



Citizenship Rights
in Africa Initiative



Institute on
Statelessness and
Inclusion

LAWYERS FOR
HUMAN RIGHTS
Making Rights Real

THE COMMITTEE ON THE RIGHTS OF THE CHILD

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KINGDOM OF LESOTHO

Civil Society Submission on the right of every child to acquire a nationality under Article 7 CRC

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Introduction

1. The SADC CRAI Network on Statelessness, represented by Lawyers for Human Rights, and the Institute on Statelessness and Inclusion welcome the opportunity to make this submission to the Committee on the Rights of the Child regarding The Kingdom of Lesotho's compliance towards every child's right to acquire a nationality under Article 7 of the CRC.
2. The **SADC CRAI Network on Statelessness** is the Southern African branch of the Citizenship Rights in Africa Initiative (CRAI). The **Citizenship Rights in Africa (CRAI)** is dedicated to ending statelessness and the arbitrary denial of nationality in Africa.¹
3. **Lawyers for Human Rights (LHR)** is a South African human rights organisation committed to social justice activism and strategic public interest litigation. LHR is currently the coordinator of the SADC CRAI network. In 2011, LHR launched the Statelessness Project as part of the Refugee and Migrant Rights Programme. LHR provides direct legal services to stateless persons; engages government on the need for legal reform to prevent and reduce statelessness; raises awareness on the rights of stateless people; and advocates for accession to the 1954 and 1961 UN statelessness conventions. LHR has reached more than 3,000 persons from over 28 countries of origin. LHR has identified numerous categories of stateless persons in the Republic, both migrants and those born in South Africa.²

¹ For more information visit <http://citizenshiprightsafrika.org/>

² For more details of LHR's statelessness project, see: <http://www.lhr.org.za/programme/rmrp-statelessness-project-accessing-citizenship-and-nationality> .

4. **The Institute on Statelessness and Inclusion** (the Institute) is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness.³ The Institute is committed to helping promote children's right to a nationality, establishing it as one of its five thematic priorities. As part of this work, the Institute has developed a Toolkit, to strengthen civil society engagement on children's right to a nationality with the Committee on the Rights of the Child.⁴
5. This submission has been structured to highlight issues which may be included in the List of Issues by including them in a text box in the conclusion, followed by recommendations which may be drawn on for the Committees Concluding Observations.
6. The submission will focus on the following challenges and concerns relating to the full enjoyment of every child to acquire a nationality, as protected under Article 7 CRC:
 - a. The right of foundlings or children of unknown parents to acquire and retain Lesotho citizenship;
 - b. Difficulty in accessing birth registration and/or documentation for children born in Lesotho;
 - c. The passing on of citizenship for only one generation born outside of the country;
 - d. Challenges related to acquisition of citizenship of stateless children;
 - e. The discrimination against Mosotho women when passing on their citizenship to their spouses.

The Report of Lesotho to the Committee

7. In the government of Lesotho's first Periodic Report to the Committee since its initial report in 1998, it acknowledged the limited increase in the registration of births and listed lack of government capacity, the practical and financial disincentives for families, and the confusion around legal requirements all as difficulties in increasing birth registration. The report acknowledges that

*"the penalty levied for late registration has become a major disincentive for parents. Central and district capacity within the Office of the Registrar is seriously inadequate hence unable to proactively identify unregistered children. This also causes delays in the issuance of birth certificates."*⁵

8. The Report states that a new national identity system aims to harmonise vital registrations, including birth registrations, and the state emphasised their efforts to encourage families to obtain birth certificates for their children, "At district and community levels, the Government

³ For more information visit www.institutesi.org

⁴ This Toolkit can be found at: <http://www.statelessnessandhumanrights.org/>

⁵ Periodic Report on the Domestic Implementation of the UN Convention on the Rights of the Child, Lesotho, CRC/C/LSO/2, December 2014.

*of Lesotho is assisted by development partners to promote birth registration to ensure that children can access basic services such as the Lesotho Child Grants Programme”.*⁶

9. While acknowledging the positive steps towards increased birth registrations and the existence of a safeguard against statelessness prescribed by Lesotho’s Constitution: as this submission sets out, there remain various outstanding challenges to ensuring every child’s right to a nationality. Furthermore, the lack of reference, in the state report, to foundlings, and the continuous gaps in law on birth registrations, and the implementation of such law, may leave children stateless or at risk of statelessness in Lesotho, in violation of their right to acquire a nationality.

