

Regional Non-Judicial Mechanisms for The Protection of The Rights of Stateless Persons

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Abstract

This article examines the legal and institutional capacity of regional non-judicial mechanisms to protect stateless persons within the European, Inter-American, and African human rights systems. It focuses on procedures and institutions operating outside courts, including monitoring, individual petitions and recommendations, thematic standard-setting, periodic state reporting, fact-finding visits, technical cooperation, and institutional follow-up. Using doctrinal, comparative legal, systematic, and statistical methods, the study analyses relevant treaties, resolutions, institutional practice, and UNHCR data. It finds that the three systems differ significantly in both competence and implementation. In the European Union, nationality remains primarily within the competence of the Member States, while protection arises indirectly through asylum, migration, non-discrimination, and fundamental-rights rules, leaving no autonomous Union-wide statelessness determination regime. The Inter-American system offers the most developed non-judicial combination of individual petitions, country monitoring, thematic standards, and remedial recommendations, although uneven treaty participation and political compliance constrain its reach. In Africa, periodic reporting, thematic resolutions, and the work of the African Commission and its special mechanisms have progressively elevated the right to nationality. The 2024 Protocol on the Right to a Nationality and the Eradication of Statelessness represents a major normative advance, but its effectiveness depends on ratification and domestic implementation. The article concludes that regional non-judicial mechanisms are indispensable because they can identify structural causes of statelessness, develop common standards, facilitate cooperation, and press states to reform nationality laws without waiting for judicial litigation. Their practical impact, however, depends on clearer mandates, reliable data, accessible statelessness determination procedures, sustained monitoring, and effective follow-up to institutional recommendations.

Keywords: Statelessness; right to nationality; regional human rights systems; non-judicial mechanisms; monitoring; periodic reporting.

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1. Introduction

Statelessness is not merely a question of formal legal status. It can determine whether a person is able to obtain identity documents, register a birth, reside and work

lawfully, access education and health care, cross borders, own property, and participate in public life. Regional protection is therefore important because it translates universal standards into institutions and procedures that are closer to affected persons. Nevertheless, each

regional system distributes authority differently between member states and regional bodies, and its effectiveness is shaped by legal competence, institutional design, political will, administrative capacity, and the discipline of follow-up.

At the end of 2024, the Office of the United Nations High Commissioner for Refugees reported approximately 4.4 million stateless persons worldwide. The recorded regional totals included 11,248 persons in the Americas, 442,525 in Europe, approximately 2.5 million in the Asia-Pacific region, 931,093 in West and Central Africa, 14,796 in Southern Africa, and 363,490 in the Middle East and North Africa. Compared with the previous year, the recorded population increased by 53.3 per cent in the Americas and by 12.3 per cent in the Middle East and North Africa, while it decreased by 10.4 per cent in Europe [1].

These figures require cautious interpretation. The substantial percentage increase in the Americas arose from a comparatively small recorded base, and the absolute number remained far below those reported in Europe, Asia, and parts of Africa. Moreover, official totals depend on whether states identify stateless persons, maintain effective civil-registration systems, and report reliable data. Persons of undetermined nationality and undocumented populations may therefore remain statistically invisible. The quality of regional data is consequently not only a methodological concern but also an element of the protection problem itself.

Professor G. Yuldasheva observes that the development of regional systems is consistent with Article 52 of the Charter of the United Nations, under which regional arrangements must remain compatible with the purposes and principles of the United Nations. International and regional human rights systems therefore develop in parallel while remaining coordinated and mutually complementary [2]. Building on this proposition, the present study asks how effectively regional non-judicial mechanisms identify statelessness, articulate protection standards, respond to individual and structural violations, and secure implementation by states.

2. Methods

The study is based on a doctrinal examination of constitutive treaties, regional human rights instruments, resolutions, rules of procedure, country reports, institutional statements, and UNHCR statistics. It covers the European Union, the Organization of American

States, and the African Union, and focuses on mechanisms operating outside courts: individual petitions before commissions, monitoring and fact-finding, thematic standard-setting, periodic state reporting, technical assistance, and institutional cooperation.

The comparative legal method was used to assess each regional system against five criteria: the scope of its mandate; accessibility to affected persons; the range of available procedures; the legal and practical effect of its outputs; and the existence of follow-up mechanisms. Statistical analysis was used to place the institutional comparison within the scale and distribution of recorded statelessness, while systematic analysis was applied to examine the interaction between nationality law, migration and asylum rules, non-discrimination guarantees, and civil-registration systems.

