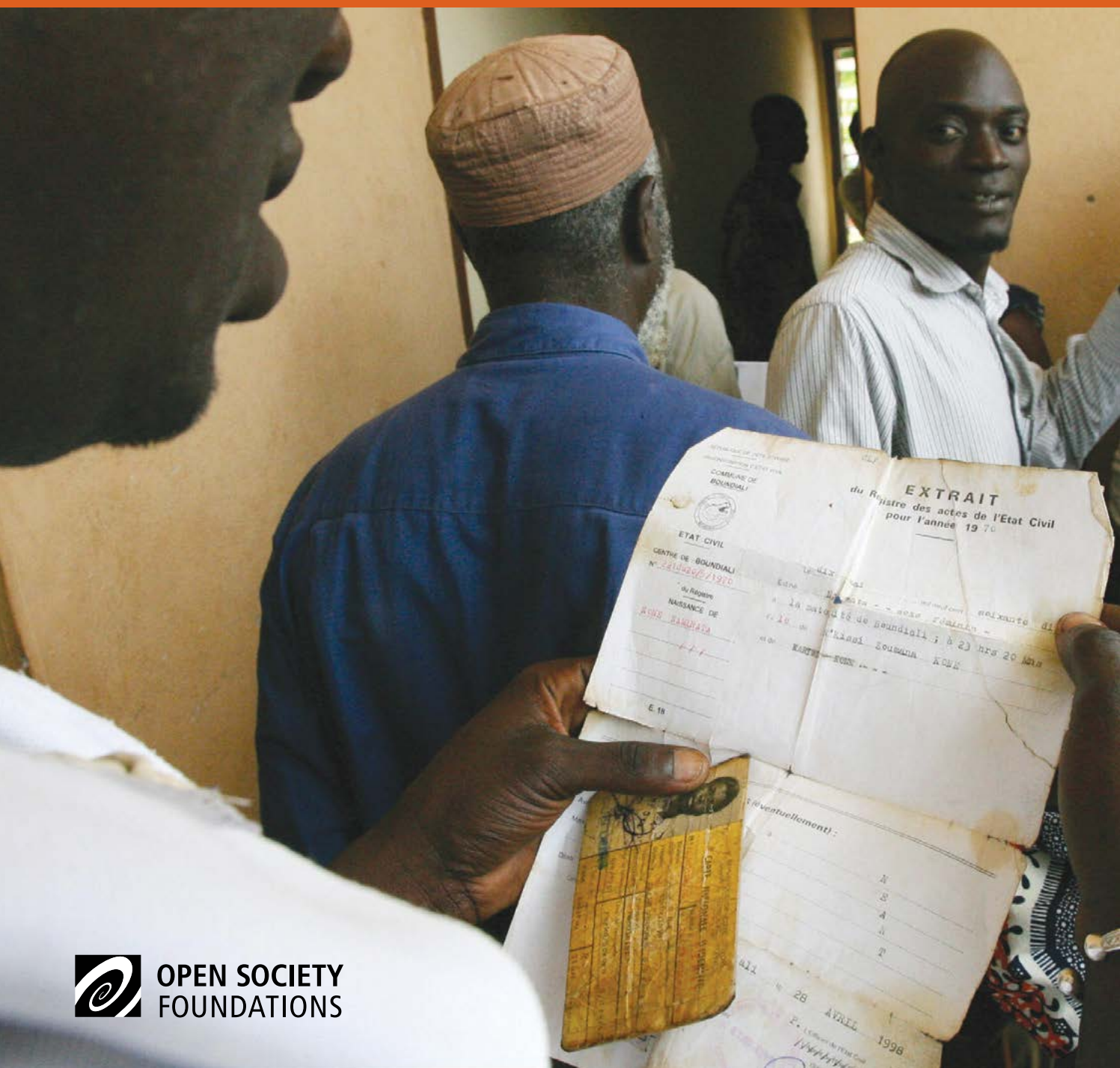
3RD EDITION

CITIZENSHIP LAW IN AFRICA



OPEN SOCIETY FOUNDATIONS

Citizenship Law in Africa
A Comparative Study

By Bronwen Manby

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Published by African Minds on behalf of
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ISBNs
978-1-928331-08-7 Print
978-1-928331-12-4 e-Book
978-1-928331-13-1 e-Pub

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Preface to the third edition

This is the third edition of this book, originally published in 2009 and written while I was an employee of Open Society Foundations (OSF). The second edition of 2010 included updates on several countries and some minor corrections. This third edition is a comprehensive revision of the original text, updated to reflect developments at national and continental levels, to clarify some interpretations based on my increased understanding of the issues, and to present completely revised and improved tables based on comparative analysis of the nationality laws of 54 countries in Africa, as well as additional tables dealing with new aspects of the law. The appendix contains the updated list of laws in force as of 2015 used to compile this study.

Among the countries that have adopted revisions to their nationality laws of greater or lesser significance since 2009/10 are Côte d'Ivoire, Kenya, Libya, Mali, Mauritania, Namibia, Niger, Senegal, Seychelles, South Africa, Sudan, Tunisia and Zimbabwe. Perhaps the most significant other developments with impacts on nationality law and the right to a nationality are the secession of South Sudan from Sudan, and the impact of South Sudan's new nationality on both countries, and the transfer of sovereignty of the Bakassi peninsula from Nigeria to Cameroon.

There have also been major developments in standard-setting at the African and international levels. The African Commission on Human and Peoples' Rights adopted two resolutions and a study on the right to nationality in Africa, leading up to the adoption in July 2015 of a draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa. The African Committee of Experts on the Rights and Welfare of the Child handed down an important decision on the nationality of children of Nubian origin in Kenya in 2011, which informed a General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child (name, birth registration and a nationality) adopted by the Committee in 2014. The UN High Commissioner for Refugees (UNHCR) has also adopted a number of guidelines and other documents on statelessness and in 2014 launched a major campaign to end statelessness within 10 years. In Africa, UNHCR's regional office in Dakar has collaborated with the Economic Community of West African States (ECOWAS), leading to the adoption in 2015 of a regional declaration on the urgency of addressing statelessness.

The first edition of this book was published at the same time as my *Struggles for Citizenship in Africa* (Zed Books, 2009), which gathered case studies of the practice of statelessness and citizenship discrimination in Botswana, Côte d'Ivoire, Democratic Republic of Congo, Ethiopia, Kenya, Mauritania, Nigeria, Sierra Leone, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe and elsewhere. This text draws on the information in *Struggles for Citizenship in Africa*, as well as on several subsequent publications, including *Statelessness in Southern Africa*, a briefing paper for a UNHCR Regional Conference on Statelessness in Southern Africa in November 2011, and *Nationality, Migration and Statelessness in West Africa*, UNHCR and IOM, 2015. The tables and information in the first edition of the report were also updated for use by the African Commission on Human and Peoples' Rights in its study on *The Right to Nationality in Africa* adopted in May 2014.

The genesis of this report lay in information collected as part of a 14-country "Africa citizenship audit" initiated by Chidi Odinkalu and Julia Harrington of the Open Society Justice Initiative working with the Africa foundations in the Open Society Foundations network. Information on this survey and its participants is available at the website of the Open Society Justice Initiative.[1]

A group of nationality experts and advocates met in London on 20 February 2009 to discuss the recommendations for this report. Those who attended the meeting were: Adrian Berry, Chaloka Beyani, Brad Blitz, Deirdre Clancy, Jim Goldston, René de Groot, Julia Harrington, Adam Hussein, Khoti Kamanga, Ibrahima Kane, Mark Manly, Dismas Nkunda, Chidi Odinkalu, Louise Olivier, Gaye Sowe, Souleymane Sagna, Ozias Tungwarara and Patrick Weil. Abdelsalam Hassan Abdelsalam, Jorunn Brandvoll, Laurie Fransman, Susin Park, Santhosh Persaud and Laura van Waas also provided input on the recommendations. While most of the rest of the book has been revised since 2009, the recommendations remain unchanged.

Thanks to all my colleagues at the Open Society Foundations for their support and guidance over many years of working on these issues.

Bronwen Manby
January 2016

1 https://www.opensocietyfoundations.org/publications/africa-discrimination-and-citizenship-audit-report

Disclaimer

While every effort has been made to ensure that the tables and descriptions of the laws in African countries are accurate and up to date, very complex provisions have been simplified. Readers should not treat them as definitive nor accord them the status of legal advice. Many provisions are subject to interpretation, and difficult to represent in tabular form. In this edition, the laws and tables are updated to the end of December 2015. In the tables, the final column referencing the legal source gives the original date of the law currently in force, with the date of the latest amendment in brackets.

Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AHRLR	African Human Rights Law Reports
AU	African Union
CAR	Central African Republic
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of Racial Discrimination
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
EAC	East African Community
ECOWAS	Economic Community of West African States
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ILC	International Law Commission
IOM	International Organisation for Migration
OAU	Organisation of African Unity
SADC	Southern African Development Community
SADR	Sahrawi Arab Democratic Republic
STP	São Tomé and Príncipe
UK	United Kingdom (of Great Britain and Northern Ireland)
UN	United Nations
UNHCR	UN High Commissioner for Refugees

Definitions

Citizenship/nationality: In this report citizenship and nationality are used interchangeably as in contemporary international law usage to refer to the legal relationship between an individual and a state, in which the state recognizes and guarantees the individual's rights.

In the 1955 *Nottebohm* case, the International Court of Justice said that "[a]ccording to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties".[2] Precisely which rights the state guarantees to its nationals/citizens varies by state, but the most common restricted rights are the right to permanent residence within the state, the right to freedom of movement within the state, the right to vote and to be elected or appointed to public office, the right of access to public services, and the right to diplomatic protection when outside the country. In addition there are other rights that are guaranteed to non-nationals as well as nationals by the international human rights regime.

In domestic law, "citizenship" is used more often in the Commonwealth states for this legal bond of rights and duties, while the civil law countries use "nationality" (*nationalité/nacionalidade*). However, international law texts more commonly (though not consistently) use the term "nationality", even in English language versions: this report favours the use of "nationality" in relation to international obligations and in civil law contexts, using "citizenship" and "citizen" in the common law states.[3]

"Citizenship" is not used here with its wider meaning in political science or sociology encompassing the idea of full participation in a community, nor does "nationality" have any ethnic or racial connotation.

Nationality from birth/of origin: Nationality or citizenship from birth is used in this report to mean nationality that an individual is automatically attributed by law from the moment of birth rather than acquired as an adult or following any administrative process. Nationality granted solely on the basis of birth in a territory (by *jus soli*) is a separate concept, and explicitly described as such

2 *Liechtenstein v. Guatemala* ICJ Reports, 1955, p. 23. Liechtenstein sought a ruling that Guatemala should recognise Friedrich Nottebohm as a Liechtenstein national. See also Carol A Batchelor, "Statelessness and the Problem of Resolving Nationality Status," *International Journal of Refugee Law*, Vol. 10, No. 1/2, 1998, pp. 159–160.

3 This is a change from the second edition, where "citizenship" was used more often; however, "citizenship" and especially "citizen" are still used in some contexts where they sound more natural in English. In French, the natural term for a national is often "*ressortissant*"; however, *ressortissant* can have a slightly wider meaning than those with nationality, to encompass others falling under the state's jurisdiction, depending on context.

in this report. In Commonwealth countries, the term used in law for this concept is often "citizenship by birth"; however, given the common confusion this phrasing creates with the concept of citizenship attributed to any person born in the territory—on which it was originally, but is no longer, based—use of the phrase "citizenship by birth" is restricted here to references to the wording of particular national laws rather than to discussion of the principles that should be respected. In the civil law countries, the phrase "nationality of origin" (*nationalité d'origine/nacionalidade de origem*) encompasses the same idea of nationality attributed automatically from birth, and will sometimes be used in this text as a translation. In some circumstances in some countries, the law provides that an individual can obtain retroactive recognition of citizenship from birth *after* birth.

Nationality by descent: When an individual obtains nationality on the basis of his or her father's and/or mother's nationality (regardless of place of birth), this is termed "nationality by descent".

Nationality by acquisition: Nationality that has been acquired by an administrative process after birth such as by naturalisation, registration, declaration, option, or marriage is termed "nationality by acquisition".

Appropriate connection: This is a term used by the International Law Commission in its *Draft Articles on Nationality of Natural Persons in Relation to the Succession of States*. An "appropriate connection" can mean habitual residence, a legal connection with one of the constituent units of a predecessor state, or birth in the territory of a state concerned. But, "in the absence of the above-mentioned type of link between a person concerned and a State concerned further criteria, such as being a descendant of a person who is a national of a State concerned or having once resided in the territory which is a part of a State concerned, should be taken into consideration".[4]

Habitual residence: There is no agreed-upon definition in international law of what is meant by "habitual residence". Guidelines adopted by the UNHCR state that "[t]he term 'habitual residence' is to be understood as stable, factual residence … [and] does not imply a legal or formal residence requirement".[5] Jurisprudence of the European Court of Justice has established that, in general, the country of "habitual residence" is considered to mean the state where the centre of a person's interests lie and where he or she has the strongest personal connections. Such connections need not be numerous but must have a degree of permanency greater than any connections with other states.

4 *ILC Draft Articles on Nationality of Natural Persons in Relation to the Succession of States*, 1999 (Annex to UNGA Res. 55/153, 12 Dec. 2000), Article 11, commentary paragraph 10.

5 Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness, UNHCR 2012, para. 41.

Statelessness: In this report, the term "statelessness" is defined according to international law: "stateless person" means a person who is not considered as a national by any state under the operation of its law.[6] As noted by the UNHCR, "establishing whether an individual is not considered as a national under the operation of its law ... is a mixed question of fact and law". Thus, "[w]here the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national".[7]

6 Convention relating to the Status of Stateless Persons, 1954, article 1(1).

7 UNHCR, *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012, paragraphs 16 & 30.

Summary and recommendations

Citizenship laws in Africa leave many millions of people at risk of statelessness. It is impossible to put an accurate figure on the numbers affected, but stateless persons are among the continent's most vulnerable populations: they can neither vote nor stand for office; they cannot enrol their children in school beyond primary school, travel freely, or own property; they cannot work for the government; and they are exposed to human rights abuses and extortion. Statelessness exacerbates and underlies intercommunal, interethnic and interracial tensions in many regions of the continent.

This comparative study provides a comprehensive analysis of the provisions of the citizenship laws of all 54 African states, identifying those that are not in compliance with international law and therefore leave many without a recognised nationality. While administrative practice may mean that stateless people exist even in a country with good laws, bad laws guarantee that statelessness will result.

Few African countries provide for an explicit right to a nationality in their constitutions and other legislation, even for children born on their territory who would otherwise be stateless—even though this provision is required by the African Charter on the Rights and Welfare of the Child, to which almost all African states are parties. Perhaps more importantly than this absence of a statement of principle, citizenship laws too often do not include the measures that in practice protect against statelessness.

The factors that are the main contributors to statelessness in Africa are:

- Gender discrimination: Although there is a strong trend to remove gender discrimination in nationality law, the laws of almost half of Africa's states still discriminate against women in the right to transmit their nationality either to their foreign spouses and/or to their children if the father is not a national.
- Racial, ethnic or religious discrimination: The laws of around ten states explicitly discriminate on grounds related to race, ethnicity or religion. Racial and ethnic discrimination in the law leaves those who are not perceived to be of the "right" racial or ethnic group at risk of statelessness, especially where combined with discrimination on the basis of sex and the father is from another group.
- Nomadic and cross-border populations: Africa has many millions of people following a nomadic lifestyle, whose traditional grazing grounds for livestock or other places of residence may lie in two or more countries. There are also many ethnic and other communities whose cultural,

linguistic, religious or other ties, including pre-colonial political histories, lie on both sides of a contemporary border. African states' nationality laws, policies and administration are often ill-adapted to take account of these realities.

- Dual nationality rules: The majority of African states now permit dual nationality in all circumstances. However, rules on dual nationality are easily misunderstood or misinterpreted, especially for persons who potentially have two nationalities from birth. They have often been used to deny children born to one non-citizen parent the right to nationality in the country of their birth, even when in principle the child is eligible for that nationality.
- Weak rights based on birth in the territory: Although the nationality laws in more than half of the continent's states provide at least some rights based on birth in the territory for children of non-citizen parents, the remainder have very weak protections against statelessness, in some cases not even providing nationality for infants found in the territory whose parents are not known. Countries where there are very limited rights based on birth in the territory typically have large populations of people who are stateless.
- Lack of access to naturalisation: Another cause of statelessness is the failure by many states to provide effective access to naturalisation procedures. If a parent cannot naturalise, and the state also provides no rights based on birth in that territory, a child born to non-citizen parents is at high risk of statelessness, especially where the state of origin provides no effective consular services and especially if the parents are refugees—a risk that increases with each generation.
- Provisions on state succession: Many countries in Africa face continuing problems related to poor management of attribution and documentation of nationality in the transition from colonial rule to independence. State successions since independence have also failed to provide legal and administrative safeguards for the nationality of those who live in a territory transferred between two states.
- Non-existent systems for the protection of stateless persons: It is very rare for an African state to have a legal framework in place to identify and provide a status for stateless persons and facilitate their acquisition of a nationality.
- Excessive executive discretion: A final critical problem is the widespread lack of due process protections, especially when the government wishes to revoke or refuse the grant or recognition of nationality. The laws in too many countries give almost unfettered discretion to the executive in nationality administration, which in practice may mean that very junior state officials responsible for birth registration and the issue of identity cards are deciding the critical right of a person to nationality.

Many nationality problems are, of course, related to Africa's history of colonisation and the inheritance of borders that cut through pre-existing

political boundaries, and institutions that had been founded on systematic racial and ethnic discrimination. The nationality laws adopted at independence were based on European models, all of which discriminated on the basis of gender at that time and were ill-adapted for African realities, including the very low rates of civil registration bequeathed by the colonial powers, the substantial numbers of people who follow a nomadic lifestyle, or the effective integration of populations who migrated during the colonial period.

The recommendations in this report, which draw on widespread expert consultation, call on African states to address the problems of nationality that the continent's history of colonisation and migration has created and bring their nationality laws into line with international human rights norms. They should support the proposal of the African Commission on Human and Peoples' Rights for the adoption of a protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa. The African Union and its Regional Economic Communities should lead a process to harmonise national laws and to ensure their compliance with the basic principles of non-discrimination and due process already enshrined in the African Charter on Human and Peoples' Rights and in the African Charter on the Rights and Welfare of the Child. The proposed draft protocol, as well as the General Comment of the African Committee of Experts on the Rights and Welfare of the Child on the right to a name, birth registration and a nationality, already provide guidance on the provisions that national laws should contain.

These include, most importantly:

- The removal of discrimination on the basis of gender, race, ethnicity, religion, or other grounds prohibited in the two African Charters, including on the basis of birth in or out of wedlock.
- Guarantees that all children have the right to a nationality from birth. Nationality laws should, at a minimum, provide for nationality to be attributed from birth not only to a child with a father or mother (including adoptive father or mother) who is a national, but also to a child who cannot obtain recognition of the nationality of his or her parents, or whose parents' nationality is not known, as well as a child found in the territory of unknown parents. Much stronger guarantees against statelessness are provided where laws also give rights to nationality to those born in the territory who are still resident at majority or who have one parent also born there.
- Reform of rules on naturalisation to make it possible for an adult, including a refugee, to change nationality and become a full member of the society where he or she lives—and to transmit that nationality to his or her children.

- Effective oversight of executive discretion, with routes for administrative or judicial review of decisions to refuse recognition or deprive a person of nationality.

The right to a nationality in African laws

Rules on nationality may be established by a variety of laws. In some countries, the constitution provides a quite detailed framework for the recognition and management of nationality; more commonly, however, the constitution may simply empower the legislature to adopt legislation, or provide broad guidance on principles such as non-discrimination and the rights of the child, leaving the detail to statute. Most countries have a specific citizenship act or nationality code (the most common names for these laws in the Commonwealth or civil law countries), but in a few (such as Burkina Faso and Mali) the rules on nationality are included within legislation related to the family.

Few African countries provide for an explicit right to a nationality. The constitutions of Angola, Ethiopia, Guinea-Bissau, Kenya, Malawi, Rwanda and South Africa all provide in general terms for the right to a nationality for all, or that every child has the right to a name and nationality. Other countries have established the right to a nationality in other laws, including in legislation relating to children's rights. Nonetheless, the nationality laws themselves do not necessarily ensure that this promise is fulfilled. In Ethiopia, for example, the nationality law does not comply with the constitution, failing to provide a right to nationality for a child born in the country who would otherwise be stateless.

Only 13 African countries specifically provide in their nationality laws (in accordance with Article 1 of the 1961 Convention on the Reduction of Statelessness and Article 6(4) of the African Charter on the Rights and Welfare of the Child) that children born on their territory who would otherwise be stateless have the right to nationality; an additional six have provisions granting nationality to the children of stateless parents (but by itself this is not sufficient protection for those whose parents themselves have a nationality but cannot transmit it to their children).

Even so, the nationality laws of around half of Africa's countries are quite liberal. The simplest way of ensuring that children born in a country are not at risk of statelessness is to apply an absolute *jus soli* rule, providing automatic nationality to any child born on national soil. Three countries provided in law for this rule at the end of 2014: Chad, Lesotho and Tanzania (though in Tanzania, at least, the law is not applied in practice). The laws of more than 20 other countries either attribute nationality from birth to children born to parents who were themselves also born there, or give children born in the territory to non-national parents the right to claim nationality of origin if they are still resident in the given country when they reach the age of majority. A handful of other countries (Cape Verde, Namibia, São Tomé and Príncipe

and South Africa) either attribute or permit the acquisition of nationality by children born on their territory to parents who are legally resident on a long-term basis. Several other civil law countries have additional provisions allowing for those persons who have always been treated as citizens to obtain nationality papers without the need for further proof of descent or location of birth. Gabon, unusually, gives rights to children born in the border zones of countries neighbouring Gabon or raised by Gabonese nationals who have lived in Gabon for 10 years. More than half Africa's countries thus provide—at least in law—for most children born on their soil to have the right to their nationality from birth or to be able to claim it at the age of majority.

But more than 20 other countries either fail to make any provision in the law for children born on their territory with no other option to have a right to a nationality, or provide the fall-back right to a nationality only for children of unknown parents; or they discriminate on racial, ethnic or religious grounds in their other provisions. Some sixteen countries do not even have a provision relating to foundlings or children of unknown parents, an omission of particular importance in countries currently or previously affected by conflict. Among these, seven also give no other rights based on birth in the territory and have the most restrictive laws in Africa: Botswana, Côte d'Ivoire, Gambia, Mauritius, Nigeria, Seychelles and Zambia.

Children and adults negatively affected by these laws are spread throughout the continent. They form a vast population of disenfranchised people excluded from full membership in the country where they live, which may be the only one they have ever known.

Racial, ethnic and religious discrimination

Among the most problematic elements of nationality law in some African countries is an explicit racial or ethnic basis for nationality. At least half a dozen countries effectively ensure that those from certain ethnic groups can never obtain nationality from birth; nor can their children nor their children's children. At the most extreme end, Liberia and Sierra Leone, both founded by freed slaves, take the position that only those of "Negro" (Liberia) or "Negro-African" (Sierra Leone) descent can be citizens from birth. Sierra Leone also provides for more restrictive rules for naturalisation of "non-negro-Africans", while Liberia provides that those not "of Negro descent" are not only excluded from citizenship from birth, but, "in order to preserve, foster, and maintain the positive Liberian culture, values, and character", are prohibited from becoming citizens even by naturalisation.

Several North African countries discriminate on grounds of language and religion in their laws. In Egypt and Morocco, the rules on naturalisation and recognition or deprivation of nationality discriminate against non-Muslims as well as non-Arabs. Libya's 2010 nationality law removed similar provisions. In Algeria, though the right to nationality does not on the face of it have any

conditions related to religion, the rules on proof of the right to nationality of origin privilege those with Muslim parents.

Another version of these distinctions has been applied in the countries that have nationality requirements based on the concept of "indigenous origin" rather than on race, though the effect may be the same in practice. The constitution of the Democratic Republic of Congo (DRC) explicitly states that nationality of origin belongs to those persons who are members of an ethnic group found in the territory at the date of independence. The application and interpretation of the different versions of this provision over the years have helped over many years to fuel conflict. Uganda's constitutional provisions on citizenship privilege those who are "a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February, 1926". A schedule lists the ethnic groups concerned. Nigeria's constitution, though not as restrictive, has provisions that are often interpreted to imply similar rules. Somalia's 1962 nationality law provides as its legal foundation for any person "who by origin, language or tradition belongs to the Somali Nation" and is living in Somalia to obtain nationality.

In other countries, such as Côte d'Ivoire, ethnic discrimination in the granting of nationality was not written into law, but ambiguous provisions on state succession and restricted rights based on birth in the country after independence meant that it came to be widely practised. In all these cases, reform of nationality law may not be enough, but is an essential starting point to address discrimination and exclusion on the basis of race, ethnicity and religion.

Several other countries put a positive spin on the same distinction, giving preferential treatment in terms of naturalisation to certain groups. Ghana extended this principle to members of the wider African diaspora, allowing them to settle and ultimately become citizens on easier terms than those applied to people not of African descent.

Gender discrimination

At independence and until recently, most countries in Africa discriminated on the basis of gender in the granting of nationality. Women were unable to transmit their nationality to their foreign spouses, or to their children if the father was not a citizen. This situation has begun to change, as reforming laws based on international human rights norms have introduced gender neutrality in many countries. Since the mid-1980s, more than 20 countries have enacted reforms providing for greater (if not in all cases total) gender equality. However, some recently adopted nationality laws have re-enacted discriminatory provisions, including those of Burundi and Swaziland.

Around a dozen countries (including Benin, Burundi, Guinea, Liberia, Libya, Madagascar, Mauritania, Somalia, Sudan, Swaziland and Togo) still discriminate on the grounds of gender in granting nationality from birth to children born either in their territory or abroad (though the child of a national

mother and non-national father born in some of these countries may be able to acquire nationality on application, or may only be given a right to repudiate on majority). A few countries also still discriminate on the basis of a child's birth in or out of wedlock, denying mothers the right to transmit nationality if the child is born in wedlock, and fathers if the child is born out of wedlock, or creating additional procedures for children in these cases. In some countries, the law is gender-neutral on its face, but in practice the children of national mothers and non-national fathers have difficulty in getting recognition of their nationality.

Gender discrimination is of particular concern where nationality by descent or on the basis of birth in the territory also discriminates on the basis of race, ethnicity or religion, leaving the children of non-national fathers especially vulnerable.

Assuring the right of women to transmit nationality to their husbands has proved to be even more of a struggle. More than two-dozen countries either do not allow women to pass their nationality to their non-national spouses at all, or apply discriminatory residence qualifications to foreign men married to national women who wish to obtain nationality. These countries include Benin, Burundi, Cameroon, Central African Republic (CAR), Comoros, Republic of Congo, Egypt, Equatorial Guinea, Guinea, Lesotho, Libya, Madagascar, Malawi, Mauritania, Morocco, Nigeria, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo and Tunisia.

Naturalisation

All African countries permit, in principle, the acquisition of nationality by naturalisation on the basis of long-term residence and the fulfilment of other conditions. In practice, however, obtaining nationality by naturalisation can be very difficult, and in very many countries is highly discretionary, excluded from all review by the courts or requirement to give reasons for refusal.

More than 20 countries provide for a right to naturalise based on legal residence of five years; but Chad, Nigeria, Sierra Leone and Uganda require 15 or 20 years, and the Central African Republic requires as many as 35 years. South Africa provides a two-step process: a person must first become a permanent resident, a process which takes a minimum of five years; following acquisition of permanent residence, a further five years' residence is required to become a citizen.

Acquiring nationality by naturalisation may be very difficult even where the rules are not onerous on paper. Requirements to prove legal residence exclude many who have migrated within zones of free movement (such as in West Africa) and work in the informal sector.

The other conditions applied for naturalisation may also be difficult to fulfil. In many countries, investigations are required, including interviews and police inquiries; in some countries, an applicant must provide proof of good health, excluding, for example, disabled people from acquiring

nationality. Under the 2004 nationality law adopted by the DRC, applications for naturalisation must be considered by the Council of Ministers and submitted to the National Assembly before being awarded by presidential decree; moreover, the individual must have rendered "distinguished service" (*d'éminents services*) to the country. Some countries add requirements based on cultural assimilation, in particular knowledge of the national language(s). Ethiopia's 2003 Proclamation on Ethiopian Nationality requires the ability to "communicate in any one of the languages of the nations/nationalities of the Country". Egypt requires an applicant for naturalisation to "be knowledgeable in Arabic". Botswana requires a knowledge of Setswana or another language spoken by a "tribal community" in Botswana; Ghana requires knowledge of an indigenous Ghanaian language; and other countries have similar requirements.

A presidential decree is often the means by which naturalisation is granted: this requirement is only a routine administrative procedure in some countries, if the basic conditions are met, but in others it leaves acquisition of nationality within the complete discretionary power of the executive branch or head of state.

Around 20 countries impose delays of between three and 10 years before naturalised citizens can hold office. Mozambique has a prohibition on naturalised citizens being deputies or members of the government or working in the diplomatic or military services. Constitutional prohibitions on naturalised citizens holding the presidency exist in at least 23 countries.

Among the groups most seriously affected by deficiencies in laws for naturalisation are long-term refugees or former refugees. In Egypt, the case of Palestinian refugees stands out. The 1959 decision by the Arab League that Palestinian refugees should not be granted nationality in their states of refuge has prevented them from integrating into the societies where they live. The Western Saharan refugees in Algeria face a similar political problem in finding any long-term resolution to their nationality status, even though they may not, strictly speaking, be stateless. Even countries that have recently adopted refugee laws and procedures stop short of drawing on international best practice when it comes to providing for naturalisation of refugee populations. Former refugees from Sierra Leone, Liberia, Angola and Rwanda, where the cessation clauses in the 1951 Refugee Convention have been invoked, have sometimes found themselves unrecognised by their state of origin and unable to acquire citizenship where they now live. Though the general law may theoretically provide a right to naturalisation, this may not be available in practice.

There is, however, movement in some other countries towards allowing for the acquisition of nationality by refugees. South Africa's law does, notably, provide for a transfer of status from refugee to permanent resident to naturalised citizen, though problems are reported in this process in practice. Tanzania has made provision for long-term refugees from Rwanda, Burundi and Somalia to become citizens. The most effective implementation of states' obligations under international refugee law to facilitate national integration of refugees

is by those states where refugees have access to the general naturalisation law is liberal, with only a short period of permanent residence required for naturalisation and a functioning system to implement this rule. However, too often these procedures are inaccessible in practice even if available on paper.

Dual nationality

At independence, most African countries took the decision that dual nationality should not be allowed. In the Commonwealth countries dual nationality was usually permitted for children, but they were required to opt at majority; in the civil law countries, dual nationality of origin was quite commonly permitted, but a person who voluntarily acquired another nationality automatically lost nationality of origin or, less often, a person naturalising had to renounce another nationality.

Increasingly, however, an African diaspora with roots in particular African countries, in addition to the earlier involuntary diaspora of slavery, has grown to match the European and Asian migrations. In addition, there are increasing numbers of Africans with connections to two African countries—and not only among ethnic groups living on the frontiers between two states—who also wish to be able to carry the passports of both.

Thus, many African states have followed the global trend and changed their rules to allow dual nationality or are in the process of considering such changes. Almost 30 states now permit dual nationality in most circumstances, and a handful more allow dual nationality with the explicit permission of the authorities, including Egypt, Eritrea, Libya, Mauritania, South Africa and Uganda.

Today only 10 African countries prohibit dual nationality for adults; even in those countries the rules may not be enforced, so that a national can acquire another nationality without facing adverse consequences in practice. Some African countries—notably Ghana and Ethiopia—have created an intermediate status for members of the diaspora, in addition to or instead of creating a right to dual nationality.

Many countries have rules prohibiting those with dual nationality from holding senior public office, on the grounds that the loyalty of such persons should not be divided. In Ghana, Kenya and Uganda, bans on dual citizens holding a range of public offices were introduced at the same time as the general ban on dual nationality was removed; in some two-dozen other countries, they may not be president; and in Côte d'Ivoire, the constitution prohibits those who have ever held another nationality from becoming the president of the republic. Similar rules exist in Egypt.

Loss, deprivation and arbitrary non-recognition

Provisions allowing a state to revoke nationality acquired by naturalisation in case of fraud or other abuse of process, or if the person joins the military or works in the service of another state, are relatively common throughout

the world and are permitted by the UN Convention on the Reduction of Statelessness. Even in these cases there are restrictions, and minimum standards of due process should be applied, including the right to challenge the decision in a court of law.

Revocation of nationality from birth is far more problematic. More than half of Africa's 54 states forbid deprivation of nationality by action of the state authorities from a person who has held nationality since birth, whether or not the person would become stateless. But the situation is not always clear: in the case of Comoros and South Africa, for example, the nationality law is not in compliance with the constitution.

The most common provision for automatic loss of birth nationality is in case of acquisition of another, in countries where dual nationality is not allowed: this is the case in about 20 states. These provisions can be hard to interpret and there is particular confusion in those cases where the language of the legislation, derived from French law at the time of independence, states both that a person who voluntarily acquires another nationality automatically loses his or her nationality of origin, and also that this loss is subject to permission, sometimes only for men during a period in which they could be called up for military service. In practice, official interpretation and application of these laws varies widely, or small differences in wording result in different outcomes.

Some countries provide sweeping powers for revocation of nationality, even nationality from birth, that go well beyond prohibitions on dual nationality, or the question of fraud or service to a foreign state. The Egyptian nationality law, for example, gives extensive powers to the government to revoke nationality, whether from birth or by naturalisation, including on grounds that an individual has acquired another nationality without the permission of the minister of the interior, enrolled in the military of another country, worked in various ways against the interests of the state, or been "described as ... a Zionist at any time." The law provides additional reasons for the revocation of nationality from those who obtained it by naturalisation.