Lesotho’s international obligations

10. As a party to the Convention on the Rights of the Child, with no reservations in place, Lesotho is obliged to ensure every child’s right to acquire a nationality in accordance with Article 7 of the Convention and the Convention’s Guiding Principles of non-discrimination, best interests of the child, the child’s right to participate and the right to life, survival and development of the child.
11. Lesotho is also party to the following treaties which uphold the right to a nationality and prohibit discrimination in this regard: the International Covenant on Civil and Political Rights (ICCPR) (Article 24), the Convention on the Elimination of all forms of Discrimination Against Women (Article 9); the Convention on the Elimination of all Forms of Racial Discrimination (Article 5), and the African Charter on the Rights and Welfare of the Child (Article 6). All of the principles contained within these treaties in relation to the right to a nationality, are entrenched under the CRC, in relation to children. Thus, the CRC prohibits denial of the child’s right to right to a nationality as a result of discrimination against the child or his or her parents or guardians, on all prohibited grounds including gender, race and disability.
12. Lesotho is also among the few African countries to ratify both the 1954 Convention Relating to the Status of Stateless persons and the 1961 Convention on the Reduction of Statelessness.
13. It is also commendable to note that Lesotho has domesticated provisions in its legislation and policy that enforce birth registration and protect against statelessness. These provisions as well as remaining challenges will be looked at in closer detail below.

Lesotho’s legal framework

14. The 1993 Constitution of Lesotho includes contains some important provisions on human rights, right to nationality and safeguards against statelessness.⁷
15. Articles 4 (1) (a) and (n) and (o) of the 1993 Constitution of Lesotho protect fundamental human rights and freedoms and Article 32 protects the rights of children and young persons.

⁶ Ibid.

⁷ To read the Constitution of Lesotho, see

<http://www.unesco.org/education/edurights/media/docs/5f117d45be0d3d8ed8e573ee1db7db551ad68565.pdf>

Article 4. Fundamental human rights and freedoms

“(1) Whereas every person in Lesotho is entitled, whatever his race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status to fundamental human rights and freedoms, that is to say, to each and all of the following –

(a) the right to life;

(n) freedom from discrimination;

(o) the right to equality before the law and the equal protection of the law.”

Article 32. Protection of children and young persons

“Lesotho shall adopt policies designed to provide that –

(a) Protection and assistance is given to all children and young persons without any discrimination for reasons of parentage or other conditions”

16. In addition, both the Constitution and Citizenship Order, have a jus soli provision which provides the right to nationality for anyone born on the territory of Lesotho.⁸ These provisions also include a safeguard against statelessness by ensuring citizenship for those who do not qualify for citizenship but would otherwise be stateless. These provisions guarantee the right to a nationality for all children born in Lesotho.

Article 38. Persons born in Lesotho after the coming into operation of the Constitution

(1) Subject to the provisions of subsections (2) and (3), every person born in Lesotho after the coming into operation of this Constitution shall become a citizen of Lesotho.

(2) Save as provided in subsection (3), a person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth neither of his parents is a citizen of Lesotho, and -

(a) one or both of his parents possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Lesotho; or

(b) one or both of his parents is an enemy alien and the birth occurs in a place then under occupation by the enemy.

*(3) A person born in Lesotho on or after the coming into operation of this Constitution who is disqualified to become a citizen of Lesotho by virtue of subsection (2) of this section shall become a citizen of Lesotho **if he would otherwise become stateless.***

⁸ Chapter IV of the Constitution of Lesotho 1993 and Part II of the Lesotho Citizenship Order No. 16 of 1971. To read the Citizenship Order, see <http://www.refworld.org/pdfid/4c5849ad2.pdf>

Section 5 of the Lesotho Citizenship Order of 1971:

(1) Subject to the provisions of subsection (2), every person born in Lesotho after the 3rd day of October, 1966 shall be a citizen of Lesotho with effect from the date of his birth.

(2) A person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth - (a) neither of his parents is a citizen of Lesotho and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Lesotho; or (b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

(3) Unless he would thereby become stateless, a person born in Lesotho after the 3rd day of October, 1966 shall not become a citizen of Lesotho at the date of his birth by virtue of this section if his father is not on that date a Commonwealth Citizen.

Section 6 of the Citizenship Order states that:

“A person born outside Lesotho after the 3rd day of October, 1966 shall be a citizen of Lesotho with effect from the date of his birth if his father is a citizen of Lesotho at that date otherwise than by virtue of section 23(2) of the Lesotho Independence Order 1966.”

Section 7 states that:

“Any woman who after the 3rd day of October 1966 married or marries a citizen of Lesotho shall be entitled upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Lesotho”

17. **The Children’s Protection and Welfare Act**,⁹ in line with the CRC, protects the acquisition of nationality and birth registration for all children born in Lesotho, including orphaned and vulnerable children. It also protects against discrimination and stresses that a child’s best interest shall be the primary consideration in any matter concerning a child.

