroad would not have parents or grandparents who are Ghanaian, and may not have any

documentation to prove they are citizens of any other country. It is thus very likely to find people in the Zongo communities who may be stateless, even if they do not realize it.

The likelihood of future generations of stateless persons in the Zongo communities bearing the tag of statelessness becomes reduced when these later generations acquire citizenship of Ghana through other means, such as naturalization, registration following marriage to a Ghanaian citizen, or having one Ghanaian citizen parent.

Trafficked Persons

Trafficked persons usually do not carry any form of identity documentation with them to their destinations. Even when they do, it is common practice that the traffickers or some other persons in the chain of trafficking have custody of this identity documentation. As a result of abuses and other human rights violations, a trafficked person may jettison their identity documentation and flee. Thus, the absence of identity documentation has the potential of increasing the risk of statelessness for trafficked persons.

Ghana is a source, transit, and destination country for human trafficking, and it experiences both cross-border and intracountry trafficking. Vulnerable persons, especially women and children, are usually the victims of trafficking. The perpetrators may be relatives of the victims, intermediaries, or criminal syndicates. The Gulf States are the destination for lots of cross-border trafficking. Victims of intracountry trafficking usually do not have birth certificates, passports, or other documentation establishing their nationality as Ghanaian.

Persons of Lebanese Origins in Ghana

Like persons from the Zongo communities, children of persons of Lebanese origin are at risk mainly because Ghana is a *jus sanguinis* nation, where nationality is by ancestry. The descendants of Lebanese without Ghanaian nationality will typically not be Ghanaians. Even for those who may have acquired citizenship of Ghana, the discriminatory practices of certain institutions of the state based on skin color, race, and names may subject members of this group to the consequences of statelessness.

We observed that there are many with Lebanese ancestry in Ghana, and the reason for their presence in Ghana is mainly economic. Some of these people were

in Ghana before Ghana gained independence from the British. Consequently, they became Ghanaians through the 1957 Constitution of Ghana. They retained this status on the promulgation and coming into force of the 1992 Constitution of Ghana. Others who came into Ghana after independence subsequently became Ghanaians through other means such as naturalization and registration.

Documentation proving citizenship of this category of people is necessary to prevent them from becoming stateless or at risk of statelessness. Many state officials and others who render services to citizens of Ghana would not believe they are Ghanaians in the absence of documentary proof, due mainly to their skin color. They may be discriminated against on the grounds of race, name, and other markers.

Persons Who Became Stateless as a Result of Gaps in Previous Constitutions

Persons who were not citizens of Ghana under the 1960 Constitution did not become citizens of Ghana when the 1969 Constitution came into force, unless they subsequently acquired Ghanaian citizenship under the provisions of the 1969 Constitution. If such persons were stateless, they continued to remain stateless on the entry into force of the 1969 Constitution. Descendants of such persons whose parents or grandparents were not citizens of Ghana are also stateless unless they subsequently acquired Ghanaian citizenship in another way.

Under the 1969 Constitution, only a woman could become a citizen of Ghana by registration following marriage to a man who was a citizen of Ghana. In addition, a non-Ghanaian man could lose his nationality by virtue of a marriage to a Ghanaian woman.

Also, under the 1969 Constitution, a person born in or outside Ghana became a citizen of Ghana if either parent was a citizen of Ghana. There was no room for a person to become a citizen of Ghana by virtue of any grandparent being a citizen of Ghana. The 1979 Constitution bridged this gap by providing for the acquisition of Ghanaian citizenship if any parent or grandparent is or was a citizen of Ghana. This provision increased the opportunity for an otherwise ineligible category of persons to acquire citizenship.

There was no provision in the 1969 Constitution conferring citizenship on adopted children, nor were there any such provisions in the 1960 or 1957 Constitutions.