Even in those countries where nationality may be taken only from those who have naturalised, the grounds are often very broad, and extend far beyond fraud to encompass crimes against the state, ordinary crimes or various acts showing "disloyalty". The decision to deprive someone of nationality is not always subject to appeal or court review: a number of countries have provisions allowing for revocation of naturalisation at the discretion of a minister and without appeal to any independent tribunal.

In practice, African states have far more often decided not to recognise a person's nationality at all, or to impose administrative conditions that are very difficult to fulfil, rather than to invoke legal provisions for deprivation of nationality. Such methods have been deployed by several different governments for political purposes to silence troublesome critics or political opponents, or to ensure that members of a particular ethnic group find it difficult to vote or fully participate in society. Although there are other means of silencing journalists,

blocking political aspirants or disenfranchising population groups, the usefulness of denationalisation is that those affected then have tenuous legal status that is highly vulnerable to abusive use of discretionary executive power.

Yet examples of better laws do exist. The laws of several countries, including Ghana and South Africa, establish explicit due-process protections in case of deprivation of nationality, limiting grounds for removal, requiring reasons to be given, and granting a right to challenge the decision in court—and, in Ghana, providing for the decision to be made by the courts on application by the executive. It is important that such rules ensure access to the courts even where there is no clear decision to deprive, but only a refusal to recognise a person's right to nationality in the first instance.

International norms

International law related to nationality is relatively undeveloped by comparison with other areas of human rights; but there have been significant new jurisprudence and efforts at standard-setting in recent years, including by the African Union institutions.

The grant of nationality was historically regarded as being within the discretion of the state concerned. This remained the case even after the Universal Declaration of Human Rights established in 1948 that "everyone has a right to a nationality". But if general rules on the right to the nationality of a particular state have still not been established, certain basic principles have been laid down. These principles include the requirement to grant nationality to children born in the territory who would otherwise be stateless; a prohibition on various forms of discrimination in granting or revoking nationality; and basic rules of due process in the granting and revoking of nationality.

Another important area of international law on nationality are the rules related to succession of states, when sovereignty over a territory is transferred. All African states except Ethiopia and Liberia were at one time colonised by a European power, and the process of managing the departure of the colonial powers created many challenges in managing the nationality of the populations of those states. There have been three major transfers of sovereignty over territory since the departure of the European colonisers: the secession of Eritrea from Ethiopia; the secession of South Sudan from Sudan; and the transfer of the Bakassi peninsula from Nigeria to Cameroon. The International Court of Justice has ruled on several more minor border disputes. Under international law, of which the most authoritative interpretation is the International Law Commission's Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, adopted in 1999, individuals who had the nationality of a predecessor state should have the right to the nationality of at least one of the successor states, with the default rule based on habitual residence. However, this rule has not always been respected in African national laws: indeed, the manipulation of the transitional rules on nationality applied at

independence or on division of the state has often been at the heart of efforts to deny people nationality.

The African Charter on the Rights and Welfare of the Child, ratified by 47 African countries and signed by all, follows the UN Convention on the Rights of the Child (CRC) by providing in its Article 6 for the right to a name, birth registration and to acquire a nationality, and it goes beyond the CRC by incorporating the requirement in the 1961 UN Convention on the Reduction of Statelessness relating to "otherwise stateless" children, that "a child shall acquire the nationality of the State in the territory of which he [*sic*] has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws". In May 2014, the African Committee of Experts on the Rights and Welfare of the Child adopted a General Comment on Article 6, which provides comprehensive guidance on the interpretation of these obligations.

The African Charter on Human and Peoples' Rights does not mention the right to a nationality, but does include a provision in Article 5 on the right to "recognition of legal status". The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides strong rules on non-discrimination in general, but does not provide for a woman's right to pass nationality to her husband and permits national law to override the treaty's provision for non-discrimination in granting nationality to children. However, in 2013 and 2014 the African Commission on Human and Peoples' Rights adopted two resolutions confirming jurisprudence of the Commission that the right to a nationality was implied within Article 5, affirming norms on non-discrimination, and deciding to draft a protocol on the right to a nationality in Africa. In July 2015, the Commission adopted the draft text of a protocol, which then moved into the stages of consideration by the other AU structures.

Many African states already have provisions that respect these general principles of international law. More than half of African countries either provide a right to a nationality to any child born in their territory, or the right to claim nationality for that child if he or she is still living in the state at adulthood; a large majority of states now allow men and women citizens equal rights to pass nationality to their children. But gender and racial or ethnic discrimination are still present elsewhere, and the extremely weak rights based on birth in the territory in some countries, as well as a lack of due process protections in nationality matters, leave many at risk of statelessness.

African states should move towards the international norm, accepting as a basic principle that all those who had the right of nationality before independence and their descendants have equal rights to nationality today. They should recognise the reality of historical and contemporary migration and ensure in law and practice that those who are the descendants of migrants can obtain rights to nationality based on birth in the territory in some circumstances, and that those who have migrated themselves can naturalise

as citizens on reasonable terms. They should harmonise their laws to adopt in all countries the best practices that already apply in some. The African Union should take concrete steps to realise the ideals and aspirations of a greater African unity by adopting and taking steps to enforce measures that guarantee the right to a nationality on the basis of non-discrimination, due process and respect for human rights—in particular by adopting the proposed protocol to the African Charter on Human and Peoples' Rights on the right to a nationality.

Recommendations

International treaties and harmonisation of laws

1. African states acting within the framework of the African Union should take steps to prepare and adopt a Protocol on Nationality to the African Charter on Human and Peoples' Rights, based on the principles of the African Charter, the Constitutive Act of the African Union, the Universal Declaration of Human Rights and other international human rights norms (and the recommendations below).
2. African states that have not yet done so should take immediate steps to ratify relevant treaties, including the African Charter on the Rights and Welfare of the Child, the UN Convention on the Rights of the Child, the UN Convention relating to the Status of Stateless Persons, and the UN Convention on the Reduction of Statelessness.
3. African states should withdraw any reservations made to Article 9 of the UN Convention on the Elimination of All Forms of Discrimination Against Women, Article 7 of the UN Convention on the Rights of the Child, and the statelessness conventions. African states should interpret Article 6 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in light of the general non-discrimination requirements established by Article 2 of the Charter.
4. African states should bring their nationality laws into line with the norms embodied in these treaties (and the recommendations below). The Regional Economic Communities that make up the African Union should lead these efforts.
5. African states should cooperate in making efforts to harmonise nationality laws and to determine the nationality of persons who face difficulties in establishing their nationality.
6. African intergovernmental institutions, including the African Commission on Human and Peoples' Rights, should monitor and report on African states' respect in their nationality law and practice for the human rights norms established by African and international treaties.

Right to a nationality

7. National constitutions and nationality laws should provide for an explicit and unqualified right to a nationality from birth.

8. The law should provide for persons to have a right to nationality (whether from the time of birth or by acquisition at a later stage) on the basis of any appropriate connection to the country, including birth in the territory, having a father or mother (including an adoptive father or mother) who is a national, marriage to a national, or habitual residence.
9. The law should provide for a child to have nationality from birth (of origin) if he or she is born in the state concerned, or if he or she is born in the state concerned and:
    a. either of his or her parents are nationals; or
    b. either of his or her parents was also born in the country; or
    c. either of his or her parents has his or her habitual residence in the country; or
    d. he or she would otherwise be stateless.
10. The law should provide that a child found in the territory of the state shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that state.
11. The law should provide for a person to have the right to obtain recognition of nationality from birth (of origin) if he or she was born in the state concerned or arrives there as a child, fulfils a minimum residence requirement, and still has his or her habitual residence there at the age of majority.
12. The law should provide at a minimum for a child to have nationality from birth (of origin) if he or she is born outside the state concerned and
    a. either of his or her parents was born in that state and is a national or has the right to acquire the nationality of that state; or
    b. either of his or her parents is a national or has the right to acquire the nationality of that state and the child would otherwise be stateless.
13. Under no circumstances should national laws be amended, adopted, or repealed in circumstances where the changes are, or could be interpreted to be, intended to deny or revoke the nationality of any specific individual or group. No law relating to the denial or revocation of nationality should have retroactive effect. In case of doubt, national courts should apply a presumption in favour of the person or group concerned.

State succession

14. In case of state succession, the law should provide the following:
    a. Every person who had the nationality of a predecessor state, irrespective of the mode of acquisition of that nationality, or who would otherwise become stateless as a result of the state succession, has the right to opt for the nationality of any or all of the successor states to which he or she has an appropriate connection, including birth in the territory, having a father

or mother (including an adoptive father or mother) who is a national, marriage to a national, or habitual residence.

b. If a person does not take any action to opt for the nationality of one of the other states, the law should attribute to a person the nationality of the successor state where he or she is habitually resident.

15. Transitional provisions relating to nationality dating from independence should be interpreted in favour of those affected and should not be invoked arbitrarily to deny nationality to any person.

Non-discrimination

16. The law should not refer to membership of any particular racial, ethnic, religious, linguistic or similar category noted in international human rights treaties as the basis for inclusion or exclusion from nationality rights.
17. The law should grant men and women equal rights to acquire, change or retain their nationality and confer nationality on their children.
18. The law should not permit any discrimination with regard to the acquisition of nationality as between legitimate children and children born out of wedlock.
19. African states should take legal and other measures to ensure that persons of any race, ethnicity, religion or linguistic community have a right to nationality on the same terms and, in particular, that members of groups that have historically been excluded from nationality (including children whose mothers but not fathers are nationals), benefit from such measures.
20. African states should take measures to ensure equality of rights among persons possessing their nationality, in particular that the right to nationality is not undermined by discriminatory laws and practices applying to members of sub-national units.

Proof, documentation and information

21. The law should provide that a person has a right both to the documents that are necessary to prove nationality, including birth certificates, and to proof of nationality itself.
22. The laws and practices relating to recognition of nationality should provide for alternative systems of proof of identity and other requirements in contexts where documentary evidence is not available or cannot reasonably be obtained.
23. The law should provide for the certification of nationality by the courts where an application for recognition of nationality has not been processed within a reasonable time or where the official documentation necessary to prove nationality does not exist or cannot be obtained, and for the courts to order that any other documents be issued.

24. The law should provide that, in the event that an application for recognition of nationality is denied, the state must provide reasons in writing for the refusal and the decision may be appealed to the courts.
25. African states should take all necessary measures to provide relevant documentation to all those who are entitled to nationality and to ensure that the administrative processes by which persons acquire registration and other documents required to prove a right nationality are accessible on the same basis to anyone who satisfies the criteria established by law.
26. African states should take all necessary measures to ensure that all children born in the country are registered immediately after birth, without discrimination, including those children born in remote areas and in disadvantaged communities; and that children not registered at birth can be registered later during childhood or adulthood. These measures should include, for example, the use of mobile birth registration units, registration free of charge and flexible systems of proof where it is not reasonable to meet the standard requirements. Children whose births have not been registered should be allowed to access basic services, such as health care and education, while waiting to be properly registered.
27. African states should take measures to provide for registration of the births of the children of nationals who are born abroad.
28. The law should provide that all nationals have the right to a passport and, where in use, to an identity card.
29. The fees required to apply for recognition, acquisition, retention, loss, recovery or certification of nationality and to obtain necessary documents to support such applications should be reasonable.
30. African states should take steps to inform and educate all those who might be eligible for a particular nationality about that right, especially but not only in the case of succession of states.

Naturalisation

31. The law should provide the right to acquire nationality by naturalisation (or similar process) to anyone who has been habitually resident in the country for five years, or a shorter period in the case of a person married to a national, persons born in the country, former nationals, stateless persons, and refugees.
32. Where there is a right to naturalisation only if a person is lawfully present in the country, any period of unlawful residence preceding the recognition of lawful residence should be included in the calculation of the necessary period for naturalisation.
33. Any other conditions required for naturalisation should be clearly and specifically provided in law and reasonably possible to fulfil. Grounds for exclusion from the right to naturalise should not include ill health or disability or general provisions relating to good character and morals, with the exception of criminal convictions for a serious offence.

34. The law should provide that a minor child of a person who acquires the nationality of a state acquires nationality at the same time as the parent if he or she is living with that parent.
35. The law should provide that the rights of those persons who are nationals from birth and those who have acquired nationality subsequently are equal.
36. The law should provide that a person whose application for naturalisation is rejected has the right to be given reasons in writing for the refusal and to appeal to the courts.
37. The law should provide for the courts to rule on an application for naturalisation in the event that it has not been processed within a reasonable time.
38. African states should fulfil the obligations under the 1951 UN Convention relating to the Status of Refugees and the 1954 Convention Relating to the Status of Stateless Persons and as far as possible facilitate naturalisation, including by making every effort to expedite procedures and to reduce as far as possible the charges and costs of such proceedings. These measures should apply in all cases, with no exceptions made on the basis of national origin or membership of a particular national, racial or ethnic origin, political opinion, religion or membership in a particular social group.
39. Where a refugee acquires the nationality of the state of refuge but is not able to renounce his or her previous nationality, his or her new nationality shall be considered to be predominant for the purposes of diplomatic protection in relation to the state of previous nationality and the state of previous nationality shall be bound to recognise this exercise of diplomatic protection.

Marriage and family relations

40. African states should take legal and other measures to facilitate the acquisition of nationality by foreigners married to nationals and by the children of both parents or the foreign spouse, whatever the sex of the foreign spouse or parent.
41. The law should not include any provisions providing that marriage to a foreigner or change of nationality by the husband during marriage automatically changes the nationality of the wife or forces upon her the nationality of the husband, or that place her at risk of statelessness.
42. The law should grant women equal rights to men with respect to the nationality of their children.
43. The law should provide that those who have acquired nationality on the basis of marriage to a national do not lose that nationality in the event of dissolution of the marriage.
44. The law should provide for spouses to have the right to acquire nationality on the basis of marriage to a national even when they do not have their habitual residence in the country whose nationality is sought.

45. The law relating to the acquisition of nationality by marriage should recognise any marriage conducted according to the laws of the country where it took place; there should be no requirement for it to have been conducted according to the laws of the country whose nationality is sought.

Dual nationality

46. The law should provide that existing nationals, whether from birth or by acquisition, may acquire other nationalities without any penalty and that nationals of other countries may be naturalised without any requirement to renounce an existing nationality, so as to avoid the risk of creating statelessness.
47. Countries that amend their laws to allow dual nationality when it had previously been forbidden should adopt transitional provisions allowing those who had previously lost their nationality on acquiring another to recover their former nationality.
48. Any provisions under national laws placing restrictions on the holding of public office by persons with dual nationality should be narrowly defined, restricted to the very highest offices of state, and applied only to the nationality of the person concerned and not the nationality of his or her parents or spouse. Where there are restrictions, they should apply only from the time the person takes up office and not while he or she is running for election or applying for appointment.

Loss and deprivation of nationality

49. The law should not provide for involuntary loss of birth nationality (nationality of origin).
50. In the case of those persons who are nationals by acquisition, the law should provide for deprivation of nationality only on the grounds of clear, narrowly defined and objectively provable criteria that comply with international human rights law and, in particular, the principle of proportionality. The law should prohibit deprivation of nationality on racial, ethnic, religious, political or similar grounds.
51. The law should prohibit any deprivation of nationality that would have the effect of rendering the person concerned stateless.
52. Where the law provides for the deprivation of nationality on grounds of fraud or false representation, the law should also provide exceptions in favour of retention of nationality where at the time of the fraud or false representation the person involved was a minor or where the fraud or false representation took place more than 10 years earlier.
53. The law should not provide for deprivation of nationality based on refusal to carry out military service or the perpetration of an ordinary crime. The law should not provide for deprivation of nationality on grounds of disloyal or criminal behaviour where such behaviour is not seriously prejudicial to the vital interests of the state. Voluntary service for a foreign military force

can only be considered seriously prejudicial to the vital interests of the state if the force is engaged in armed conflict against that state.

54. The law should provide that any children of a person whose nationality is revoked retain nationality, in particular if their other parent retains it or if they would otherwise become stateless; or if the ground for loss relates to the personal behaviour of the parent, or occurs or is discovered after they have attained the age of majority.
55. The law should provide that deprivation of nationality does not affect the spouse of the person concerned.
56. The law should provide that nationality may be only revoked by court order following an individual hearing on the merits of the case, and not by administrative decision. The state should bear the burden of proving that the person concerned is not entitled to nationality and there should be a right to appeal through established procedures.

Renunciation of nationality

57. The law should provide that a person may renounce nationality, unless he or she would otherwise become stateless. Procedures required to renounce nationality should be purely administrative and should give no right to the state to refuse permission.
58. The law should provide for the possibility of recovery of nationality by persons who have previously renounced it.

Expulsions

59. The law should prohibit expulsion of nationals from the country except in the context of extradition by due process of law to stand trial or serve a sentence in another country.
60. The law should prohibit expulsion or return of any person contrary to the provisions of the 1951 UN Convention relating to the Status of Refugees, the 1954 Convention relating to the Status of Stateless Persons, the African Charter on Human and Peoples' Rights or any other relevant international law.
61. The law should protect against arbitrary expulsion of non-nationals from the country, in particular by establishing clear and narrowly defined grounds for expulsion and providing that in all cases, including those where expulsion is purportedly on the basis of national security, the persons affected have the right to have their cases heard on an individual basis before an independent tribunal with the right to representation and appeal through established procedures, and that the state bears the burden of proof of the case for expulsion, including the fact that the person is not a national.
62. The law should provide that those who are habitually resident in the country but who for whichever reason have not acquired nationality nonetheless acquire rights that give them greater protection against expulsion than

non-residents. The courts should apply the law taking into account the proportionality of the harm caused to the person being expelled in relation to the gravity of the reason asserted for his or her expulsion.

63. African states should incorporate in their national laws and respect in practice the provisions of the African Charter on Human and Peoples' Rights prohibiting mass expulsions.

Freedom of movement

64. The law should provide that nationals and those habitually resident in the country, including but not limited to stateless persons, have the right to enter the country.
65. The law should provide that everyone lawfully present in the country has freedom of movement and freedom to choose his or her residence within the country.
66. The law should provide that everyone, including a national, has the right to leave the country.

International norms on nationality

Legal recognition of nationality or citizenship is the most critical legal link between an individual and the state whose nationality is claimed.[8] Historically, it was generally regarded that rules about who had the right to membership, and to that legal link, were within the discretion of the rulers of a particular territory. At the same time, during the era of limited franchise in European states and colonial rule in Africa, nationality in itself did not necessarily give the individual concerned full rights within the state, since only a limited few could participate fully in its government. This distinction between nationality and citizenship (in this context, the exercise of full civil and political rights) meant that women in particular were, until the early years of the 20th century, everywhere excluded from full citizenship in the countries of which they were nationals; and in colonial states all those not of European descent were similarly disadvantaged. With the coming of the era of democracy based on universal suffrage, as well as decolonisation and self-determination—the idea that *all* those with the nationality of a state have the right to participate in its government—a distinction between nationality and citizenship has become unacceptable. At the same time, the era of globalisation has brought greatly increased migration around the world. The determination of who is to be a national (with full citizenship rights) has thus become more important and more complex.

Yet international law related to nationality is relatively undeveloped by comparison to agreements on the regulation of matters of commerce, diplomatic status, or even human rights law. Nevertheless, certain basic principles have been laid down.

The right to a nationality and prohibition of statelessness

The grant of nationality was long regarded under international law as being within the "reserved domain" of states, a position affirmed by the Permanent Court of International Justice in 1923.[9] Since that date, however, international human rights law has increasingly asserted limits to state discretion, in this as in other areas.

The first international treaty on nationality was the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, adopted in 1930. It affirmed in its preamble that it is in the interest of the international

8 See definitions section for discussion of the meaning of "nationality" and "citizenship": in general, the two words are used as synonyms in this report.

9 *Tunis and Morocco Nationality Decrees case*, PCIJ Ser.B., No. 4 (1923). See also, Paul Weiss, *Nationality and Statelessness in International Law* (2nd ed.), 1979, p. 126.

community to ensure that all countries recognise that "every person should have a nationality". While providing that each state may decide under its own laws who are its nationals, the Convention notes that other states will recognise these laws only insofar as they are consistent with international conventions, custom and "principles of law generally recognised with regard to nationality".[10] The Hague Convention was an attempt to guarantee a nationality to all while minimising dual nationality, by harmonising nationality practices among states.

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. Article 14 provides that:

> A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known. A foundling is, until the contrary is proved, presumed to have been born in the territory of the State in which it was found.

The experience of the Second World War, and especially the denationalisation of many millions of Jews in Germany—leading to Hannah Arendt's famous description of citizenship as the "right to have rights"—meant that the right to a nationality was one of the rights guaranteed in the Universal Declaration of Human Rights in 1948. Article 15 provides that "[e]veryone has a right to a nationality" and that "[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".

The 1961 Convention on the Reduction of Statelessness, which entered into force in 1975, makes it a duty of states to prevent statelessness in nationality laws and practices. Article 1 mandates that "[a] Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless". Article 2 then endorses the protection given in the Hague Convention to foundlings, providing that "[a] foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State". In relation to deprivation of nationality, Article 8(1) directs that "[a] Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless". Although Article 8 does provide limited legitimate grounds for the deprivation of nationality even if the deprivation would result in statelessness (where, for example, nationality has been gained by fraud or where a national swears allegiance to another state), such deprivation can occur only through a procedure that respects due process.

10 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930 (entered into force 1937), article 1.

Many human rights treaties mention nationality in relation to their own subject matter. The International Covenant on Civil and Political Rights (ICCPR) does not discuss the nationality of adults, but recognises the right of "[e]very child ... to acquire a nationality".[11] The Convention on the Rights of the Child also guarantees the right of every child to acquire a nationality, placing a duty on states parties to respect this right.[12] This right is reaffirmed by the Migrant Workers Convention for the children of migrants.[13]

In a General Comment on the right of every child to acquire a nationality, the UN Human Rights Committee noted that:

> States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. In this connection, no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.[14]

The treaties prohibiting discrimination also encompass the right to nationality. In particular, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) prohibits the most common form of discrimination in nationality law, requiring that women be granted equal rights with men in respect of nationality.[15] The Convention on the Rights of

11 International Covenant on Civil and Political Rights, Article 24(3).

12 Convention on the Rights of the Child, Article 7(1): "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents." Article 8 requires states to "respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference", and to provide appropriate assistance and protection, to re-establishing identity where it has been deprived. See Jaap E. Doek, "The CRC and the right to acquire and to preserve a nationality", *Refugee Survey Quarterly*, Vol. 25, No. 3, 2006.

13 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 29: "Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality."

14 CCPR General Comment No. 17: Rights of the child (Art.24), 7 April 1989, para 8.

15 CEDAW Article 9: "(1) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. (2) States Parties shall grant women equal rights with men with respect to the nationality of their children." Article 16(1)(d) of CEDAW specifies that men and women should have "[t]he same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children".

Persons with Disabilities requires states to recognise the rights of persons with disabilities to a nationality, on an equal basis with others.[16]

The International Convention on the Elimination of Racial Discrimination (CERD) requires that enjoyment of the right to nationality be guaranteed to everyone "without distinction as to race, colour, or national or ethnic origin".[17] However, recognising that some forms of discrimination are in fact the basis of nationality law, CERD also provides that "[t]his Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens", while it excludes from its applications "legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions to not discriminate against any particular nationality".[18]

The Committee on the Rights of the Child has commented unfavourably on discriminatory provisions in nationality laws in the Democratic Republic of Congo (DRC) and Liberia, as well as non-African countries.[19] There is more ambivalence in the context of naturalisation, but the Committee on the Elimination of Racial Discrimination, the Human Rights Committee and the Committee on the Rights of the Child have all expressed disquiet about discrimination in naturalisation procedures.[20] While some language and cultural assimilation requirements are seen as reasonable in the case of naturalisation, discriminatory group preferences or exclusions are not.

In 2005, the UN Committee on the Elimination of Racial Discrimination adopted a General Recommendation on discrimination against non-citizens, which outlined states' obligations in relation to providing access to citizenship as follows. States should:

> 13. Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and

16 Convention on the Rights of Persons with Disabilities, Article 18: "(1) States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities: (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability; (b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement; (c) Are free to leave any country, including their own; (d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country. (2) Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents."

17 CERD, Article 5: "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (d) Other civil rights, in particular: [...] (iii) The right to nationality."

18 CERD, Article 1(1) and (1(2).

19 Committee on the Rights of the Child, *Concluding Observations: Democratic Republic of the Congo,* CRC/C/15/Add. 153, 9 July 2001, para 28. Committee on the Rights of the Child, *Concluding Observations: Liberia,* CRC/C/LBR/CO/2-4, 13 December 2012, para 41.

20 In Korea, Japan, Panama, Kuwait and other cases. For a survey, see Peter J. Spiro, "A new international law of citizenship", *American Journal of International Law*, Vol. 105, 2011, pp. 694–746, at pp. 727–730. The leading IACtHR case is *Re Amendments to the Naturalisation Provisions of the Constitution of Costa Rica*.

> to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents;
> 14. Recognise that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of states parties' obligations to ensure non-discriminatory enjoyment of the right to nationality;
> 15. Take into consideration that in some cases denial of citizenship for long-term or permanent residents could result in creating disadvantage for them in access to employment and social benefits, in violation of the Convention's anti-discrimination principles;
> 16. Reduce statelessness, in particular statelessness among children, by, for example, encouraging their parents to apply for citizenship on their behalf and allowing both parents to transmit their citizenship to their children;
> 17. Regularise the status of former citizens of predecessor States who now reside within the jurisdiction of the State party; [....] [21]

The interpretation of international norms on the avoidance of statelessness continues to evolve. In 2012, the UNHCR published an important series of four Guidelines on the interpretation of the conventions on statelessness,[22] of which the first three were complied into a Handbook on protection of stateless persons.[23] These Guidelines were informed by the conclusions of expert meetings convened to discuss the issues arising.[24]

Among the important conclusions of these documents are those relating to the definition of stateless persons, where the UNHCR notes that "establishing whether an individual is not considered as a national under the operation of its law ... is a mixed question of fact and law". Thus, "[w]here the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national".[25] Similarly, in considering a State's obligation to grant nationality to a child born on its territory who would otherwise be stateless:

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21 Committee on the Elimination of Racial Discrimination, *General Recommendation No. 30: Discrimination against Non-citizens,* 2005.

22 *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012; *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012; *Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level*, HCR/GS/12/03, 17 July 2012; *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1–4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, 21 December 2012. A fifth Guideline, on loss and deprivation of nationality is expected in 2015.

23 *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, UNHCR, 2014.

24 The Prato, Geneva, Dakar and Tunis Conclusions, available, with the Guidelines, at the UNHCR website page on statelessness: http://www.refworld.org/statelessness.html.

25 UNHCR, *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012, paragraphs 16 & 30.

"The concept 'otherwise stateless' requires evaluating the nationality of a child and not simply examining whether a child's parents are stateless". Therefore, a state "cannot avoid its obligations to grant its nationality to an otherwise stateless person based on its interpretation of another State's nationality laws which conflicts with the interpretation applied by the State concerned."[26]

The African Charter on Human and Peoples' Rights, adopted in 1981 (entry into force 1986), does not contain an explicit provision on nationality.However, Article 5 of the Charter provides that:

> Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.

This provision has been interpreted by the African Commission on Human and Peoples' Rights to include the right to a nationality (see further below) and in April 2013, the African Commission on Human and Peoples' Rights adopted a resolution that reaffirmed the right to a nationality as implied within Article 5 of the Charter.[27] A year later, the Commission formally approved a study on nationality prepared in accordance with this resolution[28] and decided to draft a protocol to the Charter on the right to a nationality for adoption by heads of state.[29]

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa places strong non-discrimination requirements on states in general, but is weak on nationality rights, thanks largely to the efforts of the North African states.[30] It omits the obligation in CEDAW to provide equal rights to nationality for men and women, and states in Article 6 only that:

> g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
> h) a woman and a man shall have equal rights with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests.

These provisions are arguably in violation of the non-discrimination provisions in the African Charter on Human and Peoples' Rights itself.

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26 *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children (The "Dakar Conclusions")*, UNHCR, 2011, paragraphs 12 and 13.

27 Resolution 234 on the Right to Nationality, adopted at the 53rd Ordinary Session, in Banjul, The Gambia, 9–23 April 2013.

28 *The Right to Nationality in Africa,* Study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, pursuant to Resolution 234 of April 2013 and approved by the Commission at its 55th Ordinary Session, May 2014.

29 Resolution 277, on the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa, adopted at the 55th Ordinary Session, 28 April – 12 May 2014, Luanda, Angola.

30 See discussion of the drafting process in Fareda Banda, "Protocol to the African Charter on the Rights of Women in Africa," in Malcolm Evans and Rachel Murray (eds.), *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006,* Cambridge University Press, 2008.

However, the the African Charter on the Rights and Welfare of the Child is more progressive. Article 6 repeats the provision of the UN CRC on the right of a child to acquire a nationality, and Article 6(4) goes beyond the obligations in the CRC to incorporate the requirement in the Convention on the Reduction of Statelessness relating to otherwise stateless children:

> (1) Every child shall have the right from his birth to a name.
> (2) Every child shall be registered immediately after birth.
> (3) Every child has the right to acquire a nationality.
> (4) States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

In May 2014, the African Committee of Experts on the Rights and Welfare of the Child adopted a General Comment on Article 6, which "reminds African States that States do not enjoy unfettered discretion in establishing rules for the conferral of their nationality, but must do so in a manner consistent with their international legal obligations". The General Comment condemns discrimination in rules relating to nationality, whether on the basis of sex, race, ethnic group or similar criteria.

The Committee of Experts also drew on the UNHCR Guidelines to comment that "States must accept that a child is not a national of another State if the authorities of that State indicate that he or she is not a national. A State can refuse to recognise a person as a national either by explicitly stating that he or she is not a national or by failing to respond to inquiries to confirm the child is a national."

The Committee made various recommendations in line with these findings, including that States parties should adopt legal provisions that provide nationality to children born on their territory not only where the child is otherwise stateless, but also in other cases where the child has the strongest connection to that state. The Committee endorsed the rule of "double *jus soli*" where a child is automatically attributed nationality if one parent (either mother or father) was also born in the State, and urges that children born in the territory of a State of foreign parents should have "the right to acquire nationality after a period of residence that does not require the child to wait until majority before nationality can be confirmed".[31]

31 African Committee of Experts on the Rights and Welfare of the Child, *General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child*, ACERWC/GC/02 (2014), adopted by the Committee at its 23rd Ordinary Session, 7–16 April 2014, paragraphs 83–101.

In other regional treaties, the 1969 American Convention on Human Rights (entry into force 1978) was the first to contain an explicit right to a nationality.[32] The European Convention on Nationality adopted by the Council of Europe in 1997 (entry into force 2000) also establishes as a basic principle that everyone has the right to a nationality.[33]

None of these treaties compels states to grant their nationality to any particular person. Nonetheless, they increasingly limit state discretion over nationality by requiring measures to reduce statelessness, including the grant of nationality to children born in the territory who would otherwise be stateless, and by prohibiting discrimination in granting nationality and arbitrary deprivation of nationality. These principles were also confirmed in a 2005 judgment of the Inter-American Court of Human Rights:

> Although the determination of who is a national of a particular state continues to fall within the ambit of state sovereignty, states' discretion must be limited by international human rights that exist to protect individuals against arbitrary state actions. States are particularly limited in their discretion ... by their obligations to guarantee equal protection before the law and to prevent, avoid, and reduce statelessness.[34]

This ruling was affirmed by the African Committee of Experts on the Rights and Welfare of the Child in its first decision, relating to the nationality of children of Nubian descent born in Kenya.[35]

In July 2015, in accordance with its resolutions of the previous two years, and following expert meetings to draft the text, the African Commission on Human and Peoples' Rights adopted a draft Protocol on the Specific Aspects of the Right to Nationality and the Eradication of Statelessness in Africa, for consideration by the other institutions of the African Union, and ultimately the Assembly of Heads of State and Government. If adopted by the Assembly as proposed by the Commission, the protocol would provide the strongest guarantees against statelessness of any international treaty.

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32 American Convention on Human Rights, Article 20 – Right to Nationality. "(1) Every person has the right to a nationality. (2) Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality. (3) No one shall be arbitrarily deprived of his nationality or of the right to change it."

33 European Convention on Nationality, Article 4 – Principles. "The rules on nationality of each State Party shall be based on the following principles: (a) everyone has the right to a nationality; (b) statelessness shall be avoided; (c) no one shall be arbitrarily deprived of his or her nationality; (d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse." In addition, the Convention requires States parties to provide for naturalisation of "persons lawfully and habitually resident on [their] territor[ies]." The residence requirement for seeking naturalisation may not exceed ten years.

34 *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Inter-American Court of Human Rights Case No. 12.189, 8 September 2005.

35 Communication 002/2009, *Institute for Human Rights and Development in Africa and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya*, African Committee of Experts on the Rights and Welfare of the Child, 22 March 2011 (the "Kenyan Nubian Children's case"), paragraph 48.

Nationality in the context of state succession

Africa's colonial history has made the rules governing the transition to independence—the rules of state succession—particularly sensitive in the context of nationality law. The basic principle in international law is the following:

> In the absence of agreement to the contrary, persons habitually resident in the territory of the new State automatically acquire the nationality of that State, for all international purposes, and lose their former nationality, but this is subject to a right in the new State to delimit more particularly who it will regard as its nationals.[36]

The International Law Commission (ILC), an inter-governmental body established under UN auspices in 1948, prepared Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, including this provision in Article 1:

> Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned.[37]

Article 4 of the ILC Draft Articles obliges states to take "all" appropriate measures to prevent statelessness arising from state succession; and the Articles then set out rules to govern nationality in particular types of state succession, based on habitual residence, location of birth and other "appropriate connection", as well as the right to opt if a person has connections to two or more states. In particular, Article 5 states:

> Subject to the provisions of the present draft articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession.