Inductive, deductive, and logical methods were used to identify common patterns and explain regional differences. The study also recognises two limitations. First, statelessness data remain incomplete because identification and reporting practices differ among states. Secondly, the effectiveness of a non-judicial mechanism cannot be inferred solely from its legal mandate; it also depends on state cooperation, institutional resources, and implementation. The analysis therefore distinguishes formal normative capacity from demonstrated practice and triangulates legal instruments, institutional activity, and available statistical evidence.

3. Results

European Union. The European Union currently comprises 27 Member States. Statelessness is not governed by a self-standing Union nationality regime; rather, it arises at the intersection of Member State nationality law, EU migration and asylum law, and fundamental-rights obligations. Three features define the Union's role:

First, many stateless persons recorded in the European region reside within EU Member States, meaning that Union rules on residence, asylum, equality, and documentation can directly affect their everyday legal position;

Secondly, the consequences of statelessness arise at both national and Union levels, particularly when a person seeks international protection, lawful residence, family unity, freedom of movement, or protection against removal;

Thirdly, the acquisition and loss of nationality remain primarily within the competence of the Member States, although those powers must be exercised consistently with applicable EU law.

The European Union cannot itself confer the nationality of a Member State or replace national rules on the acquisition and loss of nationality. It nevertheless possesses indirect but significant competence. Article 67(2) of the Treaty on the Functioning of the European Union requires a common policy on asylum, immigration, and external-border control and expressly provides that, for the purposes of that Title, stateless persons are to be treated as third-country nationals. Articles 78 and 79 further authorise Union measures in the fields of asylum and immigration [3]. Fundamental-rights guarantees also bind EU institutions and bind Member States when they implement Union law. However, EU law does not establish an autonomous, Union-wide statelessness determination and protection status. National procedures therefore remain uneven, creating differences in identification, residence rights, documentation, and access to protection.

The Treaty of Maastricht introduced citizenship of the European Union [4]. Article 9 of the Treaty on European Union now provides that every national of a Member State is a citizen of the Union and that Union citizenship is additional to, and does not replace, national citizenship [3]. A stateless person who does not possess the nationality of a Member State cannot obtain Union citizenship on that basis. This exposes a structural limitation: the rights attached to Union citizenship, including political participation and free movement, become available only after the necessary national link has been legally recognised.

The Lisbon Treaty nevertheless made stateless persons expressly visible within the Union's area of freedom, security, and justice through Article 67(2) of the Treaty on the Functioning of the European Union [3]. Treating them as third-country nationals brings stateless persons within many common asylum and migration rules, but the equation is incomplete. Unlike most foreign nationals, a stateless person cannot rely on the diplomatic or consular protection of a state of nationality and may face exceptional barriers to obtaining travel documents or being lawfully returned. Effective protection therefore requires early identification, referral to a national statelessness determination procedure where available, a secure residence status, and safeguards against arbitrary or prolonged immigration detention.

At the non-judicial level, protection is dispersed among the European Commission, the European Union Agency for Asylum, national asylum and migration authorities, and cooperation with UNHCR. The Commission can monitor implementation of EU law, while the European Union Agency for Asylum develops practical guidance, training, and operational tools relevant to stateless applicants in the international-protection system [5]. Cooperation with UNHCR can support identification, referral, data collection, and capacity-building. These functions improve administrative protection but do not substitute for a harmonised statelessness determination regime, leaving the Union's contribution substantial yet fragmented.

Organization of American States. Established in 1948, the Organization of American States brings together the 35 independent states of the Americas. The Inter-American Commission on Human Rights is an autonomous organ of the Organization and the principal non-judicial human rights mechanism in the regional system [6]. It receives individual petitions, monitors country and thematic situations, conducts on-site visits and hearings, adopts reports and resolutions, requests precautionary measures, and makes recommendations to states. Where a case is referred to the Inter-American Court of Human Rights, the subsequent judicial phase is institutionally distinct from the Commission's own procedures.