- a. **Article 4** – (1) All actions concerning a child shall take into full account his best interests
(2) The best interests of a child shall be the primary consideration for all courts, persons, including parents, institutions, or other bodies in any matter concerning a child.
- b. **Article 6** – A child shall not be discriminated against: on the grounds of gender, race, age, religion, disability, health status, language, custom, ethnic origin, rural or urban background, birth, socio economic status, refugee status and other status.
- c. **Article 7 – Identity of child** – a child has a right from birth, to a decent name and to acquire a nationality;
- d. **Article 8 – Right to registration** – A child has a right to be registered within three months of birth whether born alive or still born;
- e. **Article 9 – Right of orphaned and abandoned and vulnerable children to register** – (1) Orphan and vulnerable children have a right to registration.

⁹ The Children’s Protection and Welfare Act No 7 of 2011. To read the Act, see <http://jafbase.fr/docAfrigue/Lesotho/children%20act%20lesotho.pdf>

18. **The Registration of Births and Deaths Act**¹⁰ stipulates that every person is enforced and obliged to register a birth at the earliest time possible.

Gaps in law, policy and practice which undermine every child's right to acquire a nationality

19. Despite this strong legal framework, there remain some crucial gaps, which undermine every child's right to acquire a nationality in Lesotho.

The right of foundlings or children of unknown parents to acquire and retain Lesotho citizenship

20. There are no provisions for granting citizenship to foundlings in either the Constitution or the Citizenship Order and as a consequence children found in Lesotho and who appear to have been born in Lesotho are not afforded the right to a nationality at birth. This is a denial of every child's right to acquire a nationality and undermines Lesotho's international and domestic obligations.

Difficulty in accessing birth registration and/or documentation for children born in Lesotho

21. Even though birth registration is provided for and enforced under the law, the most recent UNICEF birth registration data for Lesotho estimated the 2005 - 2012 birth registration rate to be only 45.1%. In particular, births in rural areas are less likely to be registered. Further, the penalties levied for late registration of birth is a major disincentive for parents. Furthermore, in the absence of parents, those registering births often do not know which documents to produce to facilitate birth registration.

The passing on of citizenship for only one generation born outside of the country

22. According to Article 39 of the Constitution of Lesotho, a Basotho citizen born abroad cannot pass on their nationality to their children who are also born abroad, a situation which could lead to statelessness.

Article 39 – Persons born outside of Lesotho after the coming into operation of the Constitution:

“A person born outside Lesotho after the coming into operation of this Constitution shall become a citizen of Lesotho at the date of his birth, if at that date either of his parents is citizen of Lesotho otherwise than by descent.”

Challenges related to acquisition of citizenship of stateless children

23. The Citizenship Order, section 10 (1)(a) and (b) makes provision for a stateless person to apply for Sotho Citizenship at the age of 18 but requires that the stateless person resided lawfully in Lesotho prior to his application as a condition. This is often an impossible requirement, as stateless persons often do not have any enabling documents and are not in a position to acquire legal status in any country in the absence of a special consideration such as a statelessness determination mechanism (procedure) to document such person. Furthermore, this provision means that children who are stateless will not have access to citizenship until

¹⁰ The Registration of Births and Deaths Act 22 of 1973

after they attain adulthood. Living your entire childhood as a stateless person is contrary to the principle of the best interests of the child, and can undermine the child's access to various human rights including access to education and healthcare.

Section 10 of the Citizenship Order – Application for registration of stateless persons as citizens of Lesotho:

“10 (1) Application may be made to the Minister as in the appropriate form set out in the Second Schedule, for registration as a citizen of Lesotho by a person- (a) who has attained the age of eighteen years and who is stateless; and (b) who is lawfully sojourning in Lesotho and has been since the 4th day of October 1966, or since such earlier date as the Minister may order (and the Minister is hereby empowered so to order), been lawfully sojourning there for a period of three years immediately preceding the application; and (c) who has neither been convicted of an offence against the security of Lesotho nor been sentenced in any country to imprisonment for a term of five years or more in respect of a criminal offence that would if it had been committed in Lesotho, have been likewise punishable; and (d) who is willing to take the oath of allegiance; and (e) who intends, if his application is granted, to reside permanently in Lesotho or to establish his domicile of choice in Lesotho, subject to necessary absences from Lesotho in the course of his employment or self-employment.

(2) This section shall apply to all persons born before as well as to persons born after the commencement of this order.”

The discrimination against Mosotho women when passing on their citizenship to their spouses

24. Both the Constitution and the Citizenship Order discriminate against Mosotho women in not giving them the same right as Mosotho men to pass on their nationality to their spouses. This contravenes Lesotho's domestic obligation in terms of the Constitution of Lesotho as well as its international obligation in terms of CEDAW. It also creates a risk of statelessness for a child in the event that the child's mother passes away and the father is stateless or of unknown nationality, or is a foreigner who cannot pass on his nationality to his child.