The Draft Articles, adopted by the ILC in 1999, have not been adopted by the UN General Assembly and are thus not formally binding. However, the most recent resolution of the UN General Assembly "[e]mphasized the value of the articles in providing guidance to the States dealing with issues of nationality of natural persons in relation to the succession of States, in particular concerning the avoidance of statelessness".[38]

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36 Crawford J., *The Creation of States in International Law* (2nd Edn), 2006, p. 53.

37 *ILC Draft Articles on Nationality of Natural Persons in Relation to the Succession of States*, 1999 (Annex to UNGA Res. 55/153, 12 Dec. 2000).

38 UN General Assembly Resolution 66/92, "Nationality of natural persons in relation to the succession of States", 9 December 2011. The Resolution postponed further action into the indefinite future.

In 2006, the Council of Europe adopted a Convention on the Avoidance of Statelessness in Relation to State Succession (not yet in force) that elaborates on these rules, again based on the principle that everyone who had the nationality of the predecessor state should have the right to nationality of one or another of the successor states if he or she would otherwise become stateless. In particular, a state should attribute nationality to a person who is habitually resident in its territory if the person would otherwise be stateless, and should respect the wishes of the person to opt between two possible nationalities.[39]

Particular historical circumstances create complications for these rules. In Africa, the comprehensive peace agreement of December 2000 ending the war between Ethiopia and Eritrea provided for the establishment of an independent Eritrea-Ethiopia Claims Commission to adjudicate on claims against each state. In arguments to the Claims Commission, Ethiopia tried to justify its denationalisation and forced expulsion of those of Eritrean heritage during the war by arguing that those who had registered to take part in the referendum on Eritrean independence in 1993 had thereby lost their Ethiopian nationality. Eritrea argued that they could not have done so because there was no Eritrea in existence at that point. The Claims Commission said:

> Nationality is ultimately a legal status. Taking into account the unusual transitional circumstances associated with the creation of the new State of Eritrea and both Parties' conduct before and after the 1993 Referendum, the Commission concludes that those who qualified to participate in the Referendum in fact acquired dual nationality. They became citizens of the new State of Eritrea pursuant to Eritrea's Proclamation No. 21/1/1992, but at the same time, Ethiopia continued to regard them as its own nationals.[40]

The Commission said that the outbreak of the war did not of itself suspend this dual nationality but placed these dual nationals "in an unusual and potentially difficult position". The Commission determined that in two categories of cases, Ethiopia's action in denying its nationality to the dual nationals had been arbitrary and unlawful.

Deprivation or non-recognition of nationality and expulsion from a territory

Article 15 of the Universal Declaration of Human Rights provides that "[n]o one shall be arbitrarily deprived of his nationality". Article 8(4) of the 1961 Convention on the Reduction of Statelessness provides that a "Contracting State shall not exercise a power of deprivation ... except in accordance with

39 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, Articles 2, 5 and 7.

40 Award of the Eritrea-Ethiopia Claims Commission in *Partial Award (Civilian Claims)*, 44 ILM 601 (2005) at p. 610 (award of 17 December 2004).

law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body". Resolutions of the UN Human Rights Council and the reports of the UN Secretary General to the Council on arbitrary deprivation clearly establish that the prohibition applies equally to automatic withdrawal of nationality by operation of law (known as "loss" of nationality in the 1961 Convention), as it does to situations where the withdrawal is initiated by the authorities of the State (deprivation).[41] Additional prohibitions apply if withdrawal would result in the person becoming stateless. Thus, any decision to revoke or withdraw recognition of nationality, which has such an important effect on an individual's rights, must be subject to review and appeal and respect due process of law.[42]

Even treaties that do not specifically mention nationality, including the African Charter on Human and Peoples' Rights, provide for the right to a fair hearing and the right to appeal to competent national organs in respect of acts violating fundamental rights, which the African Commission has affirmed applies to recognition and deprivation of nationality.[43]

According to international jurisprudence, the notion of arbitrariness also includes necessity, proportionality and reasonableness. The UN Human Rights Committee has said that "the notion of 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness and injustice",[44] and that "the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the [ICCPR] and should be, in any event, reasonable in the particular circumstances".[45]

The 1961 Convention on the Reduction of Statelessness provides in Article 9 that "[a] Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds", even if statelessness would not result. This has been reinforced by the statements of the UN's human rights bodies. The Committee on the Elimination of Racial Discrimination's General Recommendation on discrimination against non-citizens included confirmation that "deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States Parties' obligations".[46] The UN Commission on Human Rights, guided by Articles 2 and 15(2) of the Universal Declaration, reaffirmed in 2005 that "arbitrary deprivation of nationality on racial, national, ethnic, religious, political, or

41 Periodic resolutions of the UN Human Rights Council on Human Rights and Arbitrary Deprivation of Nationality, most recently A/HRC/RES/26/14, 11 July 2014.

42 *Expert Meeting – Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, UNHCR, March 2014, especially paragraph 9.

43 African Charter on Human and Peoples' Rights, article 7; and see below on jurisprudence of African human rights bodies.

44 *A. v. Australia*, Communication No. 560/1993, CCPR/C/59/D/560/1993, 30 April 1997, paragraph 9.2.

45 UN Human Rights Committee, General Comment No. 16, CCPR/C/21/Rev/ 1, pp. 19–20.

46 *General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination on Discrimination against Non-citizens*, HRI/GEN/1/Rev.7/Add.1, 4 May 2005.

gender grounds is a violation of human rights and fundamental freedoms".[47] The Human Rights Council that replaced the Commission has repeatedly confirmed this statement, most recently in 2014.[48]

In the African context, the ruling of the independent Eritrea-Ethiopia Claims Commission stated that:

> [I]nternational law limits States' power to deprive persons of their nationality. In this regard, the Commission attaches particular importance to the principle expressed in Article 15, paragraph 2, of the Universal Declaration of Human Rights, that "no one shall be arbitrarily deprived of his nationality." In assessing whether deprivation of nationality was arbitrary, the Commission considered several factors, including whether the action had a basis in law; whether it resulted in persons being rendered stateless; and whether there were legitimate reasons for it to be taken given the totality of the circumstances.[49]

Due process protections apply equally in case of expulsion from a territory. Under international law a person cannot be expelled from his or her country of nationality, no matter what the destination.[50] A state may expel individuals it claims are non-nationals from its territory or deport them to their alleged state of origin only if it respects minimum rules of due process, including the right to challenge on an individual basis both the reasons for expulsion and the allegation that a person is in fact a foreigner.

This principle was reaffirmed in May 2007 by the International Court of Justice, ruling in a case brought by Guinea that the government of what was then Zaire had not provided available and effective remedies enabling an individual to challenge an expulsion, because the decision (which was technically to "refuse entry") could not be appealed.[51]

The African Charter on Human and Peoples' Rights supports these rules and specifically includes an additional blanket prohibition on mass expulsion

47 Commission on Human Rights, Resolution 2005/45: Human Rights and Arbitrary Deprivation of Nationality, E/CN.4/RES/2005/45, 19 April 2005.

48 Human Rights Council, Resolution on human rights and arbitrary deprivation of nationality, A/HRC/RES/26/14, 23 June 2014, which "*[r]eiterates* that arbitrary deprivation of nationality, especially on discriminatory grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status is a violation of human rights and fundamental freedoms". See also periodic Reports of the Secretary-General to the Human Rights Council on "Human rights and arbitrary deprivation of nationality".

49 Award of the Eritrea-Ethiopia Claims Commission in *Partial Award (Civilian Claims)*, 44 ILM 601 (2005), paragraph 60.

50 This prohibition does not include extradition of a person (of whichever nationality) to stand trial in another country or for execution of a sentence imposed upon him or her, in accordance with due process of law and on the basis of legal agreements between states.

51 Case concerning Ahmadou Sadio Diallo (*Republic of Guinea v. Democratic Republic of Congo*), Preliminary Objections, International Court of Justice, 24 May 2007, paragraph 46.

of individuals based only on their membership of a particular national, racial, ethnic or religious group (Article 12(5)).[52]

International law and many African constitutions also prohibit the *refoulement* of refugees—that is, the forced removal of an individual to a place where he or she would be at risk of persecution under the definitions contained in the UN and African Refugee Conventions. Any person being expelled must have the individual right to challenge the removal on the basis that it would constitute a *refoulement*.

The jurisprudence of the African human rights bodies

Numerous articles of the African Charter on Human and Peoples' Rights have been applied to cases related to the right to a nationality, including the rights to non-discrimination (Article 2); to equal treatment before the law (Article 3); to dignity and legal status (Article 5); to due process and a fair trial (Article 7); and to freedom of movement (Article 12).

Several cases have been brought to the African Commission on Human and Peoples' Rights on behalf of politically active individuals whom governments have attempted (often successfully) to silence by denationalisation or deportation or by otherwise violating their rights on grounds of alleged nationality or immigration status.

Perhaps most importantly the African Commission has found that the provision of Article 5 that states "[e]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status" applies specifically to attempts to denationalise individuals and render them stateless. Thus, in the long-running case of John Modise, who spent years confined either to the South African "homeland" of Bophuthatswana or the no-man's land between South Africa and Botswana because of the Botswanan government's refusal to recognise his nationality, the Commission found against the Botswanan government and ruled, among other conclusions, that Modise's "personal suffering and indignity" violated Article 5.[53] Similarly, in *Amnesty International v. Zambia*, the Commission considered the deportations of William Banda and John Chinula from Zambia to Malawi and found that "[b]y forcing [the complainants] to live as stateless persons under degrading conditions, the [Zambian] government ... [had] deprived them of their family and [was] depriving their families of the men's support, and this constitutes a violation of the dignity of a human being, thereby violating Article 5".[54]

In addition, the Commission has held that Article 7(1)(a), with its reference to "the right to an appeal to competent national organs", includes both the

52 Article 12: "(4) A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law; (5) The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

53 Communication 97/93, *Modise v. Botswana* (2000), paragraph 91.

54 Communication No. 212/98, *Amnesty International v. Zambia* (2000), paragraph 50.

initial right to take a matter to court, as well as the right to appeal from a first instance decision to higher tribunals. In several cases relating to deportations or denial of nationality, the Commission has held that the fact that someone is not a citizen "by itself does not justify his deportation"; there must be a right to challenge expulsion on an individual basis.[55]

The Commission found against the Zambian government's notorious constitutional amendment that required anyone who wanted to compete for the presidency to prove that both parents were Zambians from birth (an amendment patently aimed at preventing former president Kenneth Kaunda from running for president again), and ruled that the provision violated Articles 2, 3 and 13.[56] The Commission noted that freedom of movement among the components of what had been the Central African Federation (now the states of Malawi, Zambia, and Zimbabwe) meant that to suggest that an indigenous Zambian could only be a person who himself was born in and whose parents were born in what came (later) to be known as the sovereign territory of the state of Zambia would be arbitrary. The retroactive application of such a law thus could not be justified according to the Charter.

Founding its decisions on Articles 2 and 7 as well as Article 12, the Commission has ruled against both Angola and Zambia in cases relating to individual deportations or mass expulsions on the basis of ethnicity, commenting that mass expulsions "constitute a special violation of human rights."[57] Zambia had expelled West Africans indiscriminately, without giving them the opportunity to appeal against their deportation, and had kept them in a special camp for up to two months.[58] Similarly, the Commission adopted a decision finding the Guinean government in violation of Article 2 and Article 12 (among others), for "massive violations of the rights of refugees" following a speech by Guinea's president, Lansana Conté, in which he incited soldiers and civilians to attack Sierra Leonean refugees.[59] Again, the Commission has ruled that the exception in Article 12(2) of the Charter relating to "the protection of national security, law and order, public health or morality" does not pre-empt the right to have a case heard, and that it is for the state to prove the threat to national security, law and order, public health or morality.[60]

The Commission has ruled that States have obligations to respect their rights to family life and other rights under the Charter, even when expelling non-nationals. In the case of Kenneth Good, an Australian academic and

55 *Amnesty International v. Zambia*, paragraph 33. See also Communication No. 159/96, *Union Interafricaine des Droits de l'Homme and Others v. Angola* (1997); *Modise v. Botswana*; Communications Nos. 27/89, 49/91 and 99/93, *Organisation Mondiale Contre la Torture and Others v. Rwanda* (1996); Communication No. 71/92, *Rencontre Africain pour la Défense des Droits de l'Homme v. Zambia* (1996).

56 Communication 211/98, *Legal Resources Foundation v. Zambia* (2001).

57 *Union Interafricaine des Droits de l'Homme and Others v. Angola*, paragraph 16. See also Communication 292/2004, *Institute for Human Rights and Development in Africa v. Angola* (2008).

58 *Rencontre Africain pour la Défense des Droits de l'Homme v. Zambia*.

59 Communication No. 249/02, *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea* (2004).

60 *Amnesty International v. Zambia*, paragraph 42.

long-term resident of Botswana who was deported after he wrote an article criticising the president, the Commission found that Botswana had violated Articles 1, 2, 7(1)(a), 9, 12(4) and 18(1) and 18(2) of the Charter. In particular, the Commission confirmed that non-nationals are entitled to the right to due process just as nationals, and that the "ouster clause" in the Botswana Immigration Act preventing the courts from reviewing his case was in violation of the Charter's general provisions on due process under Article 7, as well as the specific provision of Article 12.4. The hasty nature of the deportation order also violated the complainant's right to family life, given that he was separated from his minor daughter who lived with him.[61]

In two important cases from Côte d'Ivoire, the African Commission considered the restrictive provisions on standing for election as president and the provisions of a 1998 land law providing that land could only be owned by Ivorian citizens. In the case of the nationality of the president, who was required under the 2000 constitution both to be Ivorian by birth himself or herself and to have both parents Ivorian by birth, the Commission found:

> the requirement that an individual can only exercise the right to stand for the post of a President not only if he/she is born in Côte d'Ivoire, but also that his parents must be born in Côte d'Ivoire unreasonable and unjustifiable, and [found] this an unnecessary restriction on the right to participate in government guaranteed under Article 13 of the African Charter. [The Article] is also discriminatory because it applies different standards to the same categories of persons, that is persons born in Côte d'Ivoire are now treated based on the places of origin of their parents, a phenomenon which is contrary to the spirit of Article 2 of the African Charter.[62]

In its ruling on the 1998 land law, whose Article 26 restricted ownership of property to Ivorian citizens, the Commission found Côte d'Ivoire in violation of Articles 2 and 14 of the African Charter (equality before the law and right to property), since the application of the law "would give rise to the expropriation of their land from a category of the population, on the sole basis of their origin" and recommended restoration of their land to those deprived, as well as full implementation of 2004 amendments that reduced the impact of Article 26.[63]

The very first decision on the merits of a communication to the African Committee of Experts on the Rights and Welfare of the Child, issued in 2011, concerned the interpretation of Article 6 of the African Charter on the Rights and Welfare of the Child on the right to a name, birth registration and a nationality. In this decision on the Kenyan Nubian children, the African

61 Communication No. 313/05, *Kenneth Good v. Republic of Botswana* (2009).

62 Communication No. 246/02, *Mouvement ivoirien des droits humains (MIDH) v. Côte d'Ivoire* (2008), paragraph 86.

63 Communication No. 262/02, *Mouvement ivoirien des droits humains (MIDH) v. Côte d'Ivoire* (2008), paragraph 78.

Committee of Experts found the Kenyan state in violation of its obligations under Article 6 of the Charter, despite the reforms of the new 2010 constitution, which still failed to provide sufficient guarantees against statelessness since it does not provide that children born in Kenya of stateless parents or who would otherwise be stateless acquire Kenyan nationality at birth. The Committee noted the "strong and direct link between birth registration and nationality" and stated that it "cannot overemphasise the overall negative impact of statelessness on children". In considering the significance of the wording of Article 6(3), on the right to acquire a nationality, the Committee of Experts held that:

> [A]s much as possible, children should have a nationality beginning from birth. [...] Moreover, by definition, a child is a person below the age of 18 (Article 2 of the African Children's Charter), and the practice of making children wait until they turn 18 years of age to apply to acquire a nationality cannot be seen as an effort on the part of the State Party to comply with its children's rights obligations.[64]

African states' accession to international treaties

All African countries are parties to the Convention on the Rights of the Child.[65] Djibouti and Mauritania entered comprehensive reservations to the CRC covering virtually all articles, stating that no provision of the convention would be implemented that is contrary to the beliefs of Islam, but only Tunisia made a reservation referring specifically to Article 7, withdrawn in 2002.[66] All African countries except Sudan and Somalia are parties to the UN Convention on the Elimination of All Forms of Discrimination Against Women. Algeria, Egypt, Mauritania, Niger and Tunisia ratified the convention with reservations relevant to their nationality laws, mainly referring to the provisions of *shari'a* law in relation to equality of men and women; in 2014, Tunisia withdrew its reservations.[67] All African countries except Angola and South Sudan are parties to CERD; Angola signed in 2013.[68]

Accessions to the 1954 and 1961 conventions have greatly increased in recent years and, as of late 2015, there were 23 African state parties to the 1954

64 Kenyan Nubian Children's Case, paragraphs 42, 46 and 53.

65 Somalia and South Sudan acceded to the CRC in 2015. "UN lauds Somalia as country ratifies landmark children's rights treaty", UN News, 20 January 2015; "UN lauds South Sudan as country ratifies landmark child rights treaty", UN News, 4 May 2015.

66 "The Government of the Republic of Tunisia considers that article 7 of the Convention cannot be interpreted as prohibiting implementation of the provisions of national legislation relating to nationality and, in particular, to cases in which it is forfeited." See the reservations to the Convention on the Rights of the Child, available from the UN Treaty Collection website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en, last accessed 24 September 2015.

67 List of participants and reservations to CEDAW at the UN Treaty Collection website, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en, last accessed 24 September 2015.

68 List of participants to CERD at the UN Treaty Collection website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en, last accessed 24 September 2015.

Convention relating to the Status of Stateless Persons[69] and 15 to the 1961 Convention on the Reduction of Statelessness.[70]

All Member States of the AU except South Sudan are parties to the ACHPR; South Sudan signed in 2013.[71] Thirty-six countries had ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa as of late 2015; another 15 had signed. Countries taking no action were Botswana, Egypt and Tunisia.[72] Forty-seven countries have ratified the ACRWC, and the remainder have all signed (those that have not yet signed are: Central African Republic, Democratic Republic of Congo, Sahrawi Arab Democratic Republic, Somalia, São Tomé and Príncipe, and Tunisia).[73]

69 Algeria, Benin, Botswana, Burkina Faso, Chad, Côte d'Ivoire, Gambia, Guinea, Lesotho, Liberia, Libya, Madagascar, Malawi, Mozambique, Niger, Nigeria, Rwanda, Senegal, Swaziland, Tunisia, Uganda, Zambia, Zimbabwe. List of participants at the UN Treaty Collection website, https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en, last accessed 24 September 2015.

70 Benin, Chad, Côte d'Ivoire, Gambia, Guinea, Lesotho, Liberia, Libya, Mozambique, Niger, Nigeria, Rwanda, Senegal, Swaziland, and Tunisia. List of participants at the UN Treaty Collection website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en, last accessed 24 September 2015.

71 List of countries that have signed, ratified/acceded to the African Charter on Human and Peoples' Rights (and other treaties mentioned) at the AU website, http://www.au.int/en/treaties, last accessed 24 September 2015. Morocco had ratified the Charter, but left the AU before it entered into force, and is thus not a State Party.

72 The parties are Angola, Benin, Burkina Faso, Cameroon, Cape Verde, Comoros, Côte d'Ivoire, Djibouti, Congo, DRC, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Mali, Malawi, Mozambique, Mauritania, Namibia, Nigeria, Rwanda, South Africa, Senegal, Seychelles, Swaziland, Tanzania, Togo, Uganda, Zambia and Zimbabwe. Signature only from Algeria, Burundi, CAR, Chad, Eritrea, Ethiopia, Madagascar, Mauritius, Niger, SADR, STP, Sierra Leone, Somalia, South Sudan and Sudan.

73 DRC and São Tomé and Príncipe, the last outstanding countries, signed in early 2010, while Swaziland was the most recent to ratify, in 2012.

Nationality under colonial rule and the transition to independence

As in other areas of law, the legal systems of the colonisers established the initial framework for nationality in African states after independence, though many states have since amended their laws.[74] At the same time, the practical effect of colonisation was to create new territorial units that were mostly not rooted in any pre-existing state structures, and indeed often cut through territorial boundaries, splitting populations speaking the same language and sharing the same political institutions. The colonisers also facilitated—either coercively or as a side effect of the pattern of economic development produced by membership of an empire—migration both within Africa (such as that of mineworkers to South Africa or farm labour to Côte d'Ivoire) and from other continents to Africa (including not only white Europeans but, for example, also the south Asians brought to the eastern and southern regions of Africa by the British).

The territories of the British empire in Africa belonged to one of three categories. First established were the "colonies", largely the coastal trading enclaves, including Lagos, the Gold Coast, Gambia and Freetown, and also a large part of inland Kenya, as well as South Africa and Southern Rhodesia; of these, South Africa later became a self-governing "dominion". The remaining territories, including all those added in the late 19th century "Scramble for Africa" were designated "protectorates", into which the early colonies were later mostly merged. Colonies and dominions were part of the "crown's dominion", while "protectorates", including most other British-controlled territories in Africa, were nominally foreign territory managed by African government structures established under British protection.[75] Until 1948, when the first major reform of nationality law in Britain was adopted, the single status of "British subject" was applied to all those born within the British crown's dominion (including the United Kingdom). However, birth in a protectorate did not, in general, confer British subject status. The British Nationality Act of 1948 established the new status of "citizen of the United Kingdom and colonies" (a status abolished in 1981), the national citizenship of the United Kingdom and those places which were at that time British colonies or dominions. The status of "British protected person" was codified by the new law and applied to persons born in a protectorate, as well

74 An extended account of this history is provided in Bronwen Manby, *Citizenship and Statelessness in Africa: The Law and Politics of Belonging*, doctoral thesis submitted to the Faculty of Law, University of Maastricht, 2015. See also *Study on the Right to Nationality in Africa*, African Commission on Human and Peoples' Rights, May 2014; Frederick Cooper, "The politics of citizenship in colonial and postcolonial Africa", *Studia Africana*, Vol. 16, 2005, pp. 14–23.

75 Other categories of territory within the empire included protected states (where Britain only controlled defence and external relations), League of Nations mandates and (later) United Nations trust territories.

being used for former German territories mandated to British control after the First World War by the League of Nations. A British protected person had some rights both in the protectorate concerned and in the UK, but it was a lesser status than British subject or citizen of the United Kingdom and colonies.[76] British protected persons were, in general, governed by the customary law of the territory concerned, as modified by statute and interpreted by the colonial courts; British subjects/citizens of the UK and colonies were governed by the common law also as modified by statute.

At independence, most Commonwealth countries whose constitutions were drafted according to the standard "Lancaster House"[77] template adopted rules that created three ways of becoming a citizen of the new state: some became citizens automatically; some became entitled to citizenship and could register as of right; while others who were potential citizens could apply to naturalise. Those who became citizens automatically were: firstly, persons born in the country before the date of independence who were at that time citizens of the United Kingdom and colonies or British protected persons and who had at least one parent (or in some cases, grandparent) also born in the territory; and secondly, persons born outside the country whose fathers became citizens in accordance with the previous provision. Those persons born in the country whose parents were both born outside the country were entitled to citizenship by way of registration, a non-discretionary process, as were other British protected persons or citizens of the UK and colonies ordinarily resident in the country. Others could be naturalised if they fulfilled the more stringent conditions set. Provisions relating to married women usually made them dependent on their husband's status.[78]

For those born after independence, the initial rule in all the British territories was for *jus soli* attribution of citizenship based only on birth in the territory, though many of these laws were quickly changed to reduce or remove the rights based on location of birth.[79]

France divided nationals of its colonial territories into two main categories: French citizens (*citoyens français*), who were of European stock or mixed race; and French subjects (*sujets français*), including black Africans, Muslim Algerians, and other natives (*indigènes*) of Madagascar, the Antilles, Melanesia and other non-European territories. A much smaller number of people were designated either French-administered persons (*administrés français*) from Togo and Cameroon, placed under French control by League of Nations mandate following the First World War; or French protected persons (*protégés français*) in the protectorates of Tunisia and Morocco.

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76 The term "British protected person" still exists, and confers some rights in the United Kingdom, but has a different legal meaning today.

77 Lancaster House was the building in London where many of the constitutions were negotiated and finalised.

78 See Laurie Fransman, *Fransman's British Nationality Law, Third Edition*, Bloomsbury Professional, 2011, Chapter 3 and catalogue entries on Commonwealth countries for this history.

79 Bronwen Manby, "Trends in citizenship law and politics in Africa since the colonial era", chapter in Engin F. Isin and Peter Nyers (eds.), *Handbook of Global Citizenship Studies,* Routledge, 2014.

The *Code de l'indigénat*, a collection of legal provisions added to the Penal Code, provided for a range of offences specific to *indigènes,* applied and interpreted by colonial administrators or executive-dominated colonial tribunals; French citizens in the overseas territories were governed by the French civil code in the civil courts. The *Code de l'indigénat* initially applied only to Algeria, but from 1881 extended across the empire, and remained legally in force until 1946 (though its practical effect lasted longer). Although the French imperial system did not employ the British concept of indirect rule under customary law, and the *indigénat* regime did not rely on the fiction of custom, there was a very similar distinction between French subjects governed by local personal law and the *indigénat*, and French citizens of French civil status, the vast majority of European descent.[80] Even though Algeria itself was declared an integral part of France in 1834, and indigenous Algerian Muslims thus became French, they did not enjoy French civil rights unless they also "naturalised" as citizens through a process that involved giving up their Muslim personal status.[81] There were few exceptions to these rules, but among them was the higher status given to the inhabitants (black African as well as white) of the "four communes" in Senegal (Dakar, Saint Louis, Gorée and Rufisque) who had enjoyed special privileges since the 1830s.

Unlike the British territories, there was no systematic effort to regulate the question of nationality in the French territories on succession of states at independence. In some cases there was a long gap between the end of colonial rule and the adoption of a new nationality law—five years in the case of Dahomey (future Benin)—with a consequent lack of clarity on the status of those born or resident during this period and on the possible conflict of laws with the French nationality code. Explicit transitional provisions were usually limited to giving the formal right to opt for nationality of the host country to those who had come to the newly independent state from elsewhere in the French African territories, an option that had to be exercised within a limited time and was directed primarily at the educated elite who had served in the civil service across the French territories.[82] Retention of French nationality was based on the criterion of domicile, a requirement based on residence (though with more particular definition in French law). Thus, French

80 Christian Bruschi, "La nationalité dans le droit colonial", *Procès: Cahiers d'analyse politique et juridique*, 1987–1988, special issue on "Le droit colonial", pp. 29–83 ; Gregory Mann, "What Was the Indigénat? The 'Empire of Law' in French West Africa", *Journal of African History*, Vol. 50, No. 3, 2009, pp. 331–353; Pierre Lampué, « L'étendue d'application du statut personnel des autochtones dans les territoires français d'outre-mer », Vol. 7, No. 1, 1957, pp. 1–15.

81 Patrick Weil, *Le statut des musulmans en Algérie coloniale: Une nationalité française dénaturée*, EUI Working Paper, HEC No. 2003/3, European University Institute, 2003.

82 Stanislas Melone, « La nationalité des personnes physiques », *Encyclopédie juridique de l'Afrique: Vol VI, Droits des personnes et de la famille*, Dakar: Nouvelles éditions africaines, 1982; Alexandre Zatzepine, *Le droit de la nationalité des républiques francophones d'Afrique et de Madagascar*, Paris: Pichon et Durand-Auzias, 1963, pp. 10–31.

nationals domiciled in the newly independent states lost French nationality on the date of transfer of sovereignty, with only a few exceptions.[83]

For those born after independence, the new nationality codes mostly followed the general outline and adopted variants of the substantive and procedural provisions of French law applicable at the time, the 1945 nationality code. All countries provided for nationality by descent from a father who was a national, with most (though not all) distinguishing between children born in and out of wedlock, with rights for the child of a national mother and foreign father only if born out of wedlock and not recognised by the father, or only if the father was unknown or stateless. A majority also adopted variants on double *jus soli,* applying equally to those born before or after independence, while some also provided for the automatic attribution of nationality to those born in the country and still resident there at majority and others the right to opt for nationality at that time.[84] Specific family codes or laws on civil registration also had a greater importance than in the Commonwealth countries for the establishment of the facts on the basis of which nationality would be recognised.

The five colonies of Portugal—Angola, Cape Verde, Guinea Bissau, Mozambique, and São Tomé and Príncipe—were subject to repeated changes in political status and metropolitan policies, against a rather stable background of exploitative practices on the ground.[85] During the eighteenth century, Portuguese overseas territories were named *colônias* (colonies); they were rebranded as *províncias* (overseas provinces) in the 1820 Portuguese constitution. They were once again renamed *colônias* in the 1911 constitution, a status they kept until 1951, when they were again called *províncias*. Two categories of citizenship were introduced in 1899, the *indígena* (native) and the *não-indígena* (non-native). The *não-indígenas,* European-born Portuguese and white-skinned foreigners, were full Portuguese citizens subject to metropolitan laws, whereas the *indígenas* were administered by African law; that is, the "customary" laws of each territory. The *indigenato* code, applied in all Portuguese colonies except Cape Verde and São Tomé and Príncipe, was applied administratively, without possible appeal to any court of law.[86] Gradually, a third category emerged, that of *assimilado*, that is, a person (initially usually Asian or Afro-Portuguese but including some Africans)

83 Particular rules applied to Algeria, and Algerians even without French civil status could remain French provided they moved to France and made a declaration. In order to avoid the loss of French nationality by those of metropolitan origin, a law of 28 July 1960 modified the 1945 nationality code to permit French nationals born in metropolitan France and their descendants to keep their French nationality even if they were domiciled in the new state (including those of African origin, but mainly providing for the *métis*). Loi No. 60-752 du 28 juillet 1960 portant modifications de certaines dispositions du Code de la nationalité. Bruschi, « La nationalité dans le droit colonial », text with note 213 ; Donner, *Regulation of Nationality*, Chapter V, "Nationality and State Succession", section 3.2.2.

84 Roger Decottignies and Marc de Biéville, *Les nationalités africaines*, Paris: Collection du Centre de Recherches, d'Etudes et de Documentation sur les Institutions et la Législation Africaines, No. 4, 1963.

85 See Malyn Newitt, *A History of Mozambique,* Hurst & Company, London, 1995, pp. 378–577. In practice, Cape Verde and São Tomé and Príncipe were subjected, at least formally, to slightly different policies from Portuguese Guinea (today's Guinea-Bissau), Angola and Mozambique. See also, Paul Nugent, *Africa Since Independence: A Comparative History,* 2004, Palgrave Macmillan, pp. 17–19 and pp. 261–271.

86 Peter Karibe Mendy, "Portugal's Civilizing Mission in Colonial Guinea-Bissau: Rhetoric and Reality", *The International Journal of African Historical Studies,* 2003, Vol. 36, No. 1, p. 44.

who claimed the status of *não-indígena* on the basis of his or her education, knowledge of Portuguese language and culture, profession, and income.[87] Formal legal equality in the colonies was established by the Portuguese only in 1961, in the midst of liberation wars in Africa, when any African could formally choose to become a Portuguese citizen and the worst kinds of forced labour were abolished.

At independence, national constitutions were drafted, and political regimes were given a socialist content. However, all Portuguese-speaking (lusophone) countries kept Portugal's civil law system, maintaining much of Portuguese colonial legislation, including the framework of the provisions on nationality that had been applied in the metropolitan territories. Some countries also voted for rules favouring the grant of nationality to those who had taken part in the liberation struggle and penalising those who had collaborated with the colonial regime.

Similar rules applied in Spanish, Belgian, German and Italian colonies while they were operational. Though the systems differed, in all colonial territories those with subject status (natives, *indigènes, indígenas*) were not only subject to different legal regimes but were also usually obliged to work, to pay specific taxes (in kind, but also in labour), and to obtain a pass to travel within or to leave the country, while (for the most part European) citizens could leave the country freely, were exempt from labour legislation and paid taxes at different rates.

The clearest example of later problems being generated by a failure to create a comprehensive and clear solution at independence itself is probably that of the Democratic Republic of Congo. In Congo, the rapidity and unplanned nature of the Belgian departure meant that there was no proper clarification of the legal status of those tens, possibly hundreds, of thousands of people of Rwandan or Burundian origin imported to the country by the colonial state as labour on the plantations established for export crops. There was no detailed agreement on nationality and only a hastily adopted law on who could vote in the independence elections. The nationality status of the Banyarwanda brought to Congo by the Belgians was complicated by the fact that Ruanda-Urundi had been mandated to Belgian administration by the League of Nations, and thus Belgium was expressly disallowed from imposing its nationality on the inhabitants of those territories (who, when brought to Congo, were therefore given distinctive identity cards). Yet their children could also be argued to obtain nationality automatically on a *jus soli* basis under an expansive 1892 law aimed at bringing as many as possible within Belgian jurisdiction. The uncertainty surrounding their status during the panicky simultaneous withdrawal of Belgium from Congo, Rwanda and Burundi, amid an outbreak of violence in Rwanda that drove refugees into Congo at the critical moment of independence, has left the issue open as a running sore in DRC until today.[88]

87 These formal requisites could be waived and the *assimilado* status granted "to any African who had proved he had exercised a public charge, that he was employed in the colonial administration corps, that he had a secondary school education, that he was a licensed merchant, a partner in a business firm, or the proprietor of an industrial establishment". Bruno da Ponte, *The Last to Leave, Portuguese Colonialism in Africa*, International Defence and Aid Fund, 1974, p. 40.

88 Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 66–80.