Under Article 41 of the American Convention on Human Rights, the Commission's principal function is to promote respect for and defence of human rights and to serve as a consultative organ of the Organization of American States [7]. It may also rely on the Charter of the Organization and the American Declaration of the Rights and Duties of Man when assessing states that are not parties to the Convention. This broader normative reach is particularly important in the field of nationality because participation in the American Convention is not universal across the region.

Resolution No. 04/19, adopted by the Inter-American Commission on Human Rights on 7 December 2019, set out Inter-American principles on the human rights of migrants, refugees, stateless persons, and victims of human trafficking [8]. Resolution No. 2/23 of 4 December 2023 subsequently consolidated the Commission's approach to the right to nationality, the prohibition of arbitrary deprivation of nationality, and statelessness [9]. The latter instrument provides detailed guidance on equality and non-discrimination, birth

registration, acquisition and loss of nationality, due-process guarantees, statelessness determination procedures, and accession to the 1954 and 1961 Statelessness Conventions. Together, the two resolutions transform dispersed standards into a more coherent non-judicial framework for state conduct.

The individual petition procedure is a central protection mechanism. Any person, group of persons, or legally recognised non-governmental entity may submit a petition alleging that an OAS member state has violated protected rights. The Commission examines admissibility and merits, may facilitate a friendly settlement, and may recommend restoration of nationality or documentation, legislative or administrative reform, investigation, reparation, and guarantees of non-repetition [7]. The procedure is potentially accessible to stateless claimants because nationality is not a condition for submitting a petition. In practice, however, exhaustion requirements, delay, lack of legal assistance, and the vulnerability of undocumented persons can restrict effective access.

Monitoring complements the petition procedure. Through public hearings, requests for information, on-site visits, thematic and country reports, and precautionary measures under Article 25 of its Rules of Procedure, the Commission can identify structural patterns before an individual case reaches a final determination [10]. It can also maintain political attention through follow-up reports and public recommendations. The Dominican Republic provides the best-known illustration of how these non-judicial tools may be combined to address the risk of large-scale denationalisation and statelessness.

On 23 September 2013, the Constitutional Court of the Dominican Republic issued judgment TC/0168/13, commonly known as 'La Sentencia' [11]. The judgment interpreted the constitutional exclusion of children born to foreigners 'in transit' in a manner that was applied retroactively to births registered as far back as 1929. It primarily affected Dominicans of Haitian descent and placed many persons at risk of losing recognition of their Dominican nationality. The Inter-American Commission considered the measure discriminatory and warned that it threatened the rights to nationality, juridical personality, equality, and non-discrimination [12].

During its on-site visit of 2–6 December 2013, the Commission met public authorities, civil society organisations, and affected persons, and visited several

provinces and relevant facilities. Its 2015 country report examined the consequences of judgment TC/0168/13 and made recommendations aimed at aligning laws, policies, and administrative practice with the Dominican Republic's human rights obligations [12]. The exercise combined the Commission's monitoring mandate under Article 106 of the Charter of the Organization of American States [6], Article 41 of the American Convention [7], and its Rules of Procedure [10]. It demonstrates how fact-finding, public reporting, and recommendations can convert individual experiences into a regional assessment of structural discrimination.

The practical effectiveness of the Inter-American system is nevertheless constrained by unequal state participation, limited institutional resources, contested compliance, and political fragmentation. These limitations do not eliminate the normative importance of the Commission's standards, but they weaken implementation where recommendations require complex legislative, civil-registration, or nationality-administration reforms. The impact of the mechanism therefore depends on persistent follow-up, cooperation with domestic institutions, and the use of measurable implementation benchmarks.

Unlike some regional regimes, the Inter-American system has no standalone convention devoted exclusively to nationality or statelessness. The right to nationality is expressly recognised in Article XIX of the American Declaration of the Rights and Duties of Man [13] and Article 20 of the American Convention on Human Rights [7]. Although the Convention is not binding on every OAS member state, the Commission may draw on the Declaration, the OAS Charter, thematic resolutions, and its monitoring mandate. The system's comparative strength is therefore the breadth of its non-judicial toolkit; its principal weakness is that many of its recommendations depend on voluntary political and administrative compliance.