Article 40 of the Constitution – Marriage to Lesotho citizen:

“(1) Any woman who immediately before the coming into operation of this Constitution, is or has been married to a person- (a) who continues to be a citizen of Lesotho by virtue of section 37 of this constitution; or (b) who having died before the coming into operation of this Constitution would, but for his death, have continued to be a citizen of Lesotho by virtue of that section, shall be entitled, upon making application and upon taking the oath of allegiance, to be registered as a citizen of Lesotho.

(2) Any woman who, after the coming into operation of this Constitution, marries a citizen of Lesotho shall be entitled, upon making application and upon taking the oath of allegiance, to be registered as a citizen of Lesotho.”

Conclusion, List of Issues and Recommendations

25. In light of the Information contained in this submission, the Committee is urged to ask the Kingdom of Lesotho in its List of Issues and also in its Review:

- a. **What further steps does the state intend to take to ensure that the births of all children born in Lesotho – particularly those born in rural areas - are registered, and this results in all children being guaranteed their enjoyment of the right to acquire a nationality?**
- b. **Having acknowledged in its report that the penalty for late birth registration serves as a disincentive, what steps are the state taking to amend the relevant legal provisions and to incentivise timely birth registration without penalising late birth registration?**
- c. **Have any measures been taken to reduce the costs of late registration and to educate persons on the administrative procedures related to birth registration, particularly in the absence of the parents?**
- d. **Does the state have any information to share in relation to the child's right to acquire a nationality? If not, why does the state not maintain adequate information on this important issue?**
- e. **What further information can the state provide on the extent of statelessness, and childhood statelessness in particular in Lesotho? If no such information exists, what steps are being taken to address this information gap?**
- f. **What steps are being taken to address the lack of statistical data in relation to the child's right to acquire a nationality and statelessness?**
- g. **How many times since its last CRC review, has the safeguard against statelessness in the Lesotho Citizenship Order been utilised to protect against childhood statelessness? During this same time, how many children have been denied the right to a nationality in Lesotho and been rendered stateless?**
- h. **On what basis does Lesotho justify discrimination against Basotho citizens born abroad and Mosotho women, both of which undermine the child's right to acquire a nationality without discrimination? What steps have been taken to protect such children from statelessness?**
- i. **Why does Lesotho restrict citizenship applications from stateless persons to those who are over 18 years of age and lawfully in the country? How is this provision in the best interests of the child?**
- j. **On what basis does Lesotho not recognise the right of foundlings to nationality, in violation of Article 7 CRC? How is this policy in the best interests of the child?**

26. Based on the content of this submission, the following recommendations are made which we hope the Committee will consider in urging the Government of the Kingdom of Lesotho to ensure the right of every child to acquire a nationality:
- a. **Ensure that all national laws, regulations and policies are in line with Lesotho's obligations under international law and its Constitution, ensure the right of every child to acquire a nationality, and prevent childhood statelessness.**
 - b. **Prevent discrimination against children who are particularly vulnerable to statelessness due to their circumstances or discriminatory legal provisions, in particular, foundlings, children whose births have not been registered, children of Basotho citizens married abroad and children of Mosotho mothers and foreign or stateless fathers.**
 - c. **Take all necessary steps to break down barriers to accessing birth registration, and ensure that the births of all children born in Lesotho are registered immediately. Ensure non-discriminatory, comprehensive and consistent implementation of regulations relevant to birth registration, in particular of children born in rural areas, among indigenous populations and for children not born in hospitals, including by providing for free birth registration for those unable to pay the current costs and raising awareness about the importance of birth registration.**
 - d. **Fully implement the safeguards against statelessness contained in the Constitution and Citizenship Order to ensure that any child born in Cameroon who would otherwise be stateless may acquire Cameroonian nationality, whatever the place of birth of his or her parents.**
 - e. **Undertake, as soon as possible, a full population census with a view to improving the available data on the population as a whole, in order have a clearer picture of the extent of statelessness and access to nationality in the country.**
 - f. **Ensure that all foundlings or abandoned children found on territory are protected and that their right to acquire Lesotho nationality is guaranteed, in compliance with Article 7 CRC and the 1961 Convention on the Reduction of Statelessness.**
 - g. **Ensure that all Basotho citizens who were themselves born abroad can pass on their Lesotho nationality to their children born abroad.**
 - h. **Amend its nationality legislation and remove discriminatory provisions which allow Mosotho men to pass on their nationality to their spouses while Mosotho women cannot.**
 - i. **Establish a statelessness determination procedure and domesticate a legal framework for the protection of stateless persons, in line with the 1954 Convention and in order to ensure that stateless persons enjoy their human right.**
 - j. **Amend section 10 of the Citizenship Order which requires a stateless person be 18 years old and have legal status in Lesotho before making an application for nationality. Ensure that all stateless children, regardless of legal status, can apply for citizenship without discrimination.**