The basis of nationality law today

Most African countries—like most countries in the world—apply in their laws governing nationality from birth a combination of the two basic concepts known as *jus soli* (literally, law or right of the soil), whereby an individual obtains nationality because he or she was born in a particular country, and *jus sanguinis* (law/right of blood), where nationality is based on descent from parents who themselves were citizens. In general, a law based on *jus sanguinis* will tend to exclude from nationality those who are descended from individuals who have migrated from one place to another. An exclusive *jus soli* rule, on the other hand, would prevent individuals from claiming the nationality of their parents if they had moved away from their "historical" home, but is more inclusive of the actual residents of a particular territory. In addition to these two principles based on birth, two other factors are influential in nationality determination for adults: marriage to a national and long-term residence within a country's borders.

There are also important distinctions between different modes of acquisition of nationality, ranging from the automatic attribution of nationality at birth by operation of law and acquisition by declaration (requiring just the lodging of a statement with the authorities) or by registration (also non-discretionary but requiring the authorities to record the acquisition formally), to acquisition by the discretionary process of naturalisation.[89] In this report, the term "nationality from birth" is used for nationality that a person has from birth as of right. However, the terminology used in practice is not consistent, even across countries with the same legal tradition.

For example, the Commonwealth countries, drawing on British tradition, commonly distinguish in the wording of their laws between "citizenship by birth" and "citizenship by descent". This distinction derives from the provisions in force at independence (in the UK itself and in its former territories) that attributed nationality based on birth in the territory and on the basis of the father's nationality for those born outside the territory. A confusion arises because the wording "citizenship by birth" is still used even in those countries that have repealed *jus soli* citizenship, so that citizenship is only on the basis of descent, even for those born in the country. For those acquiring citizenship at a later date, there was at independence a distinction between acquisition by registration, which was a non-discretionary process applicable not only to certain transitional categories (as noted above) but also to a woman marrying a national and in some other cases and acquisition by naturalisation, which was

89 See the EUDO Glossary on Citizenship and Nationality that attempts to create some standardised definitions, at http://eudo-citizenship.eu/databases/citizenship-glossary/glossary, last accessed 24 September 2015.

a discretionary procedure based on long-term residence and the fulfilment of many other criteria. However, in some countries the term "naturalisation" is no longer used, and the single, but discretionary, process is known as registration.

In the francophone countries, terminology is more consistent. Nationality from birth is termed *nationalité d'origine*; terminology for acquisition after birth includes declaration and option (non-discretionary procedures usually open in case of marriage or for children born in the territory of foreign parents who remain there until majority) as well as naturalisation (discretionary, based on long residence).

In many countries, the rights of those who are nationals from birth or by acquisition are the same, but others apply distinctions, especially in relation to the holding of public office. In addition, nationality by acquisition may often be more easily withdrawn. The basis on which a person obtains nationality, which can be affected by factors such as gender discrimination, may thus be highly significant to the exercise of other rights.

Some states are still using laws that were adopted at or soon after independence and have been little changed since; others have undertaken comprehensive reforms, often in the context of a general constitutional review; yet others have adopted a series of amendments to their existing laws—most often to introduce partial or total gender equality—sometimes leading to complex provisions that seem to contradict themselves and create corresponding difficulties in determining an individual's status and rights.

The right to a nationality in national law

Only seven constitutions in Africa—Angola, Ethiopia, Guinea-Bissau, Kenya, Malawi, Rwanda and South Africa—provide either in general terms for the right to a nationality, or that every child has the right to a name and nationality.[90] A number of other countries have established the right to a nationality in other laws, notably specific legislation relating to children's rights, rather than the constitution.[91] Nonetheless, the nationality codes themselves do not necessarily ensure that this promise is fulfilled.

Among the countries that provide a constitutional right to a nationality, Angola, Guinea-Bissau, Rwanda and South Africa go the furthest in implementing this right in their nationality laws. In Rwanda, the nationality law provides that a child born in the territory of non-national parents can apply for nationality at majority, and also that a child born in Rwanda who cannot acquire the nationality of one of his or her parents shall be Rwandan.[92] The South African Citizenship Act provides for citizenship on a *jus soli* basis for any child who does not have the citizenship of any other country or the right to any other citizenship, as well as a the general right for a child born in the country of non-national parents to be able to apply for citizenship at majority; however, these rights are dependent on the child's birth being registered.[93] Angola and Guinea-Bissau provide for a child of stateless parents or parents of unknown nationality or who would otherwise be stateless to acquire nationality at birth, as well as for a newborn foundling.[94]

In Ethiopia, however, despite reforms adopted in 2003, the law does not provide a right to Ethiopian nationality for a child born in the country who would otherwise be stateless. In Kenya, the new citizenship law of 2011 provides only for foundlings but not children who cannot acquire another nationality.[95] In Malawi, the constitutional right to a nationality for children is not ensured by the provisions of the citizenship legislation. However, the 1966 Citizenship Act is unusual in specifically providing for the registration of stateless persons as citizens, if they can show that they are stateless and

90 Angola Constitution 2010, article 32; Ethiopia Constitution 1994, article 36; Guinea-Bissau Constitution 1984, as amended to 1996, article 44; Malawi Constitution 1966, Article 23(2); Rwanda Constitution 2003, Article 7; South Africa Constitution 1996, article 28(1)(a).

91 Including Botswana, Gambia, Sierra Leone, Ghana, Guinea, Kenya, Mali, Tanzania, Togo and Tunisia. Most of the former French and Portuguese colonies provide, in line with the civil law monist tradition, that the terms of treaties on nationality to which the State is a party apply even if they are contradicted by national law.

92 Loi organique No. 30/2008 du 25/07/2008 portant code de la nationalité rwandaise, sections 8 and 9.

93 South Africa Citizenship Act (No. 88 of 1995, as amended to 2010), sections 2(2)(a) and 4(3).

94 Angola Lei No. 1/05 da nacionalidade, de 1 de julho, articles 9 and 14; Guinea-Bissau Lei No. 2/1992 de 6 de abril, as amended 2010, article 5.

95 Kenya Citizenship and Immigration Act No. 12 of 2011, as amended 2012, section 9.

were born in Malawi or have a parent who is Malawian; the applicant must also satisfy the authorities that he or she has been ordinarily resident in Malawi for three years, intends to remain there, and has no serious criminal convictions. If the person is under 21, an application can be made on his or her behalf.[96]

The vast majority of countries in Africa do not provide for an explicit right to nationality. Moreover, the complexities obvious in the tables below, and the many exceptions to each supposed rule, in fact *understate* the challenges of interpreting Africa's nationality laws. In many countries—especially those in which the issue of nationality has been most controversial—it takes advanced legal skills to make any sense of the question of who has a right to nationality, which represents only the first of many hurdles that someone seeking to claim that right will have to clear. In some states, including Comoros, Lesotho, Liberia, Mozambique and South Africa, the constitution and the law conflict at least in some provisions. Even where these tables indicate that the situation is the same under different conditions or in different countries, such an indication may rest on an interpretation of the law that itself could be subject to challenge.

96 Malawi Citizenship Act 1966, section 18.

Nationality based on birth in the territory

The countries with the strongest protections against statelessness for children born on their territory are those that follow a *jus soli* rule, granting nationality automatically to any child born on their soil. Few countries in Africa (today, only Chad, Lesotho and Tanzania—and Tanzania does not apply the law in practice[97]) base their law on *jus soli* in the first instance (with the standard exception for the children of diplomats or other state representatives and, in some cases, also for the children of enemy aliens). Liberia provides for a *jus soli* rule in its law, but on a racial basis only for "Negroes", and does not repeat this in the more recent constitution.[98] So does Uganda, but only to those who are members of one of the ethnic groups listed in the constitution (see the section on racial and ethnic discrimination on page 60).

Cape Verde, Namibia, South Africa, and São Tomé and Príncipe grant or permit the acquisition of citizenship by children born of parents who are resident in the country on a long-term basis. In Namibia and South Africa, it is explicitly stated that this residence must be legal, though not in São Tomé and Príncipe.[99] Cape Verde is the most generous, providing simply that children of parents resident in the country for more than five years are attributed nationality from birth, and otherwise that, absent any evidence to the contrary in their birth documentation, children born in the country are citizens; Cape Verde also permits dual nationality.[100]

More than 25 countries, mostly in the civil law tradition, have adopted measures that provide some general rights based on birth in the territory while stopping short of a *jus soli* rule, by providing either that children born in their territory of non-national parents can claim or are attributed nationality if they are still resident there at majority, or that children born in the territory

97 The Tanzanian authorities have not applied the *jus soli* provision, requiring in practice proof that one parent is a citizen. A draft new constitution proposed in 2014 would in any event remove the *jus soli* provision to replace it with a pure descent-based system, with an exception only for children of unknown parents.

98 Art.20.1 of the 1973 Aliens and Nationality Law states that citizenship is attributed to "a person who is a Negro, or Negro descent, born in Liberia and subject to the jurisdiction thereof". Art.27 of the 1984 constitution restricts citizenship to "Negroes", and states that all existing citizens remain so; Art.28 provides only for the child of a Liberian father or mother to be a citizen, but allows the law to prescribe other qualification criteria (which could include birth in the territory). In practice, the jus soli rule may not be applied, even for those born in Liberia before 1984.

99 In South Africa, both parents must be permanent residents and, since reforms adopted in 2010, the child only qualifies for citizenship by birth if still resident in the country at majority (South Africa Citizenship Act (No. 88 of 1995, as amended to 2010), section 2(3)). In the case of Namibia, the child of parents who are "ordinarily resident" (excluding those who are illegal immigrants or diplomats, etc.) in the country are Namibian citizens from birth by operation of law (Constitution, 1990, Article 4(1)(b)). See also Committee on the Rights of the Child, *Consideration of reports submitted by States parties under Article 44 of the Convention, Initial reports of States parties due in 1993: São Tomé and Príncipe*, CRC/C/8/Add.49, 1 December 2003, paragraph 153.

100 Cape Verde Decreto-Lei No. 53/93 de 30 de agosto de 1993, articles 1 and 6. What the evidence to the contrary would be, therefore, is not clear.

of at least one parent also born there are automatically citizens from birth, a provision known as double *jus soli*.

Those providing for double *jus soli* are: Benin, Burkina Faso, Cameroon, Congo Republic, Gabon, Guinea, Mozambique, Niger and Senegal. Variants of double *jus soli* that discriminate on one ground or another are provided in Algeria (under the heading on evidence, it is provided that nationality of origin can be claimed if both father and grandfather were born in the territory and of Muslim religion[101]); Mali (the parent born in the country must have the nationality of another African state[102]); Morocco (nationality is not attributed automatically but can be claimed, and with preferential rights for a child of a father born in Morocco who is "attached to" a country of Muslim religion and Arabic language[103]); Sierra Leone (either a parent or grandparent may be born in the country, but must be of "negro African descent"[104]); South Sudan (the person concerned may be born in or outside of South Sudan, but is South Sudanese if a parent, grandparent or great-grandparent was born in South Sudan and is a member of one of the indigenous ethnic groups of South Sudan[105]); Togo (both parents must also have been born in the country and the child must be habitually resident and in *possession d'état de togolais*[106]); and Tunisia (both father and paternal grandfather must have been born in Tunisia[107]).

A small number of countries automatically attribute nationality to a child born in the territory who is still resident there at majority, again based on the French legal tradition: Benin, Burkina Faso, Congo Republic and Guinea. Those giving a person born in the territory and resident there for a period the right to acquire their nationality by registration or declaration (requiring a positive action, at the latest at majority, but without discretion for the state) are: Benin, Cameroon, Central African Republic, Comoros, DRC, Equatorial Guinea, Gabon, Guinea, Mali, Mozambique,[108] Rwanda, South Africa and Togo. Gabon's 1998 nationality code contains interesting and perhaps unique provisions relating to children born in the border zones of countries neighbouring Gabon or raised by Gabonese citizens: if such children make a declaration during the 12 months preceding their majority that they have lived in Gabon for the preceding 10 years, or if they were from before the age of

101 Code de la nationalité 1970, as amended 2005, Art.32. « Lorsque la nationalité algérienne est revendiquée à titre de nationalité d'origine, elle peut être prouvée par la filiation découlant de deux ascendants en ligne paternelle ou maternelle, nés en Algérie et y ayant joui du statut musulman. »

102 Code des personnes et de la famille, 2011, art 227 « Est malien, l'enfant né au Mali de père ou de mère né au Mali de nationalité d'origine d'un Etat africain. ».

103 Code de la nationalité marocaine, 1958, as amended 2007, Article 9.

104 Citizenship Act 1973, as amended 2005, Article 2.

105 Citizenship Act 2011, Article 8.

106 Code de la nationalité togolaise 1978, Article 1.

107 Code de la nationalité tunisienne 1963, as amended to 2010, Article 7.

108 In the case of Mozambique, the parents of a child born in the country may declare that they wish the child to be Mozambican, within one year of the child's birth, or the child may claim nationality within one year of majority (Constitution, 2004, Article 24).

15 brought up by a Gabonese national or on state assistance, they can claim Gabonese nationality of origin.[109]

The right to opt for nationality is often not effective in practice, however. In the Central African Republic, for example, which gives all children born in its territory the right to acquire nationality by declaration from the age of 12, the Committee on the Rights of the Child expressed concern about violations of the right to a nationality for children whose birth had not been registered or for children whose parents were not nationals of the CAR.[110]

Children of stateless parents or who would otherwise be stateless

Only 13 African countries specifically provide in their nationality laws (in accordance with Article 1 of the 1961 Convention on the Reduction of Statelessness and Article 6(4) of the African Charter on the Rights and Welfare of the Child) that children born in their territory who would otherwise be stateless have the right to nationality: Angola, Burkina Faso, Cameroon, Cape Verde, Chad, Guinea-Bissau, Lesotho, Malawi, Namibia,[111] São Tomé and Príncipe, South Africa and Togo. In the case of Angola and Malawi this is on application, rather than automatically. In many of the civil law countries any facts related to birth and descent must be established according to the laws on civil registration; this is not stated to be the case in most of the Commonwealth countries for those born in the country (rules on registration more commonly apply to those born outside), but in South Africa, for example, recognition of the nationality of a stateless child born in South Africa (but not the child of a citizen) is conditional on the child's birth being registered in accordance with the Births and Deaths Registration Act.

In addition, Angola, Benin, Cape Verde, DRC, Gabon, Guinea-Bissau, Mozambique, Rwanda, São Tomé and Príncipe and Tunisia have provisions granting nationality to the children of stateless parents; however, by itself this is not sufficient protection for those whose parents themselves have a nationality but cannot transmit it to their children.

Foundlings or children of unknown parents

Protections in international law for the right to nationality for children of unknown parents are incorporated into domestic law by a much larger number of countries than the requirement to grant nationality to children who would otherwise be stateless.

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109 Gabon code de la nationalité, Loi No. 37-1998, art 14. This provision is similar to those of several Latin American countries, which have specific provisions in their constitutions aiming to assist in resolving the nationality status of indigenous communities in border areas.

110 Code de la nationalite, arts 18–21; Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Central African Republic*, CRC/C/15/Add.138, 16 October 2000, paragraph 38.

111 Namibia provides that the exceptions to the right to citizenship from birth of a child born in the country of parents who are ordinarily resident—most importantly the exclusion if the parents are illegal immigrants, but also if they have diplomatic or similar status—do not apply if the child would be stateless (Constitution of Namibia, 1990, Article 4(1)(b)). This may not, however, be a complete protection, since it requires the parents to be "ordinarily resident".

In some countries, the provisions on unknown parents are specified to refer to newborn infants only. However, a provision on unknown parents should be assumed to cover a young child who is unable to explain his or her origins at the date he or she was found;[112] some laws specifically set an age. Ghana, Kenya, Swaziland, Uganda and Zimbabwe specifically state that the child found may be significantly older than a newborn child to have the right to citizenship: up to the age of seven in the case of Ghana and Swaziland, eight in Kenya, seven in Swaziland, nine for Uganda and fifteen in Zimbabwe's 2013 constitution.[113] A proposed new Tanzanian constitution would adopt the same wording as Kenya.[114]

Some sixteen countries do not have a provision relating to foundlings or children of unknown parents, an omission of particular importance in countries currently or previously affected by conflict: Botswana, Côte d'Ivoire, Equatorial Guinea, Gambia, Lesotho, Liberia, Malawi, Mauritius, Namibia, Nigeria, Seychelles, Sierra Leone, Somalia[115], South Africa, Tanzania, Togo and Zambia.

Table 1: Right to nationality based on birth in the territory

Country	Birth in country	Birth and one parent also born	Birth and resident at majority	Child otherwise stateless	Parents stateless (s) or unknown (u)	Foundlings	Relevant legal provision (most recent amendment in brackets)
Algeria		JS/2^~			u	x	L1970(2005)Art7 & Art32
Angola				os	s + u	x	C2010Art9 L2005Arts9&14
Benin [a]		JS/2	(JS+)(JS)		s + u	x	L1965Arts7-11,24-32
Botswana							L1998(2004)Art4
Burkina Faso		JS/2	(JS+)	os	u	x	L1989Arts141-144 & 155-161
Burundi					u	x	L2000Art3
Cameroon		JS/2	(JS)	os	u	x	L1968Arts9-12&20
Cape Verde	JS*			os	s + u		L1993Arts1,3,4,6
CAR			(JS)		u		L1961Arts6-7,10,18-20
Chad	JS			os	u		L1962Arts11-13
Comoros			(JS)			x	L1979Arts10,13,20-26

112 UNHCR recommends that provisions on foundlings should "apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth". UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, 21 December 2012, paragraph 58.

113 Ghana Citizenship Act 2000, Section 8; Kenya Constitution 2010, Article 14(4) and Citizenship and Immigration Act 2011, Section 9; Swaziland Constitution 2005, Article 47, Citizenship Act 1992, Section 17; Uganda Constitution 1995, Article 11; Constitution of Zimbabwe 2013, Chapter 3 (Sections 35 to 43).

114 See resources at the International IDEA ConstitutionNet website: http://www.constitutionnet.org/country/tanzania-country-constitutional-profile, last accessed 24 September 2015.

115 The version of the Somali Citizenship Law No. 28 of 22 December 1962 available on the REFWORLD website is missing articles 14–16. It is possible Art.15 contains a foundling provision.

Country	Birth in country	Birth and one parent also born	Birth and resident at majority	Child otherwise stateless	Parents stateless (s) or unknown (u)	Foundlings	Relevant legal provision (most recent amendment in brackets)
Congo Rep.		JS/2	(JS+)		u	x	L1961(1993)Arts8-10&20
Côte d'Ivoire							L1961(2013)Art6
DRC~			(JS)		s + u	x	C2005Art10 L2004Arts6,8,9,21
Djibouti					u		L2004Art6
Egypt					u	x	L1975(2004)Art2
Eq. Guinea			(JS)				L1990Arts2-3
Eritrea					u		L1992Art2
Ethiopia						x	L2003Art3
Gabon		JS/2	(JS)		s + u	x	L1998Arts11-12&14
Gambia							C1996(2001)
Ghana					u	x	C1992(2001)Art6 L2000Art8
Guinea		JS/2	(JS+)(JS)		u	x	L1983Arts34-37,56,62
G. Bissau				os	s + u	x	L1992(2010)Art5
Kenya					u	x	C2010Art14(4) L2011Art9
Lesotho	JS			os			C1993Art38
Liberia !! [b]	JS~						C1986Art27 L1973Art20.1
Libya					u		L2010Art3
Madagascar					u	x	L1960Art11
Malawi				(os)			L1966(1992)Art18
Mali		JS/2~	(JS)		u	x	L2011Arts225-227&237
Mauritania						x	L1961(2010)Art10
Mauritius							C1968(1995)Art22
Morocco [c]		(JS/2x2~)			u	x	L1958(2007)Arts7&9
Mozambique	JS	JS/2	(JS)		s + u		C2004Art23-25 L1975(1987)Art2
Namibia	JS*			os			C1990(2010)Art4(1)(d)
Niger		JS/2			u	x	L1984(2014)Arts8-10
Nigeria							–
Rwanda			(JS)		s + u	x	L2008Arts8-9
SADR	n/a						n/a
STP	JS*			os	s	x	L1990Art5
Senegal		JS/2				x	L1961(2013)Arts1&3
Seychelles							C1993(2011)Arts8&9
S. Leone		JS/2^~					L1973(2006)Arts2-3
Somalia	JS~						L1962Art3
South Africa			(JS)	os			C1996Art28(1)(a) L1995(2010)Arts2(2), 2(3)&4(3)
South Sudan		JS/2^~				x	L2011Art8

Country	Birth in country	Birth and one parent also born	Birth and resident at majority	Child otherwise stateless	Parents stateless (s) or unknown (u)	Foundlings	Relevant legal provision (most recent amendment in brackets)
Sudan						x	L1994(2011)Arts4&5
Swaziland						x	C2005Art47 L1992Art17
Tanzania	JS						L1995Art5
Togo !!		JS/2x2	(JS)	os			L1978Arts1,2&8
Tunisia		JS/2^			s + u	x	L1963(2010)Arts7-10
Uganda	JS~					x	C1995(2005)Arts10-11 L1999(2009)Arts12-14
Zambia							C1991(2009)Art5
Zimbabwe						x	C2013Art36(3)

Notes

n/a	not available
!!	legislation conflicts with the constitution (or, in Togo, with other legislation)
JS	*jus soli* attribution: a child born in the country is a citizen (with exclusions for children of diplomats and some other categories)
JS*	child born in country of parents who are legal residents is a citizen
(JS)	child born in country of non-citizens is eligible to apply for citizenship at majority and/or after residence period
(JS+)	child born in country of non-citizens is automatically attributed citizenship at majority and/or after residence period
JS/2	double *jus soli* attribution: child born in country of one parent also born in the country is a citizen
JS/2x2	child born in country of both parents also born there is a citizen
(JS/2)	child born in the country of a parent also born there has the right to opt for nationality
~	racial, ethnic or religious discrimination in law impacts on *jus soli* rights (in Algeria, ascendants must be of Muslim religion; in Egypt, only applies to father, who must be of Egyptian origin or from a Muslim or Arab country; in Liberia, *jus soli* applies only to "negroes"; in Mali, the parent born in the country must be from another African country; in Morocco, there is preferential treatment if the father is a Muslim or Arab; in Somalia, the *jus soli* right only applies to those of "Somali origin"; in Liberia and Sierra Leone, parent or grandparent must be "negro" or of "negro-African descent"; in Uganda, the *jus soli* provision applies only to those who are members of an "indigenous community"
^	rights to citizenship from grandparents: in Algeria, a parent and grandparent must both be born in Algeria; in Tunisia, it applies only if both father and grandfather born in Tunisia; in South Sudan, a person born in or outside of South Sudan is South Sudanese if any parent, grandparent or great-grandparent was born in South Sudan or is or was a member of one of the indigenous ethnic groups of South Sudan; in Sierra Leone, either a parent or a grandparent should be born in the country
(os)	grant to otherwise stateless child is discretionary
a	in Benin – child of mother born in country has right to renounce at majority; otherwise stateless mentioned – but then specified to be in case of unknown or stateless parents
b	Liberia's *jus soli* provision is contained in the law and not repeated in (but not repealed by) the constitution
c	Morocco's double *jus soli* rules are complex and do not result in automatic attribution of nationality: a person born in the country may acquire nationality by declaration at majority (unless the minister of justice opposes) if both parents were also born there after the 2007 amendment to the law came into effect, or if the father was also born there and is a Muslim or Arab and comes from a country where Muslims/Arabs are the majority

Countries indicated in bold have particularly weak legal protections against statelessness

Nationality based on descent

A substantial majority of African countries now attribute citizenship to a child born in the country of one parent who is a citizen, whether that parent is the father or mother and whether or not the child is born in or out of wedlock. Most of these extend this right to those born outside the country too. Some countries, including Cape Verde, Ghana, Nigeria, Uganda and Zimbabwe, attribute nationality if one grandparent is a citizen, with variants depending on whether the person was born in or outside the country (see Table 2).

A significant minority of countries, however, still discriminate by giving only a father the unequivocal right to pass nationality to his child, and some of those countries that do not discriminate between the parents if a child is born in the country still allow only a father to pass on nationality to a child born outside of the country. In total, at least a dozen countries still discriminate to some extent on the grounds of gender in granting nationality rights to children who are born either in their country or overseas. Only a few countries still discriminate on the basis of whether a child is in or out of wedlock, requiring additional procedures to establish descent; the significance of this difference then varies according to the way it is implemented in other laws. Racial or ethnic discrimination in relation to nationality by descent is present in the laws of half a dozen countries. (See also the sections below on gender and racial discrimination.)

A handful of countries allow for nationality to be passed for only one generation outside the country: a national from birth born in the country can transmit his or her nationality to a foreign-born child but that child cannot pass his or her nationality on in turn. Provisions to this effect, which derive from a British rule, are in force in Gambia, Lesotho, Malawi, Mauritius, Swaziland and Tanzania, and are permitted to be established by legislation according to the Kenyan 2010 constitution (but not implemented in practice).[116]

In some cases, though nationality may be transmitted to those born outside the country, there are additional requirements either to take positive steps to claim the right to nationality or to notify the authorities of the birth. These provisions, while in principle acceptable, may leave some children stateless, since they are often little known and if nationality is not claimed within the relevant time limits the right may be lost. It may also be very difficult to fulfil the requirements in practice, especially where the country of the parents' nationality has no diplomatic representation in their country of residence.

116 Kenya Constitution 2010, Article 14(3); Kenya Citizenship and Immigration Act 2011, section 7, as amended by the Security Laws (Amendment) Act, 2014. In Lesotho, the 1971 citizenship order discriminates on the basis of gender in relation to children born abroad, providing that only the father may pass nationality to children if they are not born in Lesotho; but the 1993 constitution provides for equal rights and repealed this chapter of the law.

For example, Mozambique requires all children born outside the country to declare their intention of retaining Mozambican nationality within one year of majority (unless their parents were abroad in service of the state). The nationality law but not the constitution also requires that they renounce any other nationality to which they are entitled.[117] For Swaziland, a child born abroad of a father also born abroad must notify the authorities of his or her desire to retain Swazi citizenship within one year of majority; if this is not done, the person ceases to be a citizen.[118] Namibian and South African children born abroad must be registered with the authorities.[119] Under the 2013 constitution, Zimbabwe requires birth registration in Zimbabwe of children born abroad (unless the parents were ordinarily resident in Zimbabwe or posted abroad on state duties).[120]

Other countries, such as Chad, reflect concerns about conflicts of laws and explicitly state that a child born abroad of one non-Chadian parent may opt for the other nationality.[121]

Table 2: Right to nationality based on descent

	Born in country				Born abroad					
	In wedlock + Father (F) &/or Mother (M) is a national		Out of wedlock + Father (F) &/or Mother (M) is a national		In wedlock + Father (F) &/or Mother (M) is a national		Out of wedlock + Father (F) &/or Mother (M) is a national			
Country	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**Legal provision**	**Date gender equality achieved**
Algeria	R	R	R	R	R	R	R	R	L1970(2005)Art6	2005
Angola	R	R	R	R	R	R	R	R	C2010Art9 L2005Art9	1975
Benin	R	R	R	R	R	R†	R	R†	L1965Arts12&13	–
Botswana	R	R	R	R	R	R	R	R	L1998(2002&04)Arts4&5	1995
Burkina Faso	R	R	R	R	R†	R†	R†	R†	L1989Art140	1989?
Burundi !!	R	C*	C	C*	R	C*	C	C*	C2005Art12 L2000Art2	–
Cameroon	R	R	C	C	R	R	C†	C†	L1968Arts6-8	–
Cape Verde	R	R	R	R	C^	C^	C^	C^	L1993Arts1,5	1976
CAR	R	R	R	R	R	R	R	R	L1961Arts6-8	1961
Chad	R	R	R	R	R†	R†	R†	R†	L1962Arts9-10	1962
Comoros	R	R	R	R	R	R	R	R	L1979Arts10-13	1979
Congo Rep.	R	R	R	R	R	R	R	R	L1961(1993)Arts7-9	1961
Côte d'Ivoire	R	R	R	R	R	R	C	C	L1961(2013)Art7	1961

117 Constitution 2004, Art.23(3); Lei da nacionalidade, 1975, Art.8(1).
118 Constitution, 2005, Art.43(3).
119 Constitution 1990, Art.4; Citizenship Act No. 14 of 1990, Art.2.
120 Constitution 2013, Art.37.
121 Code de la nationalité, 1962, Art.9.

	Born in country				Born abroad					
	In wedlock + Father (F) &/or Mother (M) is a national		Out of wedlock + Father (F) &/or Mother (M) is a national		In wedlock + Father (F) &/or Mother (M) is a national		Out of wedlock + Father (F) &/or Mother (M) is a national			
Country	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**Legal provision**	**Date gender equality achieved**
DRCongo ~	R	R	R	R	R	R	R	R	C2005Art10 L2004Art4,6,7	1981
Djibouti	R	R	R	R	R	R	R	R	L2004Art4,5	2004
Egypt	R	R	R	R	R	R	R	R	C2014Art6 L1975(2004)Art2	2004
Eq. Guinea	R	R	R	R	R	R	R	R	L1990Art2	1982
Eritrea	R	R	R	R	R	R	R	R	C1997Art3 L1992Art2	1992
Ethiopia	R	R	R	R	R	R	R	R	C1994Art6 L2003Art3	2003
Gabon	R	R	R	R	R	R	C	C	L1998Arts11&13	–
Gambia	R	R	R	R	Rx1	Rx1	Rx1	Rx1	C1996(2001)Arts9-10	1996
Ghana	R^	R^	R^	R^	R^	R^	R^	R^	C1992Art6(2) L2000Art7	1969
Guinea	R	R	C	C	R	R†	C†	C†	L1983Art30-32	–
G, Bissau	R	R	R	R	C	C	C	C	L1992(2010)Art5	1976
Kenya	R	R	R	R	R	R	R	R	C2010Art14 L2011Arts6-7	2010
Lesotho[b]	R	R	R	R	Rx1	Rx1	Rx1	Rx1	C1993Arts38&39	1993
Liberia !! ~	R	R	R	R	C	–	C	–	C1984 Arts27-28 L1973Arts20.1&21.31	–
Libya	R	C*	R	C*	C	–	C	–	L2010Arts3&11	–
Madagascar	R	C*	C*	R	R	C*	C*	R	L1960Arts9&16	–
Malawi	R	R	R	R	Rx1	Rx1	Rx1	Rx1	L1966(1992)Arts4&5	1966
Mali	R†	R†	C†	C†	R†	R†	C†	C†	L2011Art224	2011
Mauritania	R	R†	R	R†	R	C*	R	C*	L1961(2010)Arts8&13	–
Mauritius	R	R	R	R	Rx1	Rx1	Rx1	Rx1	C1968(1995)Art22&23	1995
Morocco	R	R	R	R	R	R	R	R	L1958(2007)Art6	2007
Mozambique !!	R	R	R	R	C	C	C	C	C2004Art23&24 L1975(1987)Art1	1975
Namibia	R	R	R	R	C	C	C	C	C1990(2010)Art4(1)(c)&(2) L1990Art2	1990
Niger	R	R	C	C	R	R	C	C	L1984(2014)Art11	1999
Nigeria	R^	R^	R^	R^	R	R	R	R	C1999Art25	1999
Rwanda	R	R	R	R	R	R	R	R	L2008Art6	2004
SADR	n/a									–
STP	R	R	R	R	C	C	C	C	C2003Art3 L1990Art5	1975
Senegal	R	R	R	R	R	R	R	R	L1961(2013)Art5	2013
Seychelles	R	R	R	R	R	R	R	R	C1993(2011)Art11	1979
Sierra Leone ~ [a]	–	–	–	–	R	–	R	–	L1973(2006)Art5	2006

Country	Born in country				Born abroad				Legal provision	Date gender equality achieved
	In wedlock + Father (F) &/or Mother (M) is a national		Out of wedlock + Father (F) &/or Mother (M) is a national		In wedlock + Father (F) &/or Mother (M) is a national		Out of wedlock + Father (F) &/or Mother (M) is a national			
	F	M	F	M	F	M	F	M		
Somalia !! ~	R	–	R	–	R	–	R	–	L1962Art2	–
South Africa	R	R	R	R	R	R	R	R	L1995(2010)Art2(1)	1995
South Sudan	R	R	R	R	R	R	R	R	C2011Art45(1) L2011Art8(3)	2011
Sudan !!	R	C	R	C	R	C	R	C	C2005Art7 L1994(2011)Art4	–
Swaziland !!	R	–	R	C*	Rx1	–	Rx1	C*	C2005Art42-43 L1992Art7	–
Tanzania[b]	R	R	R	R	Rx1	Rx1	Rx1	Rx1	L1995Arts5&6	1995
Togo !!	R	C*	R	C*	R	C*	R	C*	C1992Art32 L1978Art3	–
Tunisia	R	R	R	R	R	R	R	R	L1963(2010)Art6	2010
Uganda ~	R^	R^	R^	R^	R^	R^	R^	R^	C1995(2005)Art10 L1999(2009)Art12	1967
Zambia	R	R	R	R	R	R	R	R	C1991(1996)Art5	1973
Zimbabwe !!	R^	R^	R^	R^	C^	C^	C^	C^	C2013Arts36&37 L1984(2003)Art5	1996

Notes

n/a not available

!! legislation conflicts with the constitution and/or other legislation—the constitutional provisions are noted here unless they provide only general principles and the detailed rules are established by legislation

– no rights

R child is citizen from birth as of right

† child has right to repudiate on majority

C can claim citizenship following an administrative process (including compulsory birth registration, establishing parentage, or registration with consular authorities)

* mother passes citizenship automatically only if father of unknown nationality or stateless or if father does not claim

Rx1 child born outside country is citizen as of right only if one parent both a citizen and born in country

Rx1 (C) child born outside country must register a claim to be a citizen if citizen parent not born in country

Cx1 child born outside country is citizen only if one parent both a citizen and born in country, and admin. process completed

^ rights to citizenship from grandparents: if born in the country and one grandparent is a citizen (Ghana and Nigeria); if born in or outside the country and one grandparent is a citizen (Cape Verde, Uganda and Zimbabwe if birth registered in Zimbabwe)

~ racial, religious or ethnic discrimination in citizenship law: specified groups listed for preferential treatment (in Liberia only "negroes" can be citizens; in Somalia, must be of "Somali origin" to be citizen from birth; in Sierra Leone, a citizen parent does not transmit nationality to a child born in the country unless the parent or grandparent was also born in Sierra Leone and of negro-African descent; in Uganda, a child is not a citizen if born in the country unless the parent is citizen by birth – requiring membership of one of the indigenous communities listed in the 3rd schedule to the constitution)

a in Sierra Leone, the law makes no provision for those born in the country of a parent who is a citizen, but without a parent or grandparent also born in the country

b in Lesotho and Tanzania, *jus soli* applies, thus the law does not explicitly provide for citizenship based on descent for those born in the territory; however, the effect is that a child with one parent who is a citizen is also a citizen. Gender discrimination for those born outside was removed for both countries in 1993 and 1995 respectively, but still exists in Tanzania in provisions affecting the child born in Tanzania of a father who has diplomatic status in the country. Note also that Tanzania does not apply the *jus soli* rule in practice so provisions on descent are dominant

NB There is simplification of complex provisions

Adopted children

Most African countries provide for children adopted from abroad to become nationals, either automatically or upon a non-discretionary registration procedure. Some provide only for a discretionary naturalisation process, and other countries have no provisions at all on adopted children. A few, including Sierra Leone and Sudan, have specifically amended their laws to exclude adopted children or adoptive parents from the definition of "child" or "parent". In some countries, such as the Central African Republic, a child who is the subject of a legitimising adoption by the father becomes a national as of right, but an adoption by a non-biological parent does not have the same effect.