Consequently, children adopted by Ghanaian citizens between 1957 and 1969 never became citizens of Ghana on the coming into force of the 1979 and 1992 Constitutions, which provided for acquisition of citizenship by adoption but did not provide for retroactive application of the law. If such a child did not acquire any nationality pursuant to the adoption, he or she became stateless, and this status persisted. This is still true notwithstanding that such a child may have no ties to any other country but Ghana. The descendants of such a child also became stateless because of Ghana's *jus sanguinis* status, unless the other parent was a Ghanaian or unless such a child acquired Ghanaian citizenship by another way or citizenship from another country.

Consequences of Statelessness

Access to Healthcare

Quality healthcare is a human right. The Ghanaian National Health Insurance Scheme is the largest provider of health insurance for the majority of Ghanaians, notwithstanding the existence of a few private health insurance providers.

For stateless persons and persons at risk of statelessness, access to quality healthcare remains an important social need, and for some, it remains a mirage. Fortunately, the process to acquire national health insurance coverage in Ghana does not discriminate, at least on paper, against stateless or potentially stateless residents. One does not need national identity documentation or other similar forms of identification to successfully apply for health insurance coverage in Ghana.

The failure by stateless persons or persons at risk of statelessness to come forward and apply for national health insurance coverage is due to the distances they would usually have to travel to obtain access, as well as the financial and other costs involved in registration. Most stateless persons or persons at risk of statelessness live in towns far removed from where registration for health insurance coverage usually takes place. Thus, many of these people lack health insurance. Once a person has valid and effective health insurance coverage, such a person is given medical or other related care without any further prodding as to its mode of acquisition.

Access to Education

The right to education is recognized as a fundamental human right in the 1992 Constitution of Ghana, and all

persons in Ghana have the right to equal educational opportunities and facilities. The Ghana Education Service is the state institution mandated to supervise first and second-cycle educational institutions.¹¹ Generally, one does not need a birth certificate or any other national identity document to be able to enroll in a first or second-cycle educational institution. To the extent that proof of nationality is not required, all persons including stateless or potentially stateless residents and their children may enroll in a school and acquire education.

There are, however, usually two categories of fees at almost all tertiary institutions in Ghana: fees for citizens of Ghana, and fees for noncitizens. Fees for the former are usually markedly lower than those of the latter. Stateless persons or persons at risk of statelessness must typically pay the higher fees, which may hinder their access to education.

Right to Vote and to Participate in the Democratic Process

Stateless persons, who are also classified as non-Ghanaians, have no right to vote by virtue of Article 42 of the 1992 Constitution, which gives citizens of Ghana who are at least 18 years of age the right to vote. Furthermore, a stateless person is not eligible to run in an election to become a member of parliament under Article 94 of the 1992 Constitution. Stateless persons are also not eligible for election as president of the Republic of Ghana. Under Article 63 of the 1992 Constitution, presidential candidates must be citizens by birth.

To exercise the right to vote, one would usually have to present a valid voter's identity card. The Electoral Commission is the statutory body responsible for issuing such cards. An applicant for a card must be qualified to vote under the relevant laws. In addition, an applicant must show proof that she is a citizen of Ghana. An applicant may present a number of identity documents to prove citizenship. These include a passport, a driver's license, an old voter's identity card, or a national identity card issued by the National Identification Authority (NIA). An applicant who does not have any of these documents can still register as a voter and be issued a voter's

¹¹ First-cycle institutions refer to basic education (from preschool through primary or elementary education), whereas second-cycle institutions refer to secondary education (junior and senior high school education).

identity card if she is able to procure two guarantors, who must be citizens of Ghana and registered voters. Notably, National Health Insurance identity cards (NHIS cards), pursuant to the decision of the Supreme Court in *Abu Ramadan and Another v. The Electoral Commission and Another* and *Kwasi Danso Acheampong v. The Electoral Commission and Another* (consolidated writs, 2014), are no longer accepted by the Electoral Commission as proof of Ghanaian citizenship. The rationale for this decision was that the National Health Insurance card is available to both citizens and noncitizens, including stateless persons.