African Union. The African Union was established in 2002 and comprises 55 Member States. The African Charter on Human and Peoples' Rights forms the legal foundation of the continent's general human rights system. Although the Charter does not expressly articulate a general right to nationality, several of its provisions provide a basis for protecting persons affected by statelessness: non-discrimination (Article 2), equality before the law (Article 3), dignity and recognition of legal status (Article 5), fair-trial guarantees (Article 7), and freedom of movement (Article 12) [14]. These rights

allow nationality-related exclusion to be examined through the wider human rights framework.

Article 62 of the African Charter requires each State Party to submit a report every two years on the legislative and other measures taken to give effect to the rights and freedoms recognised by the Charter [14]. The African Commission on Human and Peoples' Rights reviews these reports, conducts dialogue with state representatives, and adopts concluding observations and recommendations. This reporting cycle is a non-judicial accountability mechanism: it can expose gaps in nationality law, birth registration, documentation, and non-discrimination, while creating an official record against which future progress can be assessed.

Resolution ACHPR/Res.234 (LIII) 2013 on the Right to Nationality requested African states to include information on the recognition, protection, and implementation of the right to nationality in their periodic reports under Article 62 of the African Charter and Article 26 of the Protocol on the Rights of Women in Africa [15]. The resolution therefore integrated nationality into the Commission's routine supervisory process rather than treating it as an isolated migration issue. It also called for an in-depth study, helping to generate the evidence and normative development that later supported a dedicated continental instrument.

The reporting mechanism can promote legislative reform and enable the Commission to issue country-specific recommendations, but its effectiveness depends on timely and sufficiently detailed state submissions. Reports that omit disaggregated data, fail to explain administrative practice, or are submitted many years late cannot provide an accurate picture of statelessness. Civil-society shadow reports, engagement by national human rights institutions, and follow-up by the Commission's special mechanisms are therefore essential to test official accounts and keep nationality rights on the regional agenda.

Recent activity reports of the African Commission continue to record reporting delays and the submission of combined reports covering multiple overdue periods [16]. This confirms that the formal obligation in Article 62 does not by itself ensure regular or current information. The problem may reflect limited administrative capacity, weak data systems, or insufficient political commitment. Whatever its cause, irregular reporting prevents the Commission from measuring whether states are identifying stateless

persons, removing discriminatory nationality rules, and implementing earlier recommendations.

The principal non-judicial actors include the African Commission, its Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants, and the African Committee of Experts on the Rights and Welfare of the Child. A major normative advance occurred on 18 February 2024, when the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights Relating to Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa. The Protocol recognises that everyone has the right to a nationality, prohibits arbitrary deprivation or denial of nationality, requires non-discrimination, and obliges states to prevent and eradicate statelessness [17]. However, the African Commission reported on 18 February 2026 that no signatures or ratifications had yet been recorded and that fifteen ratifications are required for entry into force [18]. The instrument is therefore a major legal achievement, but non-judicial advocacy, technical cooperation, monitoring, and state reporting remain decisive to convert it into operational protection.

4. Conclusion

The comparison confirms that regional non-judicial mechanisms can protect stateless persons through four connected functions: setting standards; identifying and monitoring violations; providing individual or collective avenues for remedy; and supporting implementation. Their distinctive value lies in their ability to address structural causes of statelessness—such as discriminatory nationality laws, deficient birth registration, and the absence of determination procedures—without waiting for a binding judicial judgment. Their limitations are equally clear: recommendations may lack direct enforceability, mandates may be fragmented, and implementation depends heavily on state cooperation.

The European Union possesses considerable regulatory and operational capacity in asylum and migration, but lacks an autonomous and harmonised statelessness status. The Inter-American system offers the strongest combination of petitions, monitoring, fact-finding, thematic standards, and remedial recommendations, yet uneven treaty participation and compliance limit its reach. The African system has progressively integrated nationality into periodic reporting and thematic standard-setting, culminating in the 2024 Protocol; its immediate

challenge is to secure ratification, regular state reporting, and domestic implementation. No single regional model is complete, but each provides elements that can be transferred or adapted across systems.

Accordingly, regional bodies and states should prioritise five measures: accessible statelessness determination procedures linked to residence, documentation, and basic services; harmonised and disaggregated data indicators; time-bound follow-up to recommendations; structured cooperation among regional institutions, national human rights institutions, civil registries, migration authorities, and UNHCR; and nationality-law safeguards preventing discrimination and arbitrary deprivation. These steps would convert non-judicial standards from general guidance into measurable prevention, protection, and restoration of nationality rights.

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