- Automatic acquisition (subject to completion of legal adoption process) in: Angola, Benin, Botswana (if child is three or fewer years old), Chad, Côte d'Ivoire, Gabon, Ghana, Guinea-Bissau, Mali, Mauritius, Mozambique, Namibia, Rwanda, São Tomé & Príncipe, Senegal, Seychelles, Swaziland, Tunisia and Zambia.
- Option: Burundi, Cameroon, Cape Verde, CAR, DRC, Eritrea, Ethiopia, Kenya, Madagascar, South Africa, Uganda and Zimbabwe.
- Discretionary naturalisation: Botswana (if child more than three years old), Lesotho, Mauritania.
- No mention:[122] Algeria, Burkina Faso, Comoros, Congo Republic, Egypt, Gambia, Liberia, Libya, Malawi, Morocco, Niger, Nigeria, Somalia, South Sudan and Togo.

In those countries strongly influenced by Islamic law, the principled objection to full legal adoption means that transmission of the nationality of the adoptive parent is usually not provided for. Sudan, for example, specifically amended its nationality law in 1994 to remove the right to nationality based on adoption.[123] However, Morocco's nationality code provides for a Moroccan national caring for a child of unknown parents in the guardianship system known as *kafala* to be able to present a request for the child to acquire Moroccan nationality; or for the child itself to do so during the two years preceding his or her majority.[124]

122 Where there is no mention in the nationality law, it is possible that nationality in the context of adoption may be dealt with in a family code or children's law. These have not been surveyed here.

123 Nasredeen Abdulbari, "Citizenship Rules in Sudan and Post-Secession Problems", *Journal of African Law* Vol. 55, No. 2, 2011, pp. 157–180.

124 Code de la nationalité marocaine 1958, amended 2007, Art.9(2).

Table 3: Right to nationality for adopted children

Country	Auto.	Opt.	Disc.	Nat. only	No provision	Comments	Legal provision
Algeria					x		–
Angola	x					if ties with family extinguished	L2005Art11
Benin	x						L1965Art17
Botswana	x		x			automatic only if under 3 yrs old; if more than 3 yrs old discretionary based on "good character"	L1998(2004)Art7-8
Burkina Faso					x		–
Burundi		x					L2000Art5
Cameroon		x					L1968Art21
Cape Verde		x				automatic if stateless	L1993Art10-11
CAR		x				automatic if legitimisation	L1961Art22
Chad	x						L1962Art24
Comoros					x		–
Congo Rep.					x		–
Côte d'Ivoire	x						L1961(2013)Art11
DRC		x					L2004Arts13(2)&17
Djibouti				x			L2004Art13
Egypt					x		–
Eq. Guinea				x			L1990Art4(b)
Eritrea		x					L1992Art5
Ethiopia		x				if resident in Ethiopia with adoptive parents	L2003Art7
Gabon	x						L1998Art25
Gambia					x		–
Ghana	x						C1992(2001)Art6 L2000Art9
Guinea				x		automatic if legitimisation	L1983Art48
G. Bissau	x						L1992(2010)Art7
Kenya		x					L2011Art14
Lesotho			x				C1993Art11
Liberia					x		–
Libya					x		–
Madagascar		x					L1960Art17
Malawi					x		–
Mali	x						L2011Art230
Mauritania			x			government can oppose	L1961(2010)Art13
Mauritius	x						C1968(1995)Art3
Morocco					x	provisions based on *kafala* guardianship	L1958(2007)Art9(2)
Mozambique	x						C2004Art29
Namibia	x					becomes citizen by descent	C1990(2010)Art2(2)(b)

Country	Auto.	Opt.	Disc.	Nat. only	No provision	Comments	Legal provision
Niger					x	automatic if legitimisation	L1984(2014)Arts
Nigeria					x		–
Rwanda	x						L2008Art12
SADR							–
STP	x						L1990Art9
Senegal	x						L1961(2013)Art9
Seychelles	x						L1994(2013)Art 3
S. Leone				x		"parent" excludes adoptive parent	L1973(2006)Art1(1)
Somalia					x		–
South Africa		x				birth must be registered under B&DRA	L1995(2010)Art3
South Sudan					x		–
Sudan				x		1993 Act removed adopted child from the definition of "child"	–
Swaziland	x						C2005Art43(5)
Tanzania				x			L1995Art10
Togo					x		–
Tunisia	x						L1963(2010)Art18
Uganda		x					C1995(2005)Art11 L1999(2009)Art13(2)
Zambia	x						L1975Art11
Zimbabwe		x					C2013Art38(3) L1984(2003)Art7(5)

Notes

Auto. Acquisition of nationality automatic on completion of adoption formalities
Opt. Child has the right to opt for nationality
Disc Child can apply for nationality, award is discretionary
Nat. Naturalisation

Racial and ethnic discrimination

In half a dozen countries, nationality by descent is explicitly limited to members of ethnic groups whose ancestral origins are within the particular state or within the African continent. Liberia and Sierra Leone, both founded by freed slaves, take the position that only those of "Negro" or "Negro-African" descent may be citizens from birth. Sierra Leone provides for more restrictive rules for naturalisation of those who are not "Negro-African". Liberia takes the most extreme position in relation to race: since its first constitution was adopted in 1847, those not "of Negro descent" have not only been excluded from citizenship from birth, but—"in order to preserve, foster, and maintain the positive Liberian culture, values, and character"—are prohibited from becoming citizens even by naturalisation. Moreover, only citizens may hold property in Liberia.[125]

A number of other countries have removed elements of the same racial preference. Though Mali has never generally discriminated in the rules it applies for children with citizen parents, the provision on double *jus soli* used to attribute nationality only to children born in Mali of a mother or father "of African origin" who was also born in the country.[126] Since 2011, this provision rather requires the mother or father born in the country to have nationality of origin of another African country.[127] In Malawi, discriminatory provisions were first introduced and then removed: in 1966 Malawi's *jus soli* citizenship was repealed, and the new provisions attributed citizenship to children who had at least one parent who was not only a citizen but also "a person of African race" (unless the child would otherwise be stateless).[128] References to "African race" were, however, deleted in 1992.[129]

The terms agreed in the 2004 peace deal that ended the civil war in most of the DRC formed the basis of the new constitution and nationality law, which today recognise as a Congolese national from birth "every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence" in 1960. Although the law, significantly, moved this date closer to the present day—it had previously been 1885—and also adjusted the terms for naturalisation, the basis of Congolese

125 Constitution of the Republic of Liberia, 1986, articles 22 and 27.

126 Code de la nationalité malienne, Loi No. 62-18 AN-RM du 3 février 1962, as amended by Loi No. 95-70 du 25 août 1995, article 12. There was argument over whether this phrasing implied a racial content or was merely geographical. See Frederick Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945–1960*, Princeton University Press, 2014, p. 419, note 142.

127 Code des personnes et de la famille, 2011, article 227.

128 Malawi Citizenship Act, No. 28 of 1966, sections 4, 5 and 12–15 (provisions left in place by amendments in Acts No. 37 of 1967 and 5 of 1971).

129 Malawi Citizenship (Amendment) Act, 1992 (No. 22 of 1992). (Note that this was not reported in the second edition of this book.)

nationality is still founded on ethnicity rather than on birth, residence, or other objective criteria.[130]

Uganda's constitutional requirements on citizenship include rules that effectively discriminate against long-term migrant populations. The 1995 constitution provides for a right to citizenship from birth for two categories of persons: first, for every person born in Uganda "one of whose parents or grandparents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February, 1926"; and second, for every person born in or outside Uganda one of whose parents or grandparents was a citizen of Uganda from birth. Both categories, the former explicitly, the latter implicitly (by its requirement that the parent or grandparent must himself or herself be a citizen from birth), privilege the ethnic groups historically resident in Uganda. When the 1995 constitution was being negotiated, representatives of Uganda's Asian population, subjected to expulsion by President Idi Amin, argued that they should be recognised as indigenous by this definition. Although several other ethnic groups whose status was also controversial were successful—including the Banyarwanda, as well as the Batwa, Lendu and Karamojong—the Asians were not, and remain second-class citizens in that regard.[131]

The Nigerian constitution similarly provides for citizenship by birth to be given to those born in Nigeria before the date of independence, "either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria".[132] The constitution also provides citizenship by birth to "every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria", which includes the possibility of the parent or grandparent being a citizen by naturalisation (unlike in Uganda, where the parent or grandparent must also be a citizen from birth). However, the first provision implies a need for "indigeneity", which is also reflected in Nigeria's domestic practice.[133]

In Somalia's case an article of the 1962 nationality law provides for any person "who by origin, language or tradition belongs to the Somali Nation", is living in Somalia (though not necessarily born there), and renounces any other nationality to obtain nationality by operation of law.[134] Rwanda also provides that "[a]ny person with Rwandan origin and his or her descendant shall have the right to acquire the Rwandan nationality upon request".[135]

In Eritrea, the Nationality Proclamation of 1992, on the basis of which eligibility to register in the independence referendum was determined,

130 Loi No. 04-024 du 12 novembre 2004 relative a la nationalité congolaise.

131 Manby, *Struggles for Citizenship*, pp. 50–56.

132 Constitution of the Republic of Nigeria, 1999, article 25.

133 See Human Rights Watch, *"They Do Not Own This Place": Government discrimination against "non-indigenes" in Nigeria*, April 2006; Manby, *Struggles for Citizenship*, pp. 110–112.

134 Law No. 28 of 22 December 1962 on Somali Citizenship, articles 2 and 3. See also N.A. Noor Mohammed *The Legal System of the Somali Democratic Republic*, Charlottesville, VA: Michie, 1972, Chapter 2, "Citizenship".

135 Rwanda Law No. 30/2008 of 25/07/2008 relating to Rwandan nationality, article 22.

provided that Eritrean nationals are those born of a father or mother "of Eritrean origin"—though "Eritrean origin" is defined to mean descent from a person who was resident in Eritrea in 1933, and thus not explicitly discriminatory on the basis of race or ethnicity.[136] Those who entered and resided in Eritrea between 1934 and 1951 are also entitled to a certificate of nationality on application. Any person who arrived in Eritrea in 1952 or later—including Ethiopians—must apply for naturalisation in the same way as any other foreigner.[137]

In some countries, racial or ethnic discrimination is not written into the law, but nonetheless obtains in practice. In Swaziland, the law does not specifically refer to ethnicity, but the attitudes reflected in the provision of the 1992 Citizenship Act providing for citizenship "by KuKhonta", that is, by customary law, have in practice ensured that those who are not ethnic Swazis find it very difficult to obtain recognition of citizenship.[138] In Madagascar, members of the economically significant, 20 000-strong Karana community (of Indo-Pakistani origin) who failed to register for Malagasy or Indian nationality following India's independence in 1947 are no longer eligible for either nationality. They find it impossible to obtain travel documentation.[139]

In Côte d'Ivoire, the provision in the law that a child born in the territory is a national unless both parents are foreigners (*étrangers*), coupled with the lack of definition of "foreigner" meant that many descended from people with origins in neighbouring countries who had been recognised as nationals found their nationality challenged when the government feared their electoral power. Constitutional amendments that required candidates for the presidency or vice presidency of the country to be "Ivorian by birth" (*ivoirien de naissance*) born of parents who were both also Ivorian by birth, reinforced a legal environment in which all those who might be regarded as not from Côte d'Ivoire's "core" ethnic groups were not eligible for nationality.[140]

Similar forms of discrimination may be found in provisions on naturalisation, as noted below.

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136 Eritrean Nationality Proclamation (No. 21/1992). A 1933 Italian colonial decree had defined as Eritrean "subjects" all persons (with the exception of Italian "citizens"), residing in the country before the end of 1933.

137 Eritrean Nationality Proclamation No. 21/1992, articles 2–4.

138 "A person who has Khontaed, that is to say, has been accepted as a Swazi in accordance with customary law and in respect of whom certificate of Khonta granted by or at the direction of the King is in force, shall be a citizen of Swaziland." Swaziland Citizenship Act No. 14 of 1992, section 5. See also Constitution of Swaziland, Article 42, which appears to provide that persons born before the constitution came into effect are citizens "by operation of law" if either parent is a citizen and also if the person is "generally regarded as Swazi by descent." Article 43 of the constitution removes this (not entirely clear) ethnic basis for children born after the constitution came into effect, but entrenches gender discrimination, providing that citizenship is only passed by a father who is a Swazi citizen.

139 Caroline McInerney, "Accessing Malagasy Citizenship: The Nationality Code and its impact on the Karana", *Tilburg Law Review* Vol. 19, 2014, pp. 182–193; Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices*, US Department of State, various years, available at http://www.state.gov/j/drl/rls/hrrpt/, last accessed 24 September 2015.

140 Manby, *Struggles for Citizenship*, pp. 81–93. The term *ivoirien de naissance* did not in fact exist in the constitution or nationality code.

Gender discrimination

At independence and until recently, most nationality laws in Africa discriminated on the basis of gender. Female citizens were not able to pass on their nationality to their foreign spouses or to their children, if the father was not also a citizen.

From the early 1990s, however, this situation began to change, as women's rights organisations fought for reforms based on the international human rights consensus on the equal status of men and women. A key moment was the 1992 *Unity Dow* case in Botswana, where the Court of Appeal upheld a woman's right to pass Botswana citizenship to her children (see box). Other challenges in national courts have also succeeded; in September 2014, the Benin Constitutional Court declared four articles of the nationality code to be unconstitutional on the grounds of gender discrimination in relation to a woman's right to transmit nationality to her children and spouse.[141]

Since the 1990s, Algeria, Botswana, Burkina Faso, Burundi, Côte d'Ivoire, Djibouti, Egypt, Ethiopia, Gambia, Guinea, Kenya, Lesotho, Libya, Mali, Mauritius, Morocco, Niger, Rwanda, Senegal, Sierra Leone, Sudan, Tunisia, Uganda and Zimbabwe have enacted reforms providing for greater, though not in all cases total, gender equality. The most recent reforms were in Senegal, which removed all gender discrimination in the transmission of nationality to children and spouses in 2013;[142] and in Niger, which removed gender discrimination in transmission of nationality to spouses in 2014 (gender discrimination in transmission to children had already been removed in 1999).[143] Some of these reforms provided only for greater access to nationality for the children of national mothers, rather than total equality: for example in Sudan, where a child of a national mother was given the right to claim nationality rather than automatic attribution; or in Sierra Leone where 2006 reforms still retained gender discrimination in relation to children born outside the country.[144]

Nationality of children

A minority of countries still discriminate on the basis of gender in transmission of nationality, giving only a father the unequivocal right to pass nationality

141 Décision DCC 14-172, Benin: Cour Constitutionnelle, 16 September 2014, available at: http://www.refworld.org/docid/547729054.html, last accessed 24 September 2015.

142 Loi No. 2013-05 du 29 juillet 2013.

143 Loi No. 2014-60 du 05 novembre 2014 portant modification de l'ordonnance no. 84-33 du 23 août 1984, portant Code de la nationalité nigérienne, modifiée par l'ordonnance no. 88-13 du 18 février 1988 et l'ordonnance no. 99-17 du 4 juin 1999.

144 Sudanese Nationality Act 1994, as amended by Act No. 1 of 2006; Sierra Leone Citizenship Amendment Act No. 11 of 2006.

to his child; and some of those countries that do not discriminate between the parents if a child is born in the country still allow only a father to pass on nationality to a child born outside of the country. In total, at least a dozen countries still discriminate at least to some extent on the grounds of gender in granting nationality rights to children who are either born in their country or born overseas (including Benin, Burundi, Guinea, Liberia, Libya, Madagascar, Mauritania, Sierra Leone, Somalia, Sudan, Swaziland and Togo: see Table 2).

Many of the countries that discriminate on the basis of the sex of the parent also discriminate on the basis of whether a child is born in or out of wedlock, requiring additional procedures to establish descent: Benin, Burundi, Cameroon, Côte d'Ivoire, Gabon, Guinea, Libya, Madagascar, Mali, Niger, Somalia, Sudan, Swaziland and Togo. For example, in provisions that are typical, in Madagascar transmission of nationality to a child born in wedlock is restricted to the father; however, a child born in wedlock of a Malagasy mother may claim Malagasy nationality up to the age of majority (21 years), and a child born out of wedlock takes the nationality of the mother, or may claim nationality of the father if descent is established.[145] However, in Côte d'Ivoire and Guinea, for example, the law is gender neutral, but still distinguishes between children born in or out of wedlock.

In several of these countries, the child of a national mother and non-national father born in the country can claim nationality, but does not have nationality automatically as of right; thus, the law is discriminatory in individual provisions relating to nationality from birth, but the total effect of all the provisions is to allow both sexes to pass nationality to their children, though this right will lapse if not claimed. Sometimes, for example in Benin, the legal discrimination appears in provisions allowing for the child whose mother is a national to repudiate nationality at majority, but if no action is taken he or she will be attributed nationality under the law.[146]

Even some relatively recent nationality laws still discriminate. In Burundi, for example, the 2005 constitution provides that children of Burundian men or women have the same right to a nationality, but the nationality code of 2000 still provides that the status of children born of a Burundian mother is technically the right to acquire nationality "by declaration" and automatic attribution of nationality of origin is restricted to those born of a Burundian father.[147] Swaziland's 2005 constitution explicitly provides that a child born after the constitution came into force is a citizen only if his or her father is a citizen.[148]

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145 Ordonnance no. 1960-064 portant Code de la nationalité malgache (amended by loi no. 1961-052; loi no. 1962-005 ; Ordonnance no. 1973-049 ; and loi no. 1995-021), section 16. Removal of gender discrimination in the law was under discussion as of 2015.

146 Loi No. 65-17 du 23 juin 1965 portant code de la nationalité béninoise, Arts. 8, 12, 13 and 18. In the Congo Republic, provisions permitting repudiation apply to any child with one parent (father or mother) who is a foreigner not born in Congo: Code de la nationalité congolaise, 1961, Arts 7-9.

147 Constitution of Burundi, 2005, Article 12, Loi No. 1-013 du 18 juillet 2000 portant réforme du code de la nationalité burundaise, articles 2, 4 and 5.

148 Constitution of the Kingdom of Swaziland, 2005, article 43.

Nationality based on marriage

The most common ground for acquiring nationality as an adult is on the basis of marriage. In most countries, marriage to a national allows the spouse—or only the wife—to acquire nationality either automatically or on the more favourable terms of registration (in common law countries) or option/declaration (in civil law countries). Automatic acquisition of nationality on marriage, previously the norm when women were assumed to follow the nationality of their father or husband, is now much less common, only in place in eight African countries (Benin, Central African Republic, Comoros, Congo Republic, Equatorial Guinea, Guinea, Somalia and Togo; Burkina Faso retains automatic acquisition, but for a spouse of either sex, and Mali and Côte d'Ivoire introduced the same system in 2011 and 2013, respectively). See Table 3.

More than two dozen countries today still do not allow women to pass their nationality to their non-national spouses, or apply discriminatory residence qualifications to foreign men married to national women who wish to obtain nationality (Benin, Burundi, Cameroon, Central African Republic, Comoros, Republic of Congo, Egypt, Equatorial Guinea, Guinea, Lesotho, Libya, Madagascar, Malawi, Mauritania, Morocco, Niger, Nigeria, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo and Tunisia). In some cases, marriage only shortens the period within which naturalisation can be applied for, and all other conditions for naturalisation must still be fulfilled.

In some countries, especially those that follow the French civil code model, the state may object to the acquisition of nationality by the spouse for up to a year after the application is made. In others, the grant of nationality on marriage is discretionary to a greater or lesser degree. These rules can render the interpretation of rights on marriage quite difficult; Egypt's provisions relating to the situation of a woman who marries an Egyptian or a foreigner, or whose husband changes nationality, are particularly complex.

Most civil law countries specify that all facts related to civil status must be established in accordance with the civil registration law, which thus excludes customary marriage; only a few countries, including Namibia and Togo, specifically state that customary marriages are recognised for the purposes of acquisition of nationality.[149]

149 Constitution of the Republic of Namibia, 1990, article 4(3)(b); Ordonnance no. 78-34 du 7 septembre 1978 portant Code de la nationalité togolaise, article 7.

Table 4: Right to transmit nationality to a spouse

Country	Nationality by marriage	Res. period if any)*	Marriage period (if any)	Level of discretion	Relevant legal provision(s)	Year of equality
Algeria	=	2 yrs	3 yrs	By decree	L1970(2005)Art9bis	2005
Angola	=		5 yrs	On application; marriage period waived if loses other nationality	L2005Art12	1975
Benin	w			Automatic unless declines; govt can oppose	L1965Art18-23	–
Botswana	=	5 yrs		Same conditions as naturalisation except shorter residence period	L1998(2002&04)Art14	1995
Burkina Faso	=			Automatic unless declines; govt can oppose	L1989Art151-154	1989
Burundi	w			By declaration	L2000Arts4,10-12	–
Cameroon	w			On request; govt can oppose	L1968Art17-19	–
Cape Verde	=			By declaration	L1993Art7	1976
CAR	w			Automatic unless declines; govt can oppose	L1961Art13-17	–
Chad	=			On request if marriage celebrated in Chad; govt can oppose	L1962Arts17-18	1962
Comoros	w			Automatic unless declines; govt can oppose	L1979Arts15-19	–
Congo Rep.	w	5 yrs		Automatic unless declines	L1961(1993)Art18-19	–
Côte d'Ivoire	=			Automatic unless declines; govt can oppose	L1961(2013)Arts12-16	2013
DR Congo	=		7 yrs	Marriage has no effect as of right, acquisition authorised by decree approved by National Assembly	L2004Art18-20	2004
Djibouti	=		10 yrs	Marriage has no effect as of right; period of marriage reduced to 5 yrs if there is a child	L2004Arts10-12	2004
Egypt	w		2 yrs	On application; govt can oppose	L1975(2004)Art6-8, 11-13,25	–
Eq. Guinea	w			Automatic (and loses nationality of origin)	L1990Art5	–
Eritrea	=	3 yrs		On application shall be granted	L1992Art6	1992
Ethiopia	=	1 yr	2 yrs	On application may be granted	L2003Art6	2003
Gabon	=		3 yrs	On application, but marriage has no effect as of right & govt may oppose	L1998Arts20-24	1998
Gambia !!	=	7 yrs		On application shall be entitled	C1996(2001)Art11	1996

Country	Nationality by marriage	Res. period if any)*	Marriage period (if any)	Level of discretion	Relevant legal provision(s)	Year of equality
Ghana	=			On application may be registered	C1992Art7(1) L2000Art10	1992
Guinea	w			Automatic unless declines; govt can oppose	L1983Arts49-55	–
G. Bissau	=	1 yr	3 yrs	By declaration	L1992(2010)Art8	1976
Kenya	=		7 yrs	On application, subject to conditions including clean criminal record	C2010Art15(1) L2011Art11-12	2010
Lesotho	w			On application shall be entitled	C1993Art40	–
Liberia				No additional rights on marriage	L1973Art21.30	
Libya	w		2 yrs	On proposal of the secretary of the General People's Committee for Public Security	L2010Art10	–
Madagascar	w			On request, automatic if stateless; govt can oppose	L1960Art22-26	–
Malawi !!	w	5 yrs		Must satisfy most conditions relating to regular naturalisation, including good character	C1994(1998)Art24(1)(iv) L1966(1992)Art16	–
Mali	=			Govt can oppose	L2011Arts233-236	2011
Mauritania	w	5 yrs		On request	L1961(2010)Art16	–
Mauritius	=	4 yrs		On application, though exceptions may be prescribed	C1968(1995)Art24 L1968(1995)Art7(2)	1995
Morocco	w	5 yrs		By declaration; govt may oppose	L1958(2007)Art10	–
Mozambique !!	=		5 yrs	By declaration, must fulfil conditions set by law; marriage period waived if stateless. Law provides only for a woman marrying a Mozambican, who must fulfil conditions for naturalisation	C2004Art26 L1975(1987)Art10	2004
Namibia	=	10 yrs		On application shall be granted, marriage under customary law specified as included	C1990(2010)Art4(3) L1990Art3	1990
Niger	=	3 yrs		By decree, provided satisfies conditions similar to those for naturalisation	L1984(2014)Arts13-19	2014
Nigeria	w			On application, provided satisfies conditions including good character	C1999Art26	–
Rwanda	=		3 yrs	On application may acquire	L2008Art11	2004
SADR					n/a	
STP	=			By declaration if domiciled in STP	L1990Art6	1990
Senegal	=		5 yrs	On request; govt can oppose	L1961(2013)Art7	2013

Country	Nationality by marriage	Res. period if any)*	Marriage period (if any)	Level of discretion	Relevant legal provision(s)	Year of equality
Seychelles	=	5 yrs	10 yrs	On application, provided satisfies conditions including no criminal record	C1993(2011)Art12 L1994(2013)Art6	1979
Sierra Leone	w			On application may be granted	L1973(2006)Art7	–
Somalia	w			Automatic	L1962Art13	–
South Africa	=	"prescribed period"	"prescribed period"	On application, provided admitted as a permanent resident	L1995(2010)Art5(5)	1995
South Sudan	=	5 yrs		On application may acquire	L2011Art13	2011
Sudan	w	2 yrs		On application may be granted	L1994(2011)Art8	–
Swaziland	w			By declaration	C2005Art44 L1992Art8	–
Tanzania	w			On application shall be entitled	L1995Art11	–
Togo	w			Automatic unless declines; customary marriages recognised if recorded in writing	L1978Art5-7	–
Tunisia	w	2 yrs		By declaration, automatic if loses other nationality; govt can oppose	L1963(2010)Arts13-17	–
Uganda	=		5 yrs	On application shall be registered	C1995(2005)Art12(2)(a) L1999(2009)Art14(2)(a)	1995
Zambia !!				No provision in constitution; law refers to previous constitution and woman's right to apply after 3 yrs of marriage, provided of "sound mind"	C1991(1996)Art6 L1975(1994)Art15	–
Zimbabwe !!	=	5yrs		On application shall be entitled	C2013Art38 L1984(2003)Art4(3)	2009

Notes

!! legislation conflicts with the constitution—the constitutional provisions are noted here (in Zambia the Citizenship Act refers to a provision in the abrogated 1973 constitution which is not included in the 1991 constitution)

* if residence period noted then residence is after marriage

= equal rights for men and women to pass citizenship

w only a foreign woman acquires nationality on basis of marriage to a national man

– no additional rights in case of marriage (though residence period may be reduced: see table on naturalisation)

Botswana: The *Unity Dow* Citizenship Case

In 1992, a court case brought by Unity Dow, a lawyer,[150] challenged the constitutionality of Botswana's Citizenship Act on the grounds that it discriminated on the basis of gender. Botswana's independence constitution, like those of other Commonwealth countries, had provided for citizenship to be recognised on a *jus soli* basis. However, the citizenship provisions of the 1966 constitution were repealed in 1982, and the rules on citizenship delegated to a new law, the 1982 Citizenship Act. This new Act now provided that a child became a citizen based on birth in Botswana only if not attributed the citizenship of another country through the father. In 1984, this provision was amended again, to attribute citizenship to a child born in Botswana only if his or her father was a citizen of Botswana (or his or her mother if he or she was born out of wedlock). The 1982 Act stated that a woman married to a citizen of Botswana could apply for naturalisation on preferential terms, but not a man in the same situation; the 1984 amendments then applied the same conditions to women naturalising on the basis of marriage as to any other foreigner.[151] Thus Unity Dow, a citizen of Botswana married to an American, was prevented from passing on her Botswana nationality to her children or husband.

Dow contested the discriminatory sections of the Citizenship Act on the grounds that they violated the constitutional bill of rights.

In 1991 and 1992, first the High Court and then the Court of Appeal found in favour of Dow.[152]

The High Court judgment commented as follows:

> *[T]he time that women were treated as chattels or were there to obey the whims and wishes of males is long past and it would be offensive to modern thinking and the spirit of the Constitution to find that the Constitution was deliberately framed to permit discrimination on the ground of sex.*[153]

The Court of Appeal found that, although Article 15 of the Constitution, which provides that "no law shall make any provision that is discriminatory either of itself or in its effect" does not include sex in its list of prohibited grounds of discrimination, it should be read with Article 3 of the Constitution, which provides that every person in Botswana is entitled to "all the fundamental rights and freedoms of the individual ... whatever his race, place of origin, political opinions, colour, creed or sex". The provisions of the Citizenship Act preventing women from passing Botswana citizenship to their children were thus unconstitutional. It thus agreed that the High Court "was right in holding that section 4 of the Citizenship Act infringes the fundamental rights and freedoms of the respondent conferred by

150 In 1998, after the case was decided, the president appointed Unity Dow as the first woman to sit as a judge on the High Court.

151 Citizenship Act No. 25 of 1982, sections 4, 5 and 13 (as amended by the Citizenship (Amendment) Act No. 17 of 1984).

152 See Metlhaetsile Women's Information Centre, *The Citizenship Case:* The Attorney General of the Republic of Botswana v. Unity Dow, *Court Documents, Judgements, Cases and Materials*, 1995, available at http://www.law-lib.utoronto.ca/Diana/fulltext/dow1.htm, last accessed 24 September 2015.

153 *Unity Dow v. Attorney-General*, High Court of Botswana, Misca. 124/1990, 11 June 1991, reported in 1991 BLR 233 (HC).

sections 3 (on fundamental rights and freedoms of the individual), 14 (on freedom of movement) and 15 (on protection from discrimination) of the Constitution".[154]

The Citizenship Act was amended to conform with the judgment in *Dow* in 1995, and now allows for children to acquire citizenship by descent if either the father or the mother was a citizen of Botswana at the time of birth, as well as for naturalisation of foreign spouses for both men and women—though only on the same terms as any other person applying for naturalisation.[155]

Partial reforms on gender equality in North Africa

All of the countries of North Africa have since the 1990s adopted reforms increasing gender equality, a notable development by comparison with the Arab countries of the Middle East; reforms granting the right to women to transmit nationality to their children have, however, been easier to achieve than the right to transmit nationality to a husband.[156]

As a protectorate, Tunisia had laws regulating its nationality from 1914, but adopted its own nationality code in 1956, which provided for the standard forms of gender discrimination at that time: nationality was transmitted to a child only through the father, unless he was unknown or stateless, or the child born out of wedlock; and only a wife acquired nationality through marriage.[157] From 1963, the nationality code provided for a child of a Tunisian mother or father born in Tunisia to be Tunisian; those born abroad were automatically Tunisian only through the father, but could claim nationality by declaration if born outside the country of a Tunisian mother and foreign father.[158] Reforms in 1993 and 2002 changed the procedures slightly for those born abroad, but the code remained discriminatory on its face. In 2010, the law was reformed to remove discrimination in the transmission of nationality by descent for those born after it came into effect.[159] In 2014, the new government in Tunisia withdrew its reservations to CEDAW in relation to the transmission of nationality to children; however, gender discrimination in marriage remained in the law.[160]

154 *Attorney-General v. Unity Dow*, Court of Appeal, Lobatse, 3 July 1992 (no 4/91).

155 Botswana Citizenship (Amendment) Act, 1995. See also Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial reports of States parties due in 1997: Botswana*, CRC/C/51/Add.9, 27 February 2004.

156 For a comparison of North African with Middle Eastern trends, see Laura van Waas and Zahra Albarazi "Transformations of nationality legislation in North Africa", in Isin and Nyers, *Routledge Handbook of Global Citizenship Studies*, 2014; also Delphine Perrin, "Citizenship struggles in the Maghreb", in the same volume.

157 Décret No. 34 du 26 janvier 1956 portant promulgation du Code de la nationalité tunisienne.

158 Loi No. 63-7 du 22 avril 1963 ratifiant le décret-loi No. 63-6 du 28 février 1963 portant refonte du Code de la nationalité tunisienne, sections 12 and 13 ; Souhayma Ben Achour, "L'étranger et la nationalité tunisienne : Le droit tunisien de la nationalité, est-il discriminatoire ?", paper presented at International Colloquium on "L'étranger", Faculté de droit et des sciences politiques de Tunis, 2005.