Access to Justice, Assistance, and Protection of the State

Stateless persons are guaranteed the fundamental human rights enshrined in the 1992 Constitution of Ghana and are entitled to protection by the Executive, Legislature, and Judiciary against infringement of such rights. They have the right to apply to the High Court for the enforcement of these rights (Constitution of Ghana 1992). This access to the judicial system is in line with Article 16 of the 1954 UN Convention on statelessness, which provides for access to the courts by stateless persons.

In practice, however, stateless persons or persons at risk of statelessness very often do not avail themselves of the assistance and protection of the Ghana Police Service, the justice system, and other state institutions. They are usually voiceless and not able to muster courage to avail themselves of state institutions. Stateless persons interviewed in the course of this study expressed a general fear to interface with the Police Service or other similar state institutions for fear of being removed from the country as illegal aliens. These concerns also limit the right of stateless persons to access justice.

The Right to Work

The right to work for stateless persons and persons at risk of statelessness is hindered by the lack of appropriate identity documents, particularly in the formal sector. In the informal sector, there are fewer restrictions, but an identity document might still be necessary to access a bank loan or other services. The inability of stateless persons to work and earn a living has adverse consequences on their ability to provide for themselves and their families.

Conclusion and Recommendations

This study makes a number of recommendations for addressing issues of statelessness in Ghana. First, the Ministry of the Interior should take pragmatic steps — with fixed timelines — to finalize and adopt the National Plan of Action for the eradication of statelessness in Ghana by 2024. The plan should take into consideration the provisions of the 2017 Banjul Plan of Action and should include reasonable timelines. The ministry must establish reasonable and clear procedures and conditions for nationality, and it must effectively publicize them.

Second, the Ministry of Foreign Affairs should establish clear channels to appeal the decision of an officer who refuses an applicant's application for a passport on the grounds of ethnicity or on other arbitrary grounds.

Third, Ghana should ratify — through an Act of Parliament — the 1954 and 1961 Conventions on statelessness. Their ratification through an Act of Parliament, rather than by a Resolution of Parliament, would align with recent decisions of the Ghanaian Supreme Court and better ensure that the rights created under the Conventions are enforceable by the Ghanaian courts. Article 6(2) of the 1992 Constitution should be amended to accord a child (of any age and regardless of whether the child's parents are known), who is born in Ghana and who would otherwise be stateless, citizenship of Ghana.

Fourth, the UNHCR should collaborate with strategic state institutions like the Commission on Human Rights and Administrative Justice, the National Commission for Civic Education (NCCE), the Births and Deaths Registry, the Ghana Statistical Service, the National Identification Authority, and other relevant agencies to undertake massive public education on citizenship and its acquisition, especially among communities that may be at risk of statelessness.

Fifth, the Births and Deaths Registry and other state institutions like the Ghana Immigration Service should collaborate more closely on determination of nationality. Frequent sharing of relevant, timely, and accurate information will make status determinations easier, and will improve the chances of a more just course of action with respect to a stateless person or person at risk of statelessness.

Sixth, district magistrates should be involved in determining the nationality of a parent or an applicant in cases of doubtful nationality. This step will ensure greater accuracy in nationality determinations through the

long-established process of producing evidence to establish claims. The use of magistrates will also add a more objective element to the final determination of the nationality of a person.

Seventh, when possible, the Legal Aid Commission and relevant civil society organizations (CSOs) should provide legal services to persons at imminent risk of statelessness and should ensure that administrative bodies establish proper objective guidelines for the determination of nationality.

More than 10 million persons in the world are stateless or at risk of statelessness. Most are denied the protections, services, and opportunities that citizens take for granted. In this article, we show that statelessness is a real issue in Ghana, and offer some practical steps and recommendations to reduce the phenomenon.

Authors' Note

The authors do not have the permission to share the data. Francis Xavier Dery Tuokuu is now affiliated to York University.

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