159 Loi No. 2010-55 du 1 décembre 2010.

160 "Tunisia: Withdrawal of the declaration with regard to Article 15(4) and of the reservations to Articles 9(2), 16 (c), (d), (f), (g), (h) and 29(1) made upon ratification", UN Document C.N.220.2014.TREATIES-IV.8 (Depositary Notification), 23 April 2014. The decision to withdraw the reservations (Article 9(2) relates to the equal right to transmit nationality to children) was first announced in 2011.

In Egypt, an important 2004 reform amended the 1975 Nationality Law to provide that children born to Egyptian mothers were Egyptian citizens regardless of their father's status or their place of birth. Previously, the child of an Egyptian woman born outside the country could not be an Egyptian citizen from birth unless born out of wedlock or to a stateless or unknown father.[161] By 2006 it was estimated that 17 000 people had obtained nationality under these reforms, most of them born of Sudanese or Syrian fathers.[162] Children of Egyptian women married to Palestinian men born before the reform were excluded,[163] though a number successfully challenged the discrimination in court. In May 2011, following the Egyptian revolution of earlier that year and responding to protests by women, the Ministries of Interior and Foreign Affairs issued a decree allowing Egyptian women married to Palestinian men to transmit their nationality to their children. Applications for nationality rapidly increased, with 893 naturalised by late October, of which the vast majority were children of Palestinian fathers.[164] However, gender discrimination in marriage persists.

In 2005, Algeria went beyond the example of Tunisia and Egypt, amending the nationality law to allow an Algerian woman married to a foreigner to transmit Algerian nationality to her children and also to her spouse on equal terms.[165]

In April 2007, after a long campaign by women's rights organisations, amendments to the Nationality Code came into force in Morocco, and Morocco withdraw its reservation to Article 9 of CEDAW at the same time. The reform finally gave Moroccan women equal rights to transmit nationality to their children (with retroactive effect), and benefited many children who had previously been stateless, notably the children of Palestinian men and Moroccan women. However, in the case of marriage, the law only provides for a foreign woman married to a Moroccan man for five years to acquire marriage by declaration (opposable by the government), and not a foreign man married to a Moroccan woman. In addition, despite other recent reforms that also brought a greater level of gender equality in marriage, Morocco's family code (known as the Moudawana) states that a Moroccan Muslim

161 Law No. 154 of 2004 amending some provisions of Law No. 26 of 1975 concerning Egyptian nationality, Official Gazette, Vol. 28, 14 July 2004. The Ministry of Interior also issued Decree No. 12025 of 2004, explaining the process of application for citizenship for those born to Egyptian mothers and non-Egyptian fathers. Al-Waqa'e'Al-Masreya/Government Bulletin, issue 166, 24 July 2004. See also http://www.learningpartnership.org/egypt, last accessed 24 September 2014.

162 Reem Leila, "Citizenship costs less," *Al Ahram Weekly Online*, Issue 806, 3–9 August 2006.

163 Thanks to a 1959 decision of the Arab League that Palestinians should not be given citizenship in other Arab countries, as a way of preserving their identity: League of Arab States Decree, No. 1547 of 1959; also Protocol for the Treatment of Palestinians in Arab States (Casablanca Protocol), League of Arab States, 11 September 1965.

164 "Egypt to grant citizenship to kids of Palestinian dads", *Jerusalem Post*, 8 May 2011; "Post-Revolution, Egypt Establishes the Right of Women Married to Palestinians to Pass Nationality to Children", the Arab Women's Right to Nationality Campaign in Lebanon, 13 May 2011; Gianluca Parolin, "New policy on Egyptian citizenship for children of Palestinian fathers", EUDO Citizenship Observatory, 24 November 2011.

165 Ordonnance No. 05-01 du 27 février 2005 revising Ordonnance No. 70-86 du 15 décembre 1970 portant code de la nationalité algérienne. See also Convention on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations: Algeria*, CRC/C/15/Add.269, 12 October 2005.

woman cannot marry a non-Muslim man, and the two codes read together indicate that the family code should take preference, with implications also in relation to whether the children are born out of wedlock.[166]

The *Association Démocratique des Femmes du Maroc* welcomed the reforms to the law, but called for further reform, including the extension of gender neutrality to the passing of nationality to a spouse, noting that "over 300 foreign men married to Moroccan women have been waiting for years to obtain Moroccan nationality although their request files fulfil all needed conditions".[167] Gender discrimination also still affects the provision of the nationality code providing for Moroccan nationality to be given to children born in Morocco of foreign parents who were themselves also born in Morocco. This provision applies in a gender-neutral way only if the *parents* were born after the law came into force; all other children born in Morocco (thus including all those being born today) can claim nationality only if their father was born in Morocco, is an Arabic-speaking Muslim, and comes from a country where Arabic-speaking Muslims are in the majority.[168]

Unexpectedly, Libya adopted a new nationality law in 2010, before the fall of Gaddafi, which also included changes that somewhat reduce gender inequality. In 1998, the Committee on the Rights of the Child considered a report from Libya and expressed the concern that "decisions related to the acquisition of nationality are only based on the status of the father."[169] In 2003, the committee noted with approval that Libya was considering adopting a rule that would permit a Libyan mother to transfer her nationality to her children, irrespective of her husband's nationality.[170] But the 2010 law only implements this promise in the most limited way possible, and leaves gender discrimination entrenched, so that Libya still gives the automatic right to nationality only to the child of a Libyan father, whether born in country or abroad. Although the law allows for the grant of nationality to the child of a Libyan mother and foreign father, this is at the discretion of the state, and regulations are required to implement it.[171] Despite the 2010 reforms, virtually every article thus still enshrines lesser rights for women: given the breakdown of central authority in the country, no further reform was likely.

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166 Dahir No. 1-04-22 du 12 Hija 1424 (3 Fevrier 2004) portant promulgation de la Loi No. 70-03 portant Code de la famille, articles 2 and 39 ; Code de la nationalité marocaine, Loi No. 62-06 promulguée par le dahir no. 1-07-80 du 23 mars 2007 - 3 rabii I 1428, Article 3. The Code de la famille also forbids a Moroccan man from marrying a woman who is not Muslim, unless she is Christian or Jewish (*"sauf si elle appartient aux gens de la Livre"*): Ibid., Article 39.

167 *Association Démocratique des Femmes du Maroc*, "We've Won a Battle but not the War", press release posted 26 January 2007, available at http://www.learningpartnership.org/lib/weve-won-battle-not-war, last, accessed 24 September 2015. See also Khadija Elmadmad, "Maroc: La dimension juridique des migrations", in *Mediterranean Migration Report 2007–2008*, Euro-Mediterranean Consortium for Applied Research on International Migration, European University Institute, 2008. See also, UNHCR, *Good Practices Paper – Action 3: Removing Gender Discrimination from Nationality Laws*, 6 March 2015.

168 Code de la nationalité marocaine, article 9.

169 Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations: Libyan Arab Jamahiriya*, CRC/C/15/Add.84, 23 January 1998.

170 Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations: Libyan Arab Jamahiriya*, CRC/C/15/Add.209, 4 July 2003.

171 Libya Nationality Law No. 24 of 2010, Article 3.

Dual nationality

At independence, many African countries took the decision that dual nationality should not be allowed: they wished to ensure that those who might have a claim to another nationality—especially those of European, Asian, or Middle Eastern descent—had to choose between the two possible loyalties. Those who did not take the nationality of the newly independent country were then regarded with suspicion, as a possible "fifth column" for the former colonial powers and other interests. A person acquiring another nationality automatically lost his or her birth nationality, and renunciation of another nationality was required for naturalisation. In almost all the Commonwealth countries a child with dual nationality from birth had to renounce one or the other at majority; civil law countries, however, often permitted dual nationality of origin, even where they prohibited it in case of voluntary acquisition of another or on naturalisation.

Dual nationality in case of marriage was also frowned upon. Commonwealth countries required renunciation of foreign nationality before a woman marrying a national could obtain his nationality by registration. Practice in the civil law countries was more varied, but for the most part did not allow dual nationality in the case of marriage. As an exception, however, dual nationality was sometimes allowed in the case of a foreign woman married to a male national, or a female national married to a foreign man, even where dual nationality was generally not allowed.

Increasingly, however, an African diaspora with roots in individual African countries, in addition to the earlier involuntary diaspora of slavery, has grown to match migrations from Europe and Asia.[172] These "hyphenated" Africans, with roots both in an African country and a European or American one, have brought political pressure to bear on their "home" governments to change the rules on dual nationality and to concede that people with connections to two different countries need not necessarily be disloyal to either state. In addition, there are increasing numbers of Africans with connections to two African countries—and not only persons whose roots lie in ethnic groups found on the borders between two states. A Nigerian-Ghanaian is as likely a combination as a Nigerian-American or Ghanaian-British. Though a less organised lobby group, these people too seek acknowledgment of their multiple identities.

In recent years, many African states have either changed their rules to allow dual nationality or are considering such changes. A few countries

172 Beth Elise Whitaker, "The Politics of Home: Dual Citizenship and the African Diaspora", *International Migration Review*, Vol. 45, No. 4, 2011, pp. 785–783; Okechukwu C. Iheduru, "African states, global migration, and transformations in citizenship politics", *Citizenship Studies*, Vol. 15, No. 2, 2011, pp. 181–203; George Bob-Milliar and Gloria Bob-Milliar, "Mobilizing the African Diaspora for development: The politics of dual citizenship in Ghana", in Falola and Essien (eds), *Pan-Africanism*, pp. 137–151.

allowed dual nationality right from the start (including Chad and Gabon). Today, though relatively few countries have a positive statement in their law that dual nationality is generally permitted, it is now the case that substantially more African countries permit than prohibit dual nationality. Even in those countries where dual nationality is prohibited, the rules are often not enforced in practice. In other cases, the law is ambiguous or silent but effectively allows dual nationality. The states where dual nationality is allowed under the law in most circumstances are: Algeria, Angola, Benin, Burkina Faso,[173] Burundi, Cape Verde, Chad, Comoros, Congo Republic, Djibouti, Gabon, Ghana, Guinea-Bissau, Kenya, Mali, Morocco, Mozambique, Nigeria,[174] Rwanda, São Tomé and Príncipe, Senegal,[175] Seychelles, Sierra Leone, Somalia, South Sudan, Sudan and Tunisia: see Table 4.

Some countries allow dual nationality only with the explicit permission of the authorities, including Egypt,[176] Eritrea (in some circumstances[177]), Libya, Mauritania, South Africa and Uganda. South Africa's law has been through a few iterations since 1994, and a citizen by birth acquiring another nationality must have permission to continue to hold South African nationality, while a person applying for naturalisation must satisfy the minister that they are either a citizen of a country that allows dual nationality, or that, if their presumed other nationality is with a country that does not allow dual nationality, they have renounced that nationality.[178] Uganda has an elaborate range of additional conditions that apply to people seeking to naturalise who wish to retain their other nationality, which are not applied to those who renounce.[179]

Thirteen countries prohibit dual nationality only in some circumstances—either only for a person naturalising as a citizen (Gambia, Mauritius, Namibia, Swaziland, Togo and Zimbabwe), or only for citizens from birth who voluntarily acquire another nationality (Benin, CAR, Côte d'Ivoire, Guinea and Madagascar). A few countries that do not in general permit dual nationality do, however, permit a woman who automatically acquires her husband's nationality upon marriage to retain her nationality of birth. Togo appears to

173 In Burkina Faso, the law is silent on the issue, neither providing for loss of nationality on acquisition of another nor for a person applying for naturalisation to have to renounce their previous nationality, so the presumption is that dual nationality is allowed. However, interpretation in practice may vary, in light of this silence.

174 Nigeria does not permit a person to naturalise as Nigerian while also holding another nationality by naturalisation – however, a Nigerian may acquire another nationality without losing it, and a person with another nationality of origin may acquire Nigerian nationality without renouncing his or her other nationality.

175 See footnote 176; because of ambiguities in the law, Senegal appears in the central column of Table 5.

176 However, even in case of naturalisation elsewhere without permission, a person is considered to retain Egyptian nationality together with a new nationality unless a notice is published in the Official Gazette that Egyptian nationality is lost. Expert evidence given to the UK Special Immigration Appeals Commission in the case of *Abu Hamza v. Secretary of State for the Home Department*, Appeal No: SC/23/2003, preliminary issue open judgment, dated 5 November 2010.

177 In Eritrea the 1992 nationality law provided that those who already had another nationality were allowed to keep their other nationality, but only with permission; dual nationality is not prohibited for those born since 1992 with dual nationality of origin, but those acquiring Eritrean nationality must renounce any other nationality, and nationality will be lost on voluntary acquisition of another nationality. Eritrea Nationality Proclamation No. 12 of 1992, articles 2(5), 4(2)(e) and 8(1)(a).

178 South African Citizenship Act 1995, as amended 2010, sections (5)(1)(h) and 6.

179 Citizenship & Immigration Control Act 1999, amended 2009, section 19 A-G.

forbid dual nationality both for naturalised citizens and for citizens from birth; but the interpretation is that a national of origin has to request permission to renounce nationality, so dual nationality is only truly forbidden for those who naturalise and have to renounce their other nationality.[180] In a provision with no parallel elsewhere, Sudan generally permits dual nationality—but not for those who acquired South Sudanese nationality on the secession of South Sudan.[181] Liberia has one of the strictest bans on dual nationality anywhere in Africa, though even there, the law may be interpreted to allow dual nationality in some limited circumstances.[182]

In several countries, the constitutions have been changed to allow dual nationality, but the legislation has yet to be updated, including Comoros, Congo Republic, Gambia, Mozambique, São Tomé & Príncipe, Somalia and Zimbabwe.[183]

The most confusion surrounds the common wording in the francophone countries that a person who voluntarily acquires another nationality loses his or her nationality of origin, but that this loss is subject to permission of the relevant ministry. These provisions were drafted during a time when it was presumed that most countries would not allow dual nationality: thus, in order to acquire another nationality a person would necessarily have to renounce the nationality of origin; but at the same time, states wished to ensure that a person could not change nationality simply to avoid obligations such as military service. However, the wording only applies to those who "voluntarily acquire" another nationality, and therefore does not affect those who are born with two nationalities. Additional confusion is added by the fact that national military service has never been implemented in these countries, so that the military recruitment registers referred to in the legislation (copying from French law), establishing the period during which nationality could not be lost, do not exist.[184]

In practice, interpretation and application of these laws varies widely, or small differences in wording result in different outcomes. For example, in West Africa, Senegal interprets language that is very similar to that in Benin, Côte d'Ivoire, Guinea and (until 2014) Niger to mean that dual nationality

180 Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité, Lomé, 12–16 septembre 2011.

181 Sudan Constitution 2005 Article 7(4); Sudanese Nationality Act 1994 (as amended 2011), Art.10(2).

182 In Liberia, the provisions of the constitution and the law do not match each other. Whereas the constitution requires any person with two nationalities to renounce the other on majority, the Aliens and Nationality Act rather provides for loss of birth nationality in cases where the person exercises rights or swears an oath of allegiance in another state; see the section on loss and deprivation on page 104.

183 In December 2015, Zambia's parliament approved a new constitution that would permit dual nationality; this change was not yet in force by the end of 2015 and is not reflected in the tables.

184 Many of the Commonwealth countries dealt with this situation through standard provisions allowing dual nationality among children, who then had to opt between the age of 18 and 21.

is permitted in all circumstances.[185] In Benin, Guinea and Niger, it is well known that many have acquired another nationality, including senior officials and government ministers, but no action has been taken to deprive the person formally of their nationality of origin. Only in Côte d'Ivoire is there a real effort to enforce the rules on loss of nationality in case of acquisition of another—and the process there is highly politicised, rather than a matter of neutral administrative or judicial action; even the right of a person to two nationalities of origin has been contested.[186] In late 2014, Niger became the latest country to adopt a law explicitly making dual nationality permissible in all circumstances.[187]

In some countries, the courts have attempted to re-interpret the law. In Lesotho, the constitution provides that an adult citizen cannot be a citizen of another country (unless he or she acquires this dual citizenship by marriage). However, in a 2005 case the High Court found that the provision on loss of citizenship under the Lesotho Citizenship Order of 1971 "does not deal with a Lesotho citizen who is domiciled in Lesotho but acquires a citizenship of the Republic of South Africa while he is working there. If the intention was that such a person should lose his residence and domicile, then Parliament should have specified this. It would be wrong to read into such a person's act an intention to terminate rights of domicile and residence into the Order". Thus, citizenship by birth could not be lost by acquisition "of another citizenship to get a job while his domicile remains in Lesotho".[188] A case decided by the Lesotho Court of Appeal in 2008, however, ruled that citizenship by birth could be lost if the person involved acquired another citizenship, though the court also urged the Lesotho Parliament to enact legislation permitting Lesotho citizens to hold dual nationality with at least South Africa (a destination for tens of thousands of men and women from Lesotho), given what the court characterised as "the economic interdependence of the two countries".[189]

The reality of economic migration was explicitly recognised in the Guinea-Bissau law of 1992, which provided that dual nationality was allowed if a person acquired another nationality because he or she had emigrated "essentially for

185 Senegal has two provisions that appear on first reading to forbid dual nationality: Article 16 bis and Article 18. However, the sub-articles providing modalities for implementation of Article 16 bis, stating that acquired nationality could not be held with another, were repealed; while Article 18, providing for loss of nationality on acquisition of another, also requires the person to obtain permission. The official interpretation of the Ministry of Justice is that dual nationality is permitted. Interview with Bienvenu Moussa Habib Dione, Senegalese Ministry of Justice, May 2014; and document provided by the ministry for the then Minister of Justice at the time of Senegalese nationality law reform of 2013.

186 A memo on this point, noting that dual nationality of origin is permitted under Ivorian law, and that a person does not lose nationality unless he or she requests to do so and is authorised by decree, was published by Me. François Guei, a member of the Conseil Constitutionnel of Côte d'Ivoire, in May 2010 (copy on file with author).

187 Loi No. 2014-60 du 05 novembre 2014 portant modification du Code de la nationalité nigérienne.

188 *Mokoena v. Mokoena and Others* CIV/APN/216/2005, available at http://www.lesotholii.org/ls/judgment/high-court/2007/14, last accessed 24 September 2015; see also *Mokoena v. Mokoena and Others*, C of A (CIV), No. 2 of 2007 available at http://www.lesotholii.org/ls/judgment/high-court/2008/36, last accessed 24 September 2015.

189 *Director of Immigration and others v. Pholoana Adam Lekhoaba and Anor*. C of A (CIV) No.22/07 (unreported), available at http://www.lesotholii.org/ls/judgment/court-appeal/2008/4, last accessed 24 September 2015.

economic reasons"; 2010 amendments removed any restrictions.[190] Several High Court rulings in Namibia have affirmed that under the constitution a citizen from birth can only lose his or her nationality by voluntary renunciation and that dual nationality is permitted for citizens from birth, despite section 26 of the Citizenship Act which states that no Namibian citizen may also be a citizen of a foreign country.[191]

Some governments, however, moved in the opposite direction, using a prohibition on dual nationality for political purposes. This is most evident in Zimbabwe, where, from the early 2000s, those persons who have a potential claim on another citizenship were required to renounce it, even if they had never had any legal relationship with the second state. Despite constitutional amendments adopted in 2009 that opened up the possibility of law reform to allow dual citizenship, confirmed by the new 2013 constitution which provided for dual nationality to be permitted for those who held Zimbabwean citizenship from birth, the Citizenship Act had yet to be reformed by late 2015. The Republic of Sudan (North Sudan) introduced a ban on dual nationality specifically for people who became nationals of the new Republic of South Sudan in 2011, even though dual nationality has been generally allowed since 1993. The new state of South Sudan followed continental trends by adopting a nationality law that permits dual nationality.[192]

Table 5: Countries permitting and prohibiting dual nationality for adults

	Dual nationality permitted?*			Restrictions on public office	Relevant legal provisions
Country	**Yes**	**Sometimes**	**No**		
Algeria	x (1963)			President cannot be dual national	C1989(1996)Art73 L1970(2005)Art18
Angola	x (1975)				L2005Art15(1)(a)&30-31
Benin	x (1965)				L1965Art46&49
Botswana		x †* (1982)			L1998(2002&04)Art15
Burkina Faso	x (1989)				[no provision]
Burundi	x (2000)				L2000Art21
Cameroon			x * (1968)		L1968Art31&32

190 Lei No. 2/92 de 6 de abril, artigo 10 amended by Lei da nacionalidade No. 6/2010 de 21 de junho. São Tomé & Príncipe has a similar provision allowing dual nationality "because of emigration." Lei da nacionalidade No. 6/90, artigo 12.

191 *Tlhoro v. Minister of Home Affairs* (Case No. (P) A159/2000) [2008] NaHC 65 (2 July 2008), reaffirmed by *Le Roux v. Chief of Immigration and Others* (A322/2010, High Court of Namibia). See also Werner Menges, "Court confirms legality of dual citizenship for some Namibians", *The Namibian*, 9 July 2008; Werner Menges, "Dual citizenship legal for born Namibians", *The Namibian*, 7 June 2011.

192 Before the secession of states, the government of the "New Sudan" as South Sudan, was then known, adopted a Nationality Act that, in addition to discriminating on the basis of gender, also required anyone acquiring "New Sudanese" nationality by naturalisation to renounce any other nationality. Sudan Nationality Act 2003, Laws of the New Sudan, section 9. The actual law adopted in 2011 following secession reversed this provision. See Bronwen Manby, *The Right to Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws*, Open Society Foundations, June 2012; and Bronwen Manby, *International Law and the Right to Nationality in Sudan*, Open Society Foundations, February 2011.

	Dual nationality permitted?*			Restrictions on public office	Relevant legal provisions
Country	**Yes**	**Sometimes**	**No**		
Cape Verde	x (1992)			President cannot be dual national	C1992(2010)Arts5&110 DL1993Art18
Central African Rep.		x †* (1961)			L1961Arts46-49
Chad	x (1962)			President cannot be dual national	C1996Art62 L1962Art6-7
Comoros !!	x (2001)				C2001Art5 L1979Art51
Congo Rep. !!	x (2002)				C2002Art13 L1961(1993)Art47
Côte d'Ivoire		x †* (1961)			L1961(2013)Arts48-52
Dem. Rep. Congo			x (1964)		C2005Art10 L2004Art1,22,26,51
Djibouti	x (2004)			President cannot be dual national	C1992Art24 L2004Art11
Egypt		(x) *		President and prime minister, and their spouses and parents, cannot be dual nationals	C2014Arts141&164 L1975(2004)Arts10-12
Equatorial Guinea			x (1990)	President cannot be dual national	C2012Art35 L1990Arts4(a),12&19
Eritrea [a]			x (1992)		L1992Arts2,4&8
Ethiopia			x (2003)		L2003Arts5,6&20
Gabon	x (1962)				L1998Art7
Gambia !![b]		x ‡ (2001)		President cannot be dual national	C1996(2001) Art12,12A,13&62
Ghana	x (1996)			President and members of parliament cannot be dual nationals	C1992(1996)Arts8,62&94 L2000Art14&16
Guinea		x † (1960)			L1983Art95
Guinea Bissau	x (2010)				L1992(2010)Art10
Kenya	x (2010)			President and deputy president cannot be dual nationals	C2010Arts15(4),16,99&137 L2011Art8
Lesotho			x* (1971)		C1993Art41
Liberia			x (1958)		C1984Art28 L1973Art21.2&22.1
Libya		(1954)			L2010Arts5&9
Madagascar		x (1960) †*			L1960Arts27,42&47
Malawi			x (1966)		L1966(1992)Arts6-11&20-22
Mali	x (1995)				L2011Art249
Mauritania		(x) (2010)			L1961(2010)Arts30-31
Mauritius		x ‡ (1995)			L1968(1995)Arts9(4)&14
Morocco	x (1958)				L1958(2007)Art11,19&20
Mozambique !!	x (2004)			President cannot be dual national	C2004Arts27,31,33&147 L1975(1987)Arts10&14
Namibia [b]		x ‡ (1990)			C1990(2010)Art4(8)(a) L1990Art7(1)&26
Niger	x (2014)				L1984(2014)Arts19&34

Country	Dual nationality permitted?*			Restrictions on public office	Relevant legal provisions
	Yes	Sometimes	No		
Nigeria [b]	x (1999)			President, state governors and members of national and state assemblies cannot be dual nationals	C1999Arts27&28(1), 66,107,137&182
Rwanda	x (2003)				C2003Art7 L2008Art3
Sahrawi Arab Dem. Rep.					n/a
São Tomé and Príncipe !!	x (2003)			President and prime minister cannot be dual nationals	C2003Arts3,78&100 L1990Arts10&12
Senegal [c]		x (1961)		President cannot be dual national	C2001(2008)Art28 L1961(2013) Arts1,16bis,18,20
Seychelles	x (1993)				C1993(2011)Art13(2) L1994(2013)Art12
Sierra Leone	x (2006)				L1973(2006)Arts10,16
Somalia !!	x (2004)				C2012Art8 L1962Arts2,4,6,10
South Africa [d]		(x) (2010)			L1995(2010)Art5(1)(h)&6
South Sudan	x (2011)				C2011Art45(5)&(6) L2011Arts10&15
Sudan !!	x (2011)				C2005Art7(4) L1994(2011)Art10(2)
Swaziland		x ‡* (1967)			C2005Arts42(3)&49(1)(c) L1992Art10(1)(c)
Tanzania			x (1961)		L1995Art7
Togo		x ‡* (1978)		President cannot be dual national	C1992(2002)Art62 L1978Art23Arts11&23
Tunisia	x (1975)				L1963(2010)Arts21&30
Uganda[e]		(x) (2005)		List of posts for which cannot be dual national, including president, vice-president, prime minister, cabinet ministers, heads of security services	C1995(2005)Art15 L1999(2009)Arts15-19,19A-G and schedule 5
Zambia			x * (1964)		C1991(2009)Arts7(b)&9 L1975(1994)Arts16&19
Zimbabwe !!		x ‡ (2013)			C2013Art42 L1984(2003)Art4(1)(iv)&9

Notes

*	allowed for married woman (in some circumstances)
	dates in brackets are the year the current rule was adopted, where known
n/a	not available
!!	constitution conflicts with legislation: constitutional provisions noted here (in case of Sudan, dual nationality is permitted with any country other than South Sudan)
(x)	permission of government required; and in South Africa not permitted if the other country does not allow
‡	dual nationality allowed for nationals from birth/prohibited for those who naturalise
†	dual nationality allowed for naturalised citizens/prohibited for those who voluntarily acquire another nationality
a	Eritrea allows those who already had another nationality before 1992 to keep it, with permission
b	Gambia, Namibia and Nigeria state that a naturalised citizen who then acquires another nationality loses first naturalised nationality
c	Senegal's legal provisions are almost the same as those in Benin, Guinea, Niger and Côte d'Ivoire and, in addition, it is stated that a person who acquires Senegalese nationality cannot hold another nationality – however, these laws are not applied and are interpreted to mean that dual nationality is permitted in all circumstances (except if the other country prohibits it)
d	South Africa requires proof that the other country permits dual nationality
e	Uganda's dual nationality provisions, as amended in 2009, are very complex and create significant conditions to be able to hold dual nationality (especially by acquisition). It is not permitted to hold three nationalities, and the other country must permit dual nationality

Naturalisation

All African countries permit, in principle, the acquisition of nationality by naturalisation on the basis of long-term residence and other conditions.[193] In some countries, acquiring nationality by naturalisation is relatively straightforward, at least in theory. In practice, however, obtaining nationality by naturalisation can be very difficult.

More than 20 countries provide for a right to naturalise based on legal residence of five years, but in Chad, Nigeria, Sierra Leone and Uganda, the period required is up to 15 or 20 years, while in the Central African Republic it is 35 years. South Africa provides a two-step process. A person must first become a permanent resident, a process that usually takes five years (except when married to a citizen); a further five years' residence is required to become a citizen.[194]

Other countries apply much stricter rules. In many countries investigations are required, including interviews and police inquiries; in a large number there are restrictions on access to naturalisation on grounds of ill health or disability. Under the 2004 nationality law adopted by the Democratic Republic of Congo, applications for naturalisation must be considered by the Council of Ministers and submitted to the National Assembly before being awarded by presidential decree; in this it follows the Belgian example, where naturalisation is by act of parliament.[195] In addition, the individual must have rendered "distinguished service" (*d'éminents services*) or his or her naturalisation must represent a real benefit with an observable impact for the country (*un intérêt réel à impact visible*) to the country, while conviction for a whole series of crimes related to the civil war excludes naturalisation.[196]

In the Arab world, Muslims and Arabs often have easier access to nationality by naturalisation. In Egypt, categories of people who in many other countries have the right to recognition of nationality from birth can only be naturalised, including those born in the country of parents also born there or who are born

193 The suggested definition for naturalisation in the EUDO citizenship glossary is: "Any mode of acquisition after birth of a nationality not previously held by the target person that requires an application by this person or his or her legal agent as well as an act of granting nationality by a public authority". See http://eudo-citizenship.eu/databases/citizenship-glossary/glossary#Nation, last accessed 24 September 2015. In many African countries there is also the possibility of acquiring citizenship by an easier process known in the Commonwealth countries (though not consistently) as "registration" and in civil law countries as "declaration" or "option". These non- or less-discretionary processes are usually open to spouses of citizens or to persons born in the country and still resident there at majority (and are covered above in relation to the rules applied to children born in the country or in case of marriage). Confusingly, in some Commonwealth countries, such as Kenya and Zambia, law reforms adopted since independence mean that there is only one process, known as registration, and this is discretionary rather than being a purely administrative process (the original meaning of registration in the independence constitutions and laws).

194 South African Citizenship Act (No. 88 of 1995), section 5.

195 As of 2014, Code de la nationalité belge, 28 June 1984, Article 12.

196 Loi No. 04-024 du 12 novembre 2004 relative à la nationalité congolaise, articles 11–12.

there and are still resident in the country at majority. There are preferential terms for those who are of Egyptian or Arab origin or who are Muslims.[197] Libya, seeking to buttress the concept of a pan-Arab identity, renamed its nationality "Arabic nationality" in 1980, and provided for any person of Arab descent (with the exception of Palestinians) to have the right to claim nationality on entering Libya if he or she intended to live there (and renounced any other nationality). The only non-Arabs who could naturalise were women. The 2010 nationality law, however, removed this ethno-linguistic bias.[198]

Liberia and Sierra Leone, in line with their other provisions based on race, take the position that only those persons "of Negro descent" may be citizens from birth. Sierra Leone also has more restrictive rules for naturalisation of those who are not "Negro-African" than for "Negro-Africans," while Liberia forbids "non-Negroes" from becoming citizens at all (see above, Racial and ethnic discrimination). Malawi provides for several categories of person with a close connection to the country to be able to register as citizens; but this registration is on the same discretionary terms as naturalisation for any foreigner; while Ghana does not discriminate on racial grounds in general, but provides for preferential treatment for naturalisation for those of African descent.[199]

In addition to requirements of legal residence, some countries apply criteria to naturalisation based on cultural assimilation, in particular knowledge of the national language(s). At the most demanding, Ethiopia used to require an applicant to "Know Amharic language perfectly, speaking and writing it fluently"; in 2003, the law was reformed to require only that the applicant be "able to communicate in any one of the languages spoken by the nations/nationalities of the Country".[200] In 2008, Rwanda similarly deleted a requirement that a candidate for naturalisation be able to speak Kinyarwanda, in favour of a provision that he or she should "respect Rwandan culture and be patriotic".[201] Botswana requires a knowledge of Setswana or another language spoken by a "tribal community" in Botswana;[202] Ghana requires knowledge of an indigenous Ghanaian language;[203] and other countries have similar requirements. Egypt, in line with its generally preferential treatment for Arab foreigners, requires an applicant for naturalisation to "be knowledgeable in Arabic".[204] Sudan's 1993 Nationality Act, however, removed a requirement to know Arabic that had been included in the 1957 legislation (apparently to allow non-Arab Muslims easier access to Sudanese nationality).[205] Mauritania redefined the languages required

197 Law No. 26 of 1975 concerning Egyptian nationality, article 4.

198 Nationality Law No. 17 of 1954, articles 5 and 7; Libya Law No. 18 of 1980 pertaining to the resolutions of the Nationality Act; Libya Nationality Law No. 24 of 2010.

199 Malawi Citizenship Act 1966, sections 12–15; Ghana Citizenship Act (No. 591 of 2000), section 14.

200 Proclamation 378/2003 on Ethiopian Nationality, section 5(3).

201 Organic law No. 29/2004 of 3 December 2004 on Rwandan nationality, section 15; Organic law No. 30/2008 of 25 July 2008 on Rwandan nationality.

202 Citizenship (Amendment) Act 1995, section 5, amending section 12 of the Citizenship Act, 1982.

203 Constitution of the Republic of Ghana, 1992, article 9(2); Ghana Citizenship Act, 2000, section 14(e).

204 Egypt Nationality Act (No. 26 of 1975).

205 Section 8, Sudanese Nationality Law 1957; Section 7, Sudanese Nationality Law 1993.

for naturalisation in 2010, removing French and Bambara (mainly spoken in Mali) from the list.[206] Even where there are no such rules on paper, cultural criteria may be applied. In Swaziland and Madagascar, persons who are not of Swazi or Malagasy ethnic origin often find it impossible to obtain nationality.[207]

Naturalisation procedures are often left almost entirely to the discretion of the executive in both the civil and common law systems. A large number of countries provide that no reasons need be given for the refusal to approve a naturalisation and the decision cannot be challenged.[208] In some cases, as in Niger, a failure to provide a decision on an application within a defined period is treated as a rejection, and the person must start again from scratch, while "the formal or implicit rejection of a request for naturalisation is not subject to any challenge".[209] In Liberia, however, uniquely in Africa, the Aliens and Nationality Law gives "exclusive jurisdiction" to naturalise persons as citizens of Liberia to the circuit courts in each county, which are to hear the application in open court. The attorney-general may also "designate an immigration officer to conduct a personal investigation of the person", on the basis of which the attorney-general may petition the court in support of, or opposition to, the application; the court must give reasons in case of denial of the application.[210]

Discretion in naturalisation is exemplified by the fact that almost all countries have provisions allowing for the grant of nationality by naturalisation in case of "exceptional services" rendered to the country or other similar criteria. Such provisions are often controversial: proposed amendments to the law to give the president more discretion to award naturalisation led to protests in Angola during 2014.[211] Comoros takes this to a higher level with its 2008 law on "economic citizenship", providing for the naturalisation of "economic partners" intending to invest a minimum sum in the country.[212] Controversially, the law has been invoked mainly for the grant of Comoros nationality documents to stateless persons, known as *bidoon*, from the United Arab Emirates (UAE) and more recently Kuwait, who have been pressed to take up this option. Human Rights Watch noted reports from *Le Monde* and *Al Jazeera* in 2009 that the UAE government paid US$200 million to the government of the Comoros, at that time equal to 40 per cent of the islands' GDP, to offer nationality to stateless UAE residents. The Comoros ambassador to the UAE was quoted in the *Financial*

206 Loi No. 2010-023 du 11 février 2010, replacing Art.19 of the nationality code to provide a new list of national languages: Arabic, Pular, Soninké and Wolof (previously Toucouleur, Saracollé, Wolof, Bambara, Hassaniya, Arabic and French. Toucouleur and Pular are effectively the same, and so are Saracollé and Soninké).

207 Bureau of Democracy, Human Rights, and Labor, "Swaziland" and "Madagascar", in the annual *Country Reports on Human Rights Practices*, US Department of State.

208 Among them, Central African Republic, Comoros, Congo Republic, Côte d'Ivoire, Djibouti, Equatorial Guinea, Guinea, Lesotho, Madagascar, Mali, Mauritania, Niger, Seychelles, Swaziland, Togo, Zambia and Zimbabwe.

209 Niger, Code de la nationalité 1984, art.24.

210 Aliens and Nationality Law, 1973, arts 21.1 to 21.5. Among the requirements to naturalise are that a person must "state that he does not believe in anarchy".

211 António Rocha, « Angolanos indignados com proposta de mudanças na Lei da Nacionalidade », Deutsche Welle, 7 October 2014.

212 Loi relative à la citoyenneté économique en Union des Comores, 2008, full text published in *Al Watwan* newspaper, 3 December 2008. The law was passed by 18 to 15 votes in the national assembly.

Times in 2012 saying that more than one thousand stateless persons had obtained Comoros nationality in this way. The hope held out was that on the basis of the Comoros documents, the *bidoon* could then regularise their status in UAE; but in at least one case the new nationality merely facilitated the deportation of the activist—to Thailand.[213]

In practice, the provisions of the law may be misleading in giving an indication of the ability of long-term residents to acquire the nationality of their new home. It is indicative of the difficulty of naturalisation that there are almost no published statistics about the numbers naturalised in most African countries. Those statistics that are available reveal that the numbers of naturalised persons vary hugely across countries, but are generally low.

In West Africa,[214] fewer than one hundred people had been naturalised in the course of 2013 in each of Senegal, Niger and Guinea;[215] in Burkina Faso, 62 were reported naturalised in 2005;[216] and in Senegal as of 2007, a total of only 12,000 people had been naturalised since independence in 1960.[217] In Niger and Guinea, the actual number naturalised was not known by the Ministry of Justice when interviewed in 2014, since naturalisation is ultimately by presidential decree on the discretion of the president, and there was no system of feedback on individual dossiers. In Niger, if the application is not considered within one year of its submission it lapses and the applicant has to start again. In Ghana, no non-Ghanaian was granted Ghanaian citizenship by naturalisation between 1993 and 2006.[218] In Nigeria, perhaps 100 to 200 people are naturalised each year—in a country of around 170 million—but the UNHCR only knows of a single refugee or former refugee (a Rwandan) who has been included among that number.[219] Even in Côte d'Ivoire a maximum of 92,000 people acquired nationality by naturalisation during the whole period from 1962 to 2013: though more than in some countries, this represented a trivial number in light of the

213 See, for example, "UAE: Free Blogger Activist—Advocate for Stateless 'Bidun' Says Authorities Threaten to Deport Him", Human Rights Watch, 28 May 2012; "UAE: Stop Expulsion of Bidun Activist", Human Rights Watch, 15 July 2012; "Kuwait 'playing games' with lives of more than 100,000 Bidun residents", Amnesty International, 10 November 2014.

214 West African information taken from Bronwen Manby, *Nationality, Migration and Statelessness in West Africa,* UNHCR and IOM, June 2015. Original footnotes included here for ease of reference.

215 Interviews with Ministry of Justice officials, Dakar, Niamey and Conakry, June 2014.

216 "Burkina Faso: 62 naturalisations en 2005", Press release from the Ministry of Justice reported in *Sidwaya Quotidien*, 11 July 2005.

217 "Accès à la nationalité sénégalaise: les mêmes textes pour tous les demandeurs," *APA News*, 13 August 2007.

218 Akyeampong, "Race, Identity and Citizenship in Black Africa".

219 Official figures are not published, but news stories indicate that numbers naturalised are of this order. See, for example, Emeka Anuforo, "79 foreigners get Nigerian citizenship", *The Guardian*, 31 January 2007; "FEC okays 119 for Nigerian citizenship", *The Nation*, 5 June 2008; "FG confers citizenship on 82 nationals", NAN, 18 August 2010; Ahamefula Ogbu, "FG Uncovers 1,497 Illegal Migration Routes into Nigeria", *This Day*, 15 March 2012; Elizabeth Embu, "FG Grants Citizenship to 174 Foreigners, Denies 27 applicants", *Daily Times*, 6 November 2013; Jibrin Lumba, "As Nigerians Relocate, Foreigners Struggle For Nigerian Citizenship", *Orient Daily,* 26 December 2013. Included in the numbers referred to are women married to Nigerian citizens who have applied to register as Nigerians, a far less demanding process under section 26 of the constitution. Also interview, UNHCR Abuja, July 2014.

millions of people who remained categorised in the census as "foreigners" although they had lived in Côte d'Ivoire for decades or generations.[220]

In North Africa, a mere 1,646 people were reported naturalised in Morocco between 1959 and 2007.[221] In Algeria a more substantial 47,000 obtained nationality between 1970 and 2009, the majority French, Palestinian, Syrian and Egyptian, but naturalisation procedures were significantly tightened in 1986—only 683 obtained nationality in 2008.[222] In southern Africa, the figures are similarly low, though variable. Of the nearly 20,000 foreigners who had applied for naturalisation in Swaziland since its independence until 2005, only 6,000 had been successful.[223] Botswana granted 39,000 people citizenship between 1966 and 2004.[224] Tanzania reported in 1998 that 1,000 people had naturalised in the previous four years in 1998, of whom half were Burundians.[225] Only in South Africa is there an effective system in place to allow people to become South African, with thousands of people naturalising each year, with others resuming citizenship or registering citizenship by descent—though the numbers dramatically reduced after 2010 (without official explanation).[226]

This difficulty in naturalising is partly a matter of law but even more a matter of practice: the procedures tend to be heavy in bureaucratic requirements, and in the processing. The system for application is similar in the civil law countries: an application for naturalisation is submitted at the *mairie* of the commune, requiring a dossier with the birth certificate and/or proof of nationality from the country of origin, proof of marriage (if relevant), the birth certificates of any children included in the application, a certificate of residence, proof of a clean criminal record (*casier judiciaire)*, and a letter of motivation. The mayor sends the application to the *Direction d'administration du territoire* for an inquiry into the morality of the person; and the dossier is then sent the Ministry of Justice to be verified, before it is sent on to the presidency for consideration. The final naturalisation is by *décret*, secondary legislation adopted by the president.

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220 Following the change of government in 2011, the Ministry of Justice conducted two surveys of the *Journal Officiel*, where naturalisation decrees are published, which concluded that at least 32,000 and perhaps up to 92,000 people had been naturalised between 1962 and the end of 2012 (the discrepancies might be explained by different counting methods applied to the spouses and children of those naturalised). Interview, Paul Koreki, Ministry of Justice, Abidjan, June 2014; also draft report by Mirna Adjami for UNHCR on Statelessness in Côte d'Ivoire, 2014, on file with author.

221 Perrin, "Citizenship struggles in the Maghreb".

222 According to a Ministry of Justice statement: "47 000 étrangers ont obtenu la nationalité algérienne depuis 1970», algeria.com, 21 Octobre 2009.

223 "About 6000 foreigners may become Swazi citizens," *Times of Swaziland*, 17 August 2005.

224 "Over 30,000 granted citizenship," *Daily News*, Gaborone, 31 March 2005.

225 Xinhua, 11 November 1998, available at http://www.queensu.ca/samp/migrationnews/1998/nov.htm, last accessed 24 September 2015.

226 According to figures published in the Department of Home Affairs Annual Reports, the numbers of people naturalised each year are:

2001/02	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
14,108	20,648	18,107	19,888	24,671	9,346	32,627	37,522	6,102	1,603

The 2002/03 Annual Report is not on the website (nor are earlier years) and the 2012/13 and 2013/14 Annual Reports did not contain this statistic. See http://www.dha.gov.za/index.php/about-us/annual-reports, last accessed 24 September 2015.

In Niger, for example, problems are created in this process particularly by the requirements that a person requesting naturalisation on the basis of ten years' residence has to provide both a certificate of nationality from the country of origin (even though they are not required to renounce that nationality), and residence permits showing legal residence for ten years (in the context where many migrants from other member states of the Economic Community of West African States (ECOWAS) rely on the zone of free movement, and the formal requirement to have a residence permit after 90 days is not enforced).[227]

The Commonwealth countries have equally onerous procedures to fulfil. In Nigeria, for example, where naturalisation requires fifteen years' residence and fulfilment of numerous other conditions,[228] an application for naturalisation is made to the Ministry of the Interior, and the dossier is then reviewed by a range of different state agencies, including the State Security Service, the Immigration Service, the police, the governor of the state and chair of the local government area where the person is resident, and other agencies. Ultimately, the dossier is passed to the Federal Executive Council for review and recommendation and the final decision is made by the president. A fairly substantial percentage of those who apply are rejected (perhaps 15 to 20 per cent, judging from press reports).[229]

In Sierra Leone, after filling out the necessary forms, the applicant is required to undergo a series of interviews at the Immigration Headquarters, the Criminal Investigation Department, and the National Revenue Authority. Final interviews are before a panel chaired by the minister of foreign affairs, and including the attorney general and minister of justice, the minister of trade, and the head of immigration. This committee forwards its recommendation to the cabinet for approval and the president has the final say. There is no requirement to give any reason for the refusal of an application for naturalisation, and the decision cannot be challenged in any court.[230] In 2006, procedures for naturalisation were simplified; however, according to the US Department of State 2010 human rights report, the government had approved no new naturalisations since the end of the war in 2002; moreover, a naturalised citizen must reportedly pay the equivalent of US$3,000 for a passport.[231] In 2013, President Koroma naturalised British journalist Mark Doyle and at least twenty others; still a very small number, restricted to an elite cadre of people.[232]

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227 Interview, Abdou Hamani, Ministry of Justice, Niamey, May 2014. Moreover, thanks to a bilateral agreement, a *permis de séjour* is not required for nationals of Mali, meaning that they would have no proof of residence.

228 Section 27 of the 1999 Constitution.

229 Interview, Nigerian National Immigration Service, Abuja, July 2014.

230 Sierra Leone Citizenship Act 1973, section 24.

231 Sierra Leone Citizenship (Amendment) Act No. 11 of 2006; Bureau of Democracy, Human Rights, and Labor, *2010 Country Reports on Human Rights Practices: Sierra Leone*, US Department of State, 8 April 2011; "Nasser Ayoub appeals to President Koroma", *Sierra Express*, 15 May 2012.

232 "Mark Doyle Subscribes to the oath of allegiance as Sierra Leonean", Sierra Leone presidency, 5 November 2013; "'We Expect You To Be Good Citizens' – President Koroma Admonishes", Sierra Leone presidency, 11 September 2013, both available at http://www.statehouse.gov.sl/index.php/component/content/article/34-news-articles/759-mark-doyle-subscribes-to-the-oath-of-allegiance-as-sierra-leonean, last accessed 24 September 2015.

Table 6: Right to acquire nationality by naturalisation

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Algeria	7 yrs	Assimilation into Algerian community	Good morality; no conviction involving loss of civil rights (*condemnation infamante*)	No	Good mental and physical health; means of subsistence	No conditions if exceptional services or special interest to Algeria	Yes, automatically	President must have nationality of origin	C1989(1996)Art73 L1970(2005)Arts10-17
Angola	10 yrs	Civic and moral guarantees of integration into Angolan society	Can be opposed before Supreme Court if no effective connection, sentenced to prison for more than 8 years, crime against security of state, worked for foreign state without authorisation, military service for another state	No	Capacity to make decisions (*reger a sua pessoa*); means of subsistence	Nat. Ass. can authorise naturalisation if relevant services or exceptional qualifications	Yes, on application	President must have nationality of origin, naturalised person can only be member of national assembly after 7 yrs	C2010Arts110,129, 145 L2005Arts10,13,17-18
Benin	3 yrs none for husband	Assimilation into Beninois community, in particular "sufficient knowledge" of Beninois language or French	Good conduct and morals; no convictions of more than a year of imprisonment	No	Good physical and mental health	No residence period if born in Benin or important services or interest for Benin	Yes, automatically	President must be national of origin or naturalised 10 yrs; generally 5 yrs before public functions; 3 yrs before can vote	C1990Art44 L1965Arts34-36,41-43
Botswana	11 yrs (10+1)	Sufficient knowledge of Setswana or any language spoken by any "tribal community" in Botswana	Good character	No	–	Any person may be registered if signal honour or distinguished service, or special circumstances; language requirement may be waived	Yes, at discretion of minister	President and vice president must be citizen by birth or descent	C1966(2002) Arts33&39 L1998(2002&04) Arts9-14
Burkina Faso	10 yrs 2 yrs if born in BF	–	Good conduct and morals; no convictions for more than one year of imprisonment	No	Good mental health	Period reduced to 2 years if born in BF or important services etc; important investments if a business person	Yes, automatically	3 yrs before public functions or vote	L1989Arts162-170, 180-184

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Burundi	10 yrs 5 yrs for husband	Attachment to Burundi and "assimilation with Burundian citizens"	Good conduct and morals; no convictions for any "crime" or "délit"	No	–	Exception to res. period can be made in cases of "exceptional service" to Burundi	Yes, automatically	President must be national from birth; otherwise 10 yrs before can be elected	C2005Art97 L2000Arts3&7-9
Cameroon	5 yrs none for husband	Cameroon the "centre of his/her principal interests"	Good conduct, life and morals; no convictions for any "crime" or "délit"	Yes	Good physical and mental health	No residence period if born in Cameroon or "exceptional services"	No	5 yrs before eligible to be elected	L1968Arts25-27,30&31
Cape Verde	5 yrs	–	Produce police report	No	Capacity to make decisions; means of subsistence	Period can be waived if of CV descent, or if sizable investment promised	Yes, on application	President must have nationality of origin	C1992(2010)Art110 L1993Arts8,12,13(cross refer to L1992Art12)
CAR	35 yrs	–	–	No	–	In addition to 35 yr res, must also have sufficient investments in permanent agriculture or property and have received a national honour; no conditions if "exceptional services"; no residence period some cases for children or spouse	Yes, automatically if father acquires (or mother if father dead), though can be opposed	3 yrs before can vote or be appointed to office; 5 yrs before can be elected	L1961Art26-31,41-45
Chad	15 yrs	–	Good conduct and morals; no convictions to prison sentence	No	No physical or mental incapacity that could be a charge on the collective	Period can be waived if "exceptional services" and the person was born in Chad	Yes, automatically	President must be national from birth, of two parents also nationals of origin; otherwise, decrees may establish restrictions	C1996Art62 L1962Arts21-24
Comoros	10 yrs 5 yrs for husband	Assimilation with the Comorian community	Good conduct and morals	No	Sound mind; physical health means will not become a charge on the public	Period reduced to 5 yrs if born in Comoros or in case of "important services"; no residence period in some cases for children or spouse. Fee set in law at 20,000F (1979)	Yes, automatically if father acquires (or mother if father dead), though can be opposed	10 yrs before can be elected, 5 yrs before can vote or be appointed to office	L1979Arts28-35,48-50

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Congo Republic	10 yrs	Assimilation with Congolese community	Good conduct and morals; no convictions to more than 1 yr of prison	Yes	Sound mind; physical health means will not become a charge on the public	No residence period in some cases for children or spouse, or if exceptional services	Yes, automatically if father acquires (or mother if father dead), though can be opposed	President must be national of origin; otherwise 10 yrs before can be elected, 5 yrs before can vote or be appointed to office	C2002Art57 L1961(1993)Arts27-34, 44-46
Côte d'Ivoire[a]	5 yrs	–	Good conduct and morals	No	Sound mind; physical health means will not become a charge on the public	Period reduced to 2 yrs if born in CI or if "important services"; no residence period in some cases for children or spouse, or if "exceptional services"	Yes, automatically	President must be national of origin, of both parents also nationals of origin; 10 yrs before can be elected, 5 yrs before can vote or be appointed to office	C2000Art35 L1961(2013)Arts25-32, 42-47
Dem. Rep. Congo	7 yrs	Speak one of the Congolese languages; must then maintain clear cultural, professional, economic, emotional or familial links with the DRC	Good conduct and morals; never convicted for treason, war crimes, genocide, terrorism, corruption or various other crimes	Yes	–	Must have rendered distinguished service or naturalisation must be of real benefit to the country. Other conditions also apply in case of marriage	Yes, automatically	President must be national of origin; laws may place restrictions	C2006Art72 L2004Art11,18-25,49
Djibouti	10 yrs/5 yrs for spouse if there are children	Assimilation, in particular sufficient knowledge of one of the languages used	Good conduct and morals; no convictions for "crime" or "délit" against state security, 6 mths in prison for crime of dishonesty	No	Good health	Period reduced to 5 years if important services	Yes, automatically		L2004Arts12-22

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Egypt[b]	10 yrs	Knowledge of Arabic	Good conduct and reputation, no convictions for crime against honour	No	Mentally sane and no disability; "legal means to earn a living"	No residence period for foreigner born in Egypt if applies within one year of majority, but other conditions apply. No other conditions (except remains discretionary) for: (i) person born in Egypt with father of "Egyptian origin"; (ii) person of "Egyptian origin" after 5 years residence; (iii) person born in Egypt of foreign father also born in Egypt if father from Arab or Muslim country – if application within one year of majority. No conditions if "honourable services to Egypt and to the heads of the Egyptian religious sects"	Yes, automatically	President and prime minister must be an Egyptian born to Egyptian parents; otherwise 10 yrs before can be elected or be appointed to office; 5 yrs before can vote	C2014 Arts141&164 L1975(2004)Arts4-6,9
Equatorial Guinea	10 yrs	–	–	Yes		Residence requirement can be reduced to 5 yrs if important services or investments; or to 2 yrs in case of person born in EG who failed to opt under Art2, adopted children or husbands	No	President must be national of origin	C2012Art35 L1990Arts4,6-17
Eritrea[c]	20 yrs	Understands and speaks one of the languages of Eritrea	High integrity and not convicted of any crime	Yes	Free of mental and physical disabilities, not a burden on society, ability to provide for own and family's needs	Residence period 10 yrs if before 1974) Must not have committed "anti-people act during the liberation struggle of the Eritrean people"	Yes, on application	President must be national by birth	C1997Art40 L1992Art4,6&7
Ethiopia	4 yrs	Able to communicate in any one of the languages spoken by the nations/ nationalities of the country	Good character, no record of criminal conviction	Yes	Sufficient and lawful source of income to maintain himself and his family	Foreigner making "outstanding contribution" may be exempted from conditions	Yes, on application	No	C1994Art33 L2003Art4-12,18

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Gabon	5 yrs	–	Good conduct and morals; no convictions for "crime" or "délit"	No	No grave physical or mental incapacity	Should have "invested" in the country; period can be reduced if the person has provided "exceptional services"	Yes, automatically	President must be national of origin (and only fourth-generation descendant of naturalised can be candidate); otherwise 10 yrs before can be elected	C1991(2003)Art10 L1998Arts9,26,30-32
Gambia !!	15 yrs		Good character	Yes	Capable of supporting self and dependents		Yes, on application	President must be national by birth or descent	C1996(2001) Arts12&62 L1965Art3-6 & Schedule 2
Ghana	6 yrs	Speak and understand an indigenous language; assimilated into Ghanaian way of life	Good character attested by two Ghanaian lawyers, senior office holders or notaries public; no conviction to prison sentence	No	–	"Capable of making a substantial contribution to progress or advancement in any area of national activity"; conditions can be waived in "special circumstances"	Yes, on application	President must be citizen from birth	C1992Arts9,62,94 L2000Art11-14
Guinea	5 yrs 2 yrs for husband	–	Good conduct and morals; no conviction to more than 1 yr in prison	No	Sound mind, physical health means will not become a charge on the public	Period reduced to 2 yrs if born in Guinea or "important services"; no residence period in some cases for children or spouse, or if "exceptional services"	Yes, automatically if father acquires (or mother if father dead)	10 yrs before can elected; 5 yrs before can vote or be appointed to public office	L1983Arts62,72-80, 88-94
Guinea-Bissau	6 yrs	Basic knowledge of and identification with Guinea-Bissau's culture	Govt can oppose in case of conviction to 6 yrs prison or crime vs state and other cases	No	–	No residence period if services rendered to the Guinean people before or after the liberation struggle or for Guinea's development	Yes, on application	No	L1992(2010)Arts6,9,12
Kenya	7 yrs	"Adequate knowledge of Kenya and of the duties and rights of citizens"; able to understand and speak Kiswahili or a local dialect	No convictions more than 3 yrs prison	No	"Understands the nature of the application"; not judged bankrupt	Has been determined to be "capable of making a substantive contribution to the progress or advancement in any area of national development within Kenya", special provisions for stateless persons	Yes, on application	President and deputy president must be citizen by birth; otherwise 10 yrs before can be elected as MP	C2010Arts99&137 L2011Arts13&22

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Lesotho	5 yrs	Adequate knowledge of Sesotho or English	Good character	Yes	No mental incapacity; financially solvent	Preferential treatment for persons from Commonwealth countries and stateless persons (some conditions waived)	Yes, on application, if of "good character"	No	L1971Arts9-12
Liberia ~	2 yrs	"No person shall be naturalised unless he is a Negro or of Negro descent"	Good moral character and attached to principles of Liberian constitution; must "state that he does not believe in anarchy"	Yes	–	Residence period may be waived by president. Exclusive jurisdiction to naturalise is conferred on the circuit courts	Yes, if born outside (so *jus soli* does not apply) and father naturalises, providing resident in Liberia	President and vice president must be "natural born Liberian citizen"	C1984Arts27&52 L1973Art21.1 to 21.10 & 21.31
Libya ~	10 yrs		Sound conduct and behaviour, no convictions for crime breaching honour or security	No	Lawful entry; legitimate, steady source of income; free of infectious diseases; not older than 50 yrs	On proposal of the secretary of the General People's Committee for Public Security; conditions do not apply to various cases, including those offering significant or exceptional services. Palestinians may not be granted nationality, except Palestinian women married to Libyan men	No	10 yrs before can be appointed to high positions	L2010Arts9-11&18
Madagascar	5 yrs	Assimilation into the Malagasy community, including sufficient knowledge of Malagasy language	Good conduct and morals; no conviction more than 1 yr in prison or various other offences	No	Sound mind; physical health means will not become a charge on the public	No residence period if important services to the state or wife of foreigner who naturalises	Yes, automatically	10 yrs before can be elected; 5 yrs before can vote or be appointed	L1960Arts27-29,35-41
Malawi	7 yrs	Knowledge of prescribed vernacular language or English	Good character and suitable citizen	Yes	Financially solvent	Preferential treatment for Commonwealth citizens, citizens of other African states, and persons with a close connection to Malawi, women married to Malawian citizens, and for stateless persons born in Malawi; all conditions may be waived in "special circumstances"	No	President and vice president must be citizens by birth or descent	C1994(1998)Art80 L1966(1992)Arts12-21

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Mali	10 yrs	Integration into the Malian community	Good conduct and morals; no convictions more than 1 yr in prison or various other offices	No	Sound mind	Period reduced to 5 years for a person who has provided "exceptional services" to the state or for child born in country of foreign parents	Yes, automatically, if father or mother acquires	President must have nationality of origin; 5 yrs before can be elected, 2 yrs before can vote or be appointed	C1992Art31 L2011Arts231, 238-244&247-8
Mauritania	10 yrs	Must speak fluently one of: Arab, Pulaar, Soninké or Wolof	Good conduct and morals; no convictions with prison sentence	No	Sound mind and body	Residence period can be reduced to 5 yrs if born in Mauritania, or married under *shari'a* law to a Mauritanian, or if "exceptional services"	Yes, automatically	President must be born Mauritanian; 5 yrs before can be elected or appointed to public office	C1991Art26 L1961(2010)Arts15, 18-19
Mauritius	6 yrs (1+5)	Knowledge of English or any other language spoken in Mauritius, and of the responsibilities of a citizen of Mauritius	Good character	Yes	–	Preferential terms for Commonwealth citizens; residence period can be reduced if, for instance, the person has made investments in Mauritius	Yes, on application (discretionary)	No	L1968(1995)Arts5-10
Morocco	5 yrs	Sufficient knowledge of Arabic	Good conduct and morals; no convictions for various crimes	No	Sound body and mind; sufficient means of existence	Conditions may be waived if "exceptional services" or an "exceptional interest" for Morocco	Yes, automatically	5 yrs before can be elected or appointed to public office	L1958(2007)Art11-13 & 16-18
Mozambique !!	10 yrs	Knowledge of Portuguese or a Mozambican language	Good reputation (*idoneidade civica*)	No	Capacity to make decisions (*reger a sua pessoa*); means of subsistence	Residence period and language can be waived if the person has provided "relevant services" to the state	Yes, on application	President must be national of origin; naturalised citizens cannot be deputies, members of government or in diplomatic or military service	C2004Arts27,30, 147 L1975(1987)Arts11-13
Namibia	10 yrs	Adequate knowledge of the responsibilities and privileges of Namibian citizenship	Good character; no convictions in Namibia for listed offences	Yes	–	Honorary citizenship may be granted if "distinguished service"	Yes, on application (discretionary)	President must be citizen by birth or descent	C1990(2010) Art4(5)&28 L1990Art5,6&14

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Niger	10 yrs	–	Good conduct and morals; no convictions to prison	No	–	Residence period can be waived if exceptional services	Yes, automatically	President must be national of origin; 10 yrs before can elected or appointed to public functions for which must be Nigerien; 5 yrs for other positions	C2010Art47 L1984(2014)Arts21-29
Nigeria	15 yrs	Acceptable to and assimilated into the way of life of the local community in which he is to live permanently	Good character	Only of other non-birth nationalities	–	Capable of making a contribution to the advancement, progress and well-being of Nigeria	No	President and state governors must be citizens by birth	C1999Arts27-28, 131&177
Rwanda	5 yrs	Respect Rwandan culture and be patriotic	Good behaviour and morals; no convictions for 6 months prison	No	Not a burden on the state	The owner of "sustainable activities in Rwanda"; not implicated in the ideology of genocide; conditions can be waived for a person "of interest" to Rwanda	Yes, automatically	President must be national of origin and at least one parent also national of origin	C2003Art99 L2008Arts5&13-17
Sahrawi ADR									n/a
São Tomé and Príncipe	5 yrs	Knowledge of Portuguese or another national language; civic and moral guarantees of integration into STP society	–	Yes	Capacity to make decisions (*reger a sua pessoa*); means of subsistence	Conditions can be waived in case of relevant services or higher state interests/reasons. Govt can oppose in court within 1 yr on national security grounds or grounds of having committed a major crime	Yes, on application	President and prime minister must be nationals of origin	C2003Art78&100 L1990Arts7&10
Senegal	10 yrs	–	Good morality; no convictions to prison sentence	No, but stated to be incompatible with another nationality	Sound mind; physical health means will not become a charge on the public.	Residence period may be reduced if the person has provided important services to Senegal or if naturalisation is an exceptional interest for Senegal	Yes, automatically	10 yrs before can be elected or appointed to posts for which need to be Senegalese, or be minister or member of civil service; 5 yrs before can practice in profession for which need to be Senegalese.	L1961(2013)Arts10,12, 16bis

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Seychelles	15 yrs	Obtains at least 80 per cent of marks in 1 of the 3 national languages in a citizenship qualifying examination	Not been sentenced to prison sentence of 1 yr or more	No	–	"Special circumstances" must justify the naturalisation: (a) extraordinary ability in science, arts, education, economics, business, law or sports; (b) degree in an area that is likely to contribute significantly to the development of Seychelles; (c) significant contribution to the development of Seychelles; or (d) marriage to a Seychellois and there are children. Special terms for spouses, investors, those who have studied in Seychelles and those with Seychellois ancestry. Conditions may be waived if distinguished service rendered	Yes, on application (discretionary)	No	C1993(2011)Arts10-13 L1994(2013)Art4-6
Sierra Leone~	15 yrs	Adequate knowledge of indigenous language	Good character	No	–	Capable of making useful and substantial contribution to advancement, progress and wellbeing of SL. Residence period 8 yrs for a person "of Negro African descent"	Yes, on application	Naturalised citizen cannot be president, member of any commission, diplomat or member of armed forces, senior civil servant, or MP	L1973(2006)Arts7-9&22, Schedules 2&3
Somalia	7 yrs	–	Good civil and moral conduct	Yes	–	Period can be reduced to 2 yrs for "child of a Somali mother". Honorary citizenship possible in case of "exceptional circumstances"	No	No	L1962Arts4-9
South Africa	5 yrs	Communicate in one of 11 official languages	Good character, adequate knowledge of the privileges and responsibilities of citizenship	Yes, if other country does not allow dual citizenship	–	Must first acquire permanent residence, which usually takes 5 years. Conditions may be waived in "exceptional circumstances"	Yes, on application	No	C1996Art3 L1995(2010)Art5
South Sudan	10 yrs	–	Not convicted offence related to honesty and moral turpitude	–	Sound mind (if of unsound mind, parent or guardian may apply)	Conditions may be waived if individual has served in the national interest	Yes, on application	President must be citizen by birth	C2011Art98 L2011Arts10-11

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Sudan	10 yrs	–	Good morals; not convicted of a crime against honour or honesty	–	Sound mind; lawful way of earning a living	Notwithstanding any provision to the contrary, president can grant nationality to any alien	Yes, on application	President must be citizen by birth	C2005Art53 L1994(2011)Arts7,9
Swaziland	5 yrs	Adequate knowledge siSwati or English	Good character	Not always, but can be required to do so	Adequate means of support	Must "contribute to the development of the country". Special procedure for those supported by chief's council	No	No	C2005Arts45&49 L1992Art9
Tanzania	8 yrs	Adequate knowledge of Kiswahili or English	Good character	Yes	–	In terms of potential contribution, would be a suitable citizen. Child born outside country of father who was citizen by descent may naturalise without other conditions	Yes, on application	President must be citizen by birth	C1977(1995)Art39 L1995Arts8-10&2nd schedule
Togo	5 yrs imm. for husband	Assimilation to the Togolese community, including sufficient knowledge of a Togolese language	Good conduct and morals; no convictions more than 2 yrs in prison	Yes	Sound body and mind	Togo centre of principal interests. No residence period if born in Togo or "exceptional services"	Yes, automatically if father acquires	President must be citizen from birth; 5 yrs before can be elected or appointed to post where must be Togolese national	C1992(2002)Art62 L1978Arts10-14,19,38
Tunisia	5 yrs imm. for husband	Sufficient knowledge of Arabic	Good conduct and morals; no convictions for more than 1 yr in prison	No	State of health means would not be a charge on the public	No residence period required if person was Tunisian by origin, or if "exceptional services"	Yes, automatically, if father acquires (or mother if widow)	President must be national by birth; otherwise 5 yrs before can be elected or appointed to public office if reserved for Tunisians, or vote	C2014Art74 L1963(2010)Arts19-27

Country	Res. period	Language/cultural requirements	Character	Ren. other	Health/ income	Other[1]	Minor children included?	Limits on rights for naturalised[2]	Legal provision
Uganda[d]	10 yrs (if "legal and voluntary")	–	–	In some circum-stances	–	Significant additional conditions apply if wishes to hold dual nationality.	No	President must be citizen by birth	C1995(2005)Art12(2)(b)&102 L1999(2009)Art14(2)(b),15,19,19B&19C
	20 yrs (if not "legal and voluntary")	Adequate knowledge of "a prescribed vernacular language" or English	Good character	In some circum-stances	–	May be refused if "immigration file contains substantial inconsistencies as to put his or her demeanour in issue". Significant additional conditions apply if wishes to hold dual nationality			C1995(2005)Art13 L1999(2009) Art16&19,19A,19C
Zambia !!	10 yrs	Adequate knowledge of English or any other language commonly used by indigenous inhabitants in Zambia	Good character	Yes	Sound mind	Conditions may be waived if "distinguished service" to Zambia or other "special circumstances" exist	Yes, on application	Both parents of president must be citizens by birth or descent	C1991(1996)Art6-7&34 L1975(1994)Arts12-18
Zimbabwe !!	10 yrs	–	Good character; "fit and proper person"	Yes	Sound mind	Residence period can be reduced by the president under "special circumstances"	Yes, on application (discretionary)	President and vice president must be citizen by birth or descent Equal rights	C2013Arts35,38(2)&91 L1984(2003)Arts4&5

Notes

1 Most countries require the person to be adult, currently and legally resident and to intend to remain so if they wish to naturalise; these provisions are not included here.

2 Provisions in the nationality law and constitution (not including electoral code)

n/a not available

imm. Immediate

~ racial, ethnic or religious discrimination applies

!! the position is ambiguous in that legislation conflicts with the constitution; constitutional provisions noted here (in Zambia the Citizenship Act refers to a provision in the abrogated 1973 constitution, which is repeated in a different article of the 1991 constitution, so it is presumed the law remains valid)

a Côte d'Ivoire instituted a temporary special naturalisation procedure in 2013. The provisions here are the normal procedures

b Egypt has five separate grounds for naturalisation, based on racial and religious origin

c Eritrea provides additional criteria for the attribution of nationality to persons resident in Eritrea between 1934 and 1952; these are described as naturalisation but are non-discretionary, and more in the nature of transitional provisions

d Uganda has particularly complex distinctions between registration and naturalisation which are hard to represent in table form; significant additional conditions apply if the person wishes to have dual citizenship.

NB. There is simplification of complex provisions

Nationality requirements for public office

A number of African countries have rules prohibiting people with dual nationality or those who are naturalised rather than nationals from birth from holding senior public office, on the grounds that such office holders should not have divided loyalties.

Dual nationality

The constitutions or nationality laws of several countries prohibit the president (and vice president and/or prime minister) from holding dual nationality, including Algeria, Cape Verde, Chad, Djibouti, Egypt, Equatorial Guinea, Gambia, Ghana, Kenya, Mozambique, São Tomé and Príncipe, Senegal, Togo and Uganda. (In other cases, such exclusions are provided in the electoral code: these have not been surveyed for this overview.)

Ghana has an absolute prohibition on dual citizens holding a set of listed positions[233], and several Ghanaian politicians have been barred from taking up ministerial positions until they have renounced a foreign nationality.[234] In Côte d'Ivoire, the constitution prohibits those who have *ever* held another nationality from becoming the president of the republic or the speaker or deputy speaker of parliament.[235] Uganda has a whole list of public offices that cannot be held by dual citizens, introduced at the time general rules on dual citizenship were relaxed. Kenya's 2010 constitution similarly introduced, at the same time as the general prohibition on dual citizenship was lifted, a ban on dual nationals holding any state office (except for judges and members of commissions).[236] Similar rules have been the subject of challenge in Egypt (see box). In DRC, dual nationality is generally prohibited under the law, but in early 2007 the newly elected National Assembly hastily adopted a resolution purporting to bring in a six-month moratorium on the enforcement of the provision, after it emerged that a large number of politically important

233 Ghana Citizenship Act of 2000, section 16(2) lists the following posts to which a dual citizen may not be appointed: "(a) Chief Justice and Justices of the Supreme Court; (b) Ambassador or High Commissioner; (c) Secretary to the Cabinet; (d) Chief of Defence Staff or any Service Chief; (e) Inspector-General of Police; (f) Commissioner, Custom, Excise and Preventive Service; (g) Director of Immigration Service; (h) Commissioner, Value Added Tax Service; (i) Director-General, Prisons Service; (j) Chief Fire Officer; (k) Chief Director of a Ministry; (l) The rank of a Colonel in the Army or its equivalent in the other security services; and (m) Any other public office that the Minister may by legislative instrument prescribe." See also, Constitution of the Republic of Ghana, 1992, article 94(2).

234 For example, in the cases of Ekow Spio-Garbrah, Akwasi Agyemang Prempeh, and Stephen Dee Larbi. The rules were litigated in the case of *Professor Stephen Kwaku Asare v. Attorney-General* [2012] SCGLR 460, decision delivered on 22 May 2012; discussed in Daniel Korang, "Limited rights of dual citizens: a resurgence of caste system?" 10 August 2013, at http://www.ghanaweb.com/GhanaHomePage/features/artikel.php?ID=281797, last accessed 24 September 2015.

235 Constitution of Côte d'Ivoire, Articles 35 and 65.

236 Constitution of Kenya, 2010, Article 78.

members of the Assembly in fact held two passports. A special committee was appointed to propose a solution to the problem.[237]

In Nigeria, the 1999 constitution appears to ban holders of elected public office from holding another nationality "subject to" the provisions of the article that permits dual nationality for other citizens in most cases;[238] however, the Court of Appeal has held that dual citizenship is in fact no disqualification for public office for a Nigerian citizen from birth, given that the constitution allows a citizen from birth to hold another nationality.[239]

Naturalised persons

There are often distinctions between the rights enjoyed by those who have naturalised as against those who have held nationality from birth. Only a few African countries, including Ethiopia, provide that all nationals have equal rights, regardless of how nationality was obtained. In particular, the state may usually deprive a naturalised person of his or her nationality much more easily; in the Commonwealth countries it is common for deprivation only to be possible at all in the case of those who have acquired citizenship as an adult.

Some countries also place restrictions on the role of naturalised citizens in public life (see the second to last column in Table 6). Nationality laws in Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Comoros, Congo Republic, Côte d'Ivoire, Egypt, Gabon, Guinea, Kenya, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Senegal, Togo and Tunisia impose a waiting period of three to 10 years before naturalised citizens can hold a range of offices. Mozambique has a wide prohibition on naturalised citizens being deputies of the parliament, members of the government and members of the diplomatic service and military. Constitutional prohibitions on naturalised citizens holding the presidency exist in at least 23 countries: Botswana, Burundi, Côte d'Ivoire, Equatorial Guinea, Gabon, Ghana, Kenya, Liberia, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Sierra Leone, South Sudan, Sudan, Tanzania, Togo, Uganda and Zambia. (Other countries may have provided the same ban in the electoral code; these have not been surveyed as part of this research.) In Gabon, the president must be fourth-generation Gabonese; in Côte d'Ivoire and Zambia, both parents must also be nationals from birth; in Rwanda, at least one parent of the president must be a national from birth; Mozambique and Sierra Leone permanently bar naturalised citizens from a wide range of offices. In Algeria, the Constitutional Council has at least twice criticised (in 1989 and 1995) a clause introduced into

237 « Un moratoire accordé aux personnes concernées par la double nationalité », Agence Congolaise de Presse, 13 February 2007.

238 For example, Article 182 (1)(a) of the 1999 constitution provides that: "No person shall be qualified for election to the office of governor of a state if, subject to the provision of 28 of this constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country". Similar provisions apply to members of the Federal House of Representatives and Senate, to State Houses of Assembly, and to the president (articles 66, 107 and 137).

239 *Ogbeide v. Osula* [2004] 12 NWLR, Part 886, page 86.

the electoral law forbidding candidates to stand for election as president if they or their spouses do not hold Algerian nationality of origin.[240]

The African Commission considered restrictions on political rights based on the nationality of the parents of a candidate (but not the type of nationality of the candidate him or herself) in its decision on the provisions of Article 35 of the constitution of Côte d'Ivoire as applied to Alassane Ouattara, and found them to be in violation of the African Charter (see the section on the jurisprudence of the African human rights bodies on page 33).

Egypt: Nationality and political rights

The Egyptian constitution provides that "Egyptian Nationality is defined by law".[241] The law in force is Law No. 26 of 1975 Concerning Egyptian Nationality (as amended in 2004), which forbids an Egyptian national from obtaining nationality of another country without the permission of the minister of the interior.[242] However, in practice a person is considered to retain Egyptian nationality together with the new nationality unless a notice is published in the Official Gazette that Egyptian nationality is lost.[243]

Between 1998 and 2003, 26 individuals lost their nationality because they obtained foreign nationalities without the consent of the Egyptian government. In addition, between 1986 and 2004, 7,196 individuals lost their Egyptian nationality after being allowed to obtain foreign nationalities and abandon their Egyptian one. It is possible for a person to appeal the minister's decision to revoke nationality with the Council of State.[244]

The issue of dual nationality in Egypt has proved contentious, particularly as it relates to politicians and other prominent public figures, even though no restrictions were placed on dual nationality for elected representatives in the 1971 constitution or in the 1975 nationality law. The controversy came to the fore on the eve of the parliamentary elections in October 2000, when a candidate contested the credentials of his opponent and asked for his exclusion on the grounds that he had both Dutch and Egyptian nationalities. In January 2001, three court decisions barred Egyptians who held dual nationality from being

240 Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Twelfth Periodic Reports due in 1995: Algeria*, CERD/C/280/Add.3, 5 June 1996. Samia Bourouba, *Jurisprudence and Human Rights Standards in Arab Courts: Algeria – Iraq – Jordan – Morocco – Palestine*, Raoul Wallenberg Institute, 2013.

241 Constitution of the Arab Republic of Egypt, 1971, article 6; the 2014 Constitution, article 6, repeats this provision but also adds that nationality is the right of any child of an Egyptian father or mother.

242 "It is not permitted for an Egyptian to obtain a foreign nationality without the Minister of Interior's permission; otherwise he will be considered an Egyptian citizen in all forms and situations provided the Council of Ministers does not decide to revoke his citizenship in accordance with Article 16 of this Law. The Egyptian citizen will lose his nationality if he obtains a foreign citizenship after receiving permission from the authorities. However, it is permitted that the applicant's request to obtain a foreign nationality contain a request to keep the Egyptian citizenship for himself, his wife and his children. If he expresses his wish to keep his Egyptian citizenship during a period that does not exceed one year following his naturalisation, he and his family will keep their Egyptian citizenship despite their naturalisation." Egypt Nationality Act (No. 26 of 1975), section 10 (unofficial translation by the UNHCR).

243 According to expert evidence given to the UK Special Immigration Appeals Commission in the case of *Abu Hamza v. Secretary of State for the Home Department*, Appeal No: SC/23/2003, preliminary issue open judgment, dated 5 November 2010.

244 A. Khalil, *Halat Isqat wa Zawal Al-Genseya Al-Misriya*. (*Cases of Revocation and Loss of Egyptian Citizenship*), cited in Center for Migration and Refugee Studies, *Africa Citizenship and Discrimination Audit: The Case Study of Egypt*, 2005. On the other hand, between 1986 and 2005, 819 persons had their citizenship restored following a decision/decree issued by the Minister of Interior in accordance with section 18 of the Nationality Law (Ibid.).

members of parliament. In the first case, the Administrative Court ruled that a business magnate, Rami Lakah, who held a French passport in addition to his Egyptian nationality, could not be a parliamentarian. Basing its decision on Article 90 of the 1971 constitution, which required an oath to preserve the safety of the nation, the court held that, since Egyptians who carry other nationalities are exempt from military service and prohibited from enrolling in military and police academies, "it cannot be imagined that the person who is required to look after the country's interest may share his loyalty to Egypt with another country". The second and third decisions, by the Supreme Administrative Court, went against Mohamed Ahmed Mohamed Saleh, who was said to have forfeited Egyptian nationality after gaining German nationality, and Talaat Mutawi, who held American and Egyptian passports. The decisions were final and could not be appealed. In September 2001, the Supreme Administrative Court confirmed that the parliamentary membership of Lakah was null and void because he had dual nationality.

These decisions encouraged other persons to file similar appeals against prominent ruling National Democratic Party candidates believed to hold dual nationality, including Economy Minister Youssef Boutros Ghali, Minister of Housing Mohamed Ibrahim Suleiman, and a businessman, Mohamed Abul-Enein. Ghali and Suleiman presented the court with documents attesting that they did not hold a second nationality.[245]

The People's Assembly (the Egyptian parliament), argued that it had sole jurisdiction over its own affairs, but confirmed the cancellation of the membership of both Lakah and Mutawi. In 2004, however, the Constitutional and Legislative Affairs Committee of the Assembly stated its opinion that appointing dual nationality persons to the cabinet did not violate the law or the constitution, on the grounds that the court ruling banning dual nationality persons from standing for election did not apply to appointed ministers and executive officials. The chair of the committee, Mohamed Moussa, added that he saw no need to amend the nationality law, noting that dual nationals should enjoy all constitutional and legal rights granted to nationals except election to parliament.[246]

Nationality and public office in Egypt came back to prominence following the upheavals set off by the 2011 Arab awakening and the fall of President Hosni Mubarak. New strict nationality requirements were introduced for those wishing to be run for president in 2012, requiring that candidates be born in Egypt to Egyptian parents, none of them dual nationals, and not be married to a foreigner.[247] At least one Islamist candidate, Hazim Abu Isma'il, was removed from the ballot because of his mother's acquisition of US citizenship.[248] In 2014, the new constitution confirmed these new conditions. Article 141 stated that "[a] presidential candidate must be an Egyptian born to Egyptian parents, and neither he or his parents or his spouse may have held any other nationality." Article 164 provided the same criteria for the prime minister.

245 Amira Howeidy, "Egyptian to the core", *Al-Ahram Weekly On-line*, 11–17 January 2001, Issue 516.

246 Omayma Abdel-Latif, "On the edge", *Al-Ahram Weekly Online*, 30 August – 5 September 2001, Issue 549; *Akher Sa'a* (Cairo), 2 November 2001; *Asharq Al-awsat* (London), 18 July 2004. Assistance in research in Arabic was kindly given by the late Abdel Salam Hassan, formerly of the Sudan Human Rights Organisation and Justice Africa.

247 "Egypt sets presidential election rules", BBC News, 30 January 2012.

248 Gianluca Parolin, "Egypt: Citizenship Requirements at the Test of Presidential Elections", http://eudo-citizenship.eu/news/citizenship-news/655-egypt-citizenship-requirements, 4 June 2012, last accessed 24 September 2015.

Rights for the African diaspora

Some African countries—among them Ethiopia and Ghana—have created an intermediate status for members of their diaspora, in addition to or instead of creating a right to dual nationality.

Ethiopia

Ethiopia has never recognised dual nationality. The 1930 Nationality Law, the 1995 Constitution and the 2003 Proclamation on Ethiopian Nationality all provide a comprehensive ban on holding another nationality.

Hundreds of thousands of people of Ethiopian descent live in foreign countries, whether they fled as refugees or seeking better economic opportunities, mostly to neighbouring countries (where naturalisation is difficult), but many to the United States and Europe, where they acquired new nationalities. Although advocacy for dual nationality was not successful, since 2002, "foreign nationals of Ethiopian origin" may be issued special identity cards that entitle the holder to various benefits. A foreign national of Ethiopian origin is defined as follows:

> A foreign national, other than a person who forfeited Ethiopian nationality and acquired Eritrean nationality, who had been an Ethiopian national before acquiring a foreign nationality; or at least one of his parents, grand parents or great grand parents was an Ethiopian national.[249]

Holders of such cards enjoy rights and privileges that other foreigners do not, including visa-free entry, residence and employment, the right to own immovable property in Ethiopia, and the right to access public services.

Ghana

Ghana's substantial overseas diaspora has resulted in a change to the previous prohibition on holding two passports.[250] Since 2002, Ghana has accepted dual citizenship, although the Citizenship Act prohibits Ghanaians who have acquired citizenship of another country from being elected to the presidency or to parliament, and from appointment to certain public offices (see above).

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249 "Proclamation No. 270/2002: Providing Ethiopians resident abroad with certain rights to be exercised in their country of origin", 5 February 2002.

250 Doreen Lwanga, "Ghana upholds the spirit of pan-African citizenship," *Pambazuka News*, 7 March 2007; Constitution of the Republic of Ghana, articles 10 and 13; *Ghana—Democracy and Political Participation*, Dakar: Open Society Initiative for West Africa and AfriMAP, 2007, pp. 27–28.

Ghana is also the first African state to provide the right of return and indefinite stay for members of the broader African diaspora. Under Section 17(1)(b) of the Immigration Act 573 of 2000, the minister of the interior may, with the approval of the president, grant the "right of abode" to a person of African descent. This provision was a response to lobbying from the many African Americans who have moved to Ghana since its independence and taken up residence in the country. The government has also indicated that it intends to adopt provisions facilitating travel and investment by members of the Ghanaian diaspora.[251] A Non-Resident Ghanaians Secretariat (NRGS) was set up in May 2003 to promote further links with Ghanaians abroad and to encourage return.[252]

251 Lois Beckett, "Ghana: Echoes From Panafest—Diasporans Demand Full Ghanaian Citizenship", *Ghana Mail*, 4 August 2007.

252 John Anarfi and Stephen Kwankye, "Migration from and to Ghana: A Background Paper," *Working Paper C4*, Development Research Centre on Migration, Globalisation and Poverty, University of Sussex, December 2003.

Loss and deprivation of nationality

The constitutions of only two countries in Africa prohibit the state from withdrawing nationality, however acquired, against a person's will; even in those two cases the protection is not as far-reaching as it appears on first sight. More generally, it is much more common for a person to be denied recognition of nationality than for nationality to be lost (automatically) or deprived (by action of administrative authorities).[253]

The two countries with constitutional prohibitions are South Africa and Ethiopia. Article 33 of the constitution of Ethiopia provides that "[n]o Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will"; however, acquisition of another nationality results in the automatic loss of Ethiopian nationality.[254] In practice, Ethiopians of Eritrean descent found this provision to be easily violated.[255] In the case of South Africa, the citizenship legislation is in conflict with the constitution. Article 20 of the South African constitution states simply that "[n]o citizen may be deprived of citizenship".[256] However, the Citizenship Act provides both for automatic loss and for discretionary deprivation of citizenship, including citizenship from birth. The South African Citizenship Act No. 88 of 1995 was adopted before the current constitution came into effect, and initially provided for loss of citizenship by a citizen from birth or by acquisition both in case of acquisition of another nationality (without permission) and also if he or she is also a citizen of another country and served in the armed forces of that country in a war against South Africa.[257] The act also provided for deprivation from a naturalised citizen in cases of fraud, conviction of a crime, or if it was in the "public interest"; in case of deprivation for fraud, there was no protection against statelessness.[258] These provisions on loss and deprivation remain in effect and, in 2010, the Act was amended to introduce a hard-to-interpret further ground for automatic loss of nationality of a naturalised citizen (not a

253 Bronwen Manby, "You can't lose what you haven't got: Citizenship acquisition and loss in Africa", in Audrey Macklin and Rainer Bauböck (eds.), *The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?* Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, RSCAS 2015/14.

254 Constitution of the Federal Democratic Republic of Ethiopia, 1994, Article 33; Proclamation No. 378/2003 on Ethiopian Nationality, Article 17.

255 Manby, *Struggles for Citizenship*, pp. 98–105.

256 Constitution of the Republic of South Africa, 1996, article 20. The exception in case of statelessness where citizenship has been acquire by fraud is in fact permitted by the 1961 Convention.

257 South African Citizenship Act No. 88 of 1995, section 6 (in 2004 an amendment Act, No. 17 of 2004, removed a provision in the 1995 Act that had provided for deprivation of citizenship on use of another passport).

258 South African Citizenship Act No. 88 of 1995, section 8.

citizen from birth), if he or she "engages, under the flag of another country, in a war that the Republic does not support."[259]

More than half of Africa's 54 states forbid deprivation of nationality from a national from birth against the person's will, whether or not the person would become stateless: Botswana, Burkina Faso, Burundi, Cape Verde, Chad, Comoros, DRC, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Malawi, Mauritania, Mauritius, Namibia, Nigeria, Rwanda, Seychelles, Somalia, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. But the situation is not always clear: in the case of Comoros, the 2001 constitution states that a person with nationality of origin cannot be deprived of his or her nationality; but, as in South Africa, the 1979 nationality code is not in compliance with this provision.[260]

The most common provision for automatic loss of birth nationality is in case of acquisition of another, in countries where dual nationality is not allowed. Countries appearing to provide for loss of nationality in case of acquisition of another as an adult are Botswana, Cameroon, Central African Republic, Côte d'Ivoire, DRC, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Guinea, Lesotho, Liberia, Malawi, South Africa (if no permission is obtained), Tanzania, Togo and Zambia. However, these provisions can be hard to interpret (in addition to Table 7, see Table 5 and the section on dual nationality on page 73).

There is an apparent anomaly in many laws in relation to fraud: the nationality legislation of almost all African countries provides for deprivation of nationality acquired by naturalisation in case of fraud, but rarely is fraud mentioned in regard to the recognition of nationality from birth. The assumption would be that recognition of nationality when the conditions providing a right to nationality were not in fact fulfilled (whether or not there was active fraud) would be void *ab initio*, requiring no formal deprivation procedure. This is the interpretation applied in some of the more notorious cases in which it has been asserted that a person is not a national, such as those of Kenneth Kaunda in Zambia and Alassane Ouattara in Côte d'Ivoire, and in many other less-well-known cases where it is simpler to assert that a person was never a national than to go through the administrative processes of deprivation.[261] For example, the case of Zimbabwe shows how such laws relating to loss of nationality in case of acquisition or retention of another, although apparently in conformity with international law (which is neutral on dual nationality), can in certain political circumstances be bent to withdraw nationality from a very

259 South Africa Citizenship Amendment Act, No. 17 of 2010, adding subsection 6(3) to the principal act. This amendment came into force on 1 January 2013. See *Submission on the South African Citizenship Amendment Bill, B 17 – 2010* (Citizenship Rights in Africa Initiative, 6 August 2010), arguing that the new provision was unconstitutional; also Manby, "You can't lose what you haven't got".

260 Constitution de l'Union des Comores, 23 December 2001, article 5; Loi No. 79–12 du 12 décembre 1979 portant code de la nationalité comorienne, articles 51–56. The 1979 law disallows dual nationality, and also allows for nationality to be taken away if a national works for a foreign state and does not give up his or her position on request (a common provision in civil law countries and permitted by the 1961 Convention).

261 See above, under jurisprudence of the African human rights bodies; also Beth Elise Whitaker, "Citizens and Foreigners: Democratisation and the Politics of Exclusion in Africa," *African Studies Review* Vol. 48, No. 1, April 2005, pp. 109–126; Manby, "You can't lose what you haven't got".

large number of people on the grounds that they were awarded it in error.[262] The 2013 constitution permits dual nationality, but allows parliament to forbid it for those who naturalise as Zimbabwean.

Liberia has one of the strictest bans on dual citizenship anywhere in the continent, and also provides for automatic loss of nationality based on a range of actions by the person concerned that could imply dual citizenship, even if the person does not in fact have another citizenship: if the person acquires another nationality or serves in the armed forces or votes in an election in another state.[263]

Gender discrimination can also be problematic for loss of nationality: in Togo, for example, a foreign woman both automatically becomes Togolese on marriage to a Togolese man (a relatively common provision) and also automatically loses Togolese nationality if she is then divorced (much more unusual).[264] A Burkinabè who acquires another nationality on marriage (almost certainly a woman), automatically loses her Burkinabè nationality.[265] The law of Equatorial Guinea states that a foreign woman who marries an Equatoguinean national automatically acquires Equatoguinean nationality and loses her nationality of origin—extraordinarily purporting to dictate to another country the rules for loss of its nationality.[266]

A fairly substantial number of countries have a provision framed along the lines provided in Article 8(3) the 1961 Convention on the Reduction of Statelessness for deprivation if person works for a foreign state in defiance of an express prohibition to do so: Angola, Benin, Cameroon, CAR, Comoros,[267] Congo Republic, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Guinea, Guinea-Bissau, Liberia, Madagascar, Morocco, Mozambique, Niger, São Tomé & Príncipe, South Sudan, Sudan, Togo and Tunisia.[268]

Only a small handful of countries provide for loss or deprivation of nationality held from birth in case of a crime against the state: Egypt, Eritrea and Mali.[269]

Until 2010, the Libyan Nationality Law was perhaps the most extreme, allowing for deprivation of nationality. In 2010 the law was significantly amended to restrict these grounds, though it still permits revocation of birth nationality based on residence outside the country for more than two years

262 Manby, *Struggles for Citizenship*, pp. 39–50.

263 Aliens and Nationality Law, 1973, sections 21.2; 21.50–59 and 22.1–22.4. See also George K. Fahnbulleh, "Constitution and Laws of Liberia are clear with regards to the citizenship issue", *The Perspective* (Atlanta, Georgia), 4 August 2005.

264 Ordonnance No. 78–34 du 7 septembre 1978 portant Code le la nationalité togolaise, article 23.

265 Zatu no An VII 0013/FP/PRES du 16 novembre 1989, portant institution et application du Code des personnes et de la famille, article 188.

266 Ley num.8/1990 de fecha 24 de octubre, Reguladora de la Nacionalidad Ecuatoguineana, articulo 5.

267 Again, this provision in the Comoros legislation is not in compliance with the constitution.

268 In some cases, this would count as loss rather than deprivation – in that the final loss is automatic; however, given that the government action is required to demand that the person give up the employment, even if there is no final ruling, it is counted here as deprivation.

269 Egypt Law No. 26 of 1975 Concerning Egyptian Nationality, Article 16(7); Eritrea Nationality Proclamation 1992 Article 8; Mali Code des personnes et de la famille 2011, Article 251.

without permission, as well as providing for children to lose nationality if the father's is revoked.[270]

The Egyptian Nationality Law still gives similar extensive powers to the government to revoke nationality, whether by acquisition or from birth, including on grounds that an individual has enrolled in the military of another country or worked against the interests of the Egyptian state in various ways. The same law also allows for revocation of nationality if a person "was described as being a Zionist at any time" (previously also a provision in Libya's law) and provides additional grounds for the revocation of nationality from those who obtained it by naturalisation.[271] Although in practice most cases in which Egyptian nationality has been lost arise because a person has obtained dual nationality without permission, the provisions relating to national security are troubling: between 1986 and 2004 the minister of the interior reportedly refused to grant Egyptian nationality to seven women married to Egyptians, all for reasons related to national security; yet no explanation was given.[272] The potential for loss of nationality on the mere allegation of being a "Zionist" both infringes rights to freedom of expression and allows the deprivation of nationality rights without any evidence that the person concerned is indeed a "Zionist" or that being a "Zionist" is a threat to the Egyptian state. After the Muslim Brotherhood government of Mohammed Morsi in Egypt was deposed in 2013 by the military led by General Abdel Fattah el-Sisi, and el-Sisi was confirmed as president by election, a cabinet committee was reported to have revoked nationality from 800 people, including Palestinians, apparently on national security grounds.[273]

Deprivation of nationality from a person who has naturalised is usually far easier under the law. Almost all African countries provide for deprivation of a person who has acquired nationality as an adult under some circumstances, such as a conviction on charges of treason or a similar crime against the state, conviction on charges of less serious crimes, or a finding that nationality was acquired by fraud.

Often, there is a "catch-all" provision allowing for deprivation in a very wide range of circumstances. The Commonwealth countries borrow language from the British precedents and provide for deprivation on the grounds of "disloyalty" or the "public good", while the francophone countries talk about behaviour "incompatible with the status of a national" or "prejudicial to the interests of the country".[274] Countries including such provisions in relation

270 Libya Nationality Law No. 17 of 1954, article 10(2); Libya Nationality Law No. 18 of 1980, article 10; Libya Nationality Law No. 24 of 2010, Articles 12 and 13.

271 Egyptian Nationality Law, (No. 26 of 1975), Official Gazette No. 22, 29 May 1975, sections 15 and 16.

272 Khalil, *Cases of Revocation and Loss of Egyptian Citizenship*, cited in Center for Migration and Refugee Studies, *Africa Citizenship and Discrimination Audit: The Case Study of Egypt*, 2005, p. 5. No statistics available for Libya.

273 "Egyptian nationality stripped from 800, including Palestinians", *Egypt Independent*, 29 October 2014; Sonia Farid, "Stripping Egyptians of citizenship: a new punishment?", *Al Arabiya News*, 23 October 2014.

274 For example: "qui s'est livré à des actes ou qui a un comportement incompatibles avec la qualité de Sénégalais ou préjudiciables aux intérêts du Sénégal." Loi No. 61–70 du 7 mars 1961 déterminant la nationalité sénégalaise, art. 21.

to naturalised citizens include: Algeria, Benin, Botswana, Burkina Faso, Cameroon, CAR, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Gambia, Ghana, Guinea, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Namibia, Niger, Nigeria, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Sudan, Tanzania, Togo, Tunisia and Uganda. A naturalised person may be deprived of nationality if he refuses to do military service in Benin, Congo Republic, Djibouti, Guinea, Madagascar, Mali, Morocco and Tunisia.[275] Equatorial Guinea allows naturalised nationality to be taken away "in the interests of public order".[276] A few other countries, including Gambia, Lesotho and Mauritius, allow deprivation of naturalised citizenship if a person exercises in another country "rights accorded exclusively to that country's citizens", which usually include voting in an election.[277]

A number of countries have a provision based on Article 7 of the Convention on the Reduction of Statelessness (and British law at the time of independence in the 1960s) allowing for deprivation of nationality from an individual who has naturalised if he or she stays outside the country for an extended period (the Convention provides seven years) without notifying the authorities of an intention to retain citizenship. These include Botswana, Egypt, Guinea, Lesotho, Liberia, Libya, Malawi, Mauritius, Namibia, Sierra Leone, Swaziland and Tanzania.

In Malawi, for example, which has provisions that were typical of many Commonwealth countries, someone who has been granted citizenship through registration or naturalisation (only) can be deprived of his or her citizenship on very broad grounds and on the decision only of the designated minister. Citizenship can be revoked where the minister "is satisfied" that the person "has shown himself by act or speech to be disloyal or disaffected towards the Government of Malawi"; when he has traded or associated with or assisted an enemy during war; when within five years of receiving citizenship he is sentenced to a prison term exceeding 12 months; when he resides outside Malawi for a continuous period of seven years without being in the service of Malawi or an international organisation or without registering annually at a Malawian consulate his intention to retain his citizenship; or when Malawian citizenship was obtained through fraud, misrepresentation, or concealment of any material fact.[278] These provisions in the (1966) Citizenship Act appear to violate a (1994) constitutional prohibition on arbitrary deprivation or denial of citizenship.[279]

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275 Benin Code de la nationalité, art. 51; Congo Republic Code de la nationalité art. 55; Djibouti Code de la nationalité 1981 (still in effect for provisions not contrary to law of 2004), art. 34; Guinea Code Civil art. 106; Madagascar Code de la nationalité, art. 50; Mali Code des personnes et de la famille art. 253; Morocco Code de la nationalité, art. 22; Tunisia Code de la nationalité, art. 33.

276 Ley num. 8/1990 de fecha 24 de octubre, Reguladora de la Nacionalidad Ecuatoguineana, artículo 18.

277 Constitution of the Second Republic of The Gambia, 1996, article 13(1)(c); Lesotho Citizenship Order 1971, section 23(3)(d); Mauritius Citizenship Act 1968, article 15(1)(a)(ii).

278 Malawi Citizenship Act, section 25.

279 Constitution 1994, section 47.

Kenya's 1963 constitution had near-identical provisions;[280] however, the 2010 constitution improved this situation, in particular by removing the broadest grounds and providing for a person to have been convicted rather than only suspected of various crimes. Yet it still fails to forbid deprivation of nationality if the person would thereby become stateless.[281] In 2013, the Seychelles inserted a new article into its nationality law expanding the grounds for deprivation of nationality by naturalisation if the minister "is satisfied" that the person has been involved in terrorism, piracy, drugs offences, treason and other offences, or has acted with disloyalty.[282]

Quite a large number of countries, in a provision that should be regarded as best practice, allow nationality by naturalisation to be revoked only during a fixed period after it has been acquired, and not indefinitely: Algeria, Benin, Burkina Faso, CAR, Comoros, Congo Republic, Gabon, Libya, Madagascar, Mauritania, Morocco, Niger, Senegal and Tunisia.

Few countries provide for protection against statelessness in deprivation cases: only Lesotho, Mauritius and Zimbabwe (since 2013[283]) provide in principle for protection from statelessness in all cases where nationality is revoked by an act of the government; and Namibia, Rwanda, Senegal, South Africa and Swaziland provide partial protection, allowing statelessness to result in some circumstances or providing a rather vague guarantee.[284] Namibia allows deprivation of nationality on the grounds that a person was already deprived in another country, increasing the likelihood of rendering them stateless.[285] Tunisia made a declaration on ratifying the 1961 Convention stating that it did not consider itself bound by the provisions in article 8 prohibiting the deprivation of an individual's nationality if it would render them stateless.[286]

280 Constitution of the Republic of Kenya, 1963, article 94.

281 Constitution of Kenya, 2010, article 17. The Citizenship and Immigration Act 2011, section 21, provides for procedures in relation to revocation, referring to the conditions established by the constitution.

282 Section 11A of the Citizenship Act, No. 18 of 1994, inserted by Act No. 11 of 2013.

283 Zimbabwe's law is in conflict with the 2013 constitution, stating that the minister should seek to avoid statelessness but can still revoke naturalised citizenship if "he is satisfied that it is not conducive to the public good that the person should continue to be a citizen of Zimbabwe". Zimbabwe Constitution 2013, Article 39(3); Citizenship of Zimbabwe Act, Chapter 4:01 Laws of Zimbabwe, section 11(3).

284 Lesotho Constitution 1993, as amended to 2001, Article 42 (however, this provision is not respected in the Citizenship Order 1971 Article 23); Mauritius Citizenship Act 1968, as amended to 1995, Article 11(3)(b); Namibia Constitution 1990, as amended to 2010, Article 9(4); Rwanda Nationality Law 2003, Article 19; Senegal Nationality Code 1961 as amended 2013, Article 21; South African Citizenship Act 1996, as amended 2013, Article 8; Swaziland Constitution 2005, section 49(5).

285 Namibia Citizenship Act 1990, Article 9(3)(e)(ii).

286 Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights, *Compilation Report – Universal Periodic Review: Tunisia*, November 2011.

Table 7: Criteria for loss of nationality

	Dual cit.	Citizenship from birth		Citizenship by naturalisation								
Country	Acquires another citizenship	Work for/act like national of another state	Crime vs state	Work foreign state (incl. army)	Fraud/misrep.	Crime vs state	Ordinary crime	Disloyal/incompatible behaviour	Res. out of country	Time limit for deprivation	Protection vs statelessness	**Relevant legal provisions**
Algeria					x	x	x	x		10 yrs		L1970(2005)Arts13, 18-24
Angola		x		x	x	x						L2005Art15
Benin		x			x	x	x	x		10 yrs		L1965Arts15,46-53, 62-63
Botswana	x				x	x		x	x			L1998(2002&04) Arts15-18
Burkina Faso					x	x	x	x		10 yrs		L1989Arts149,187-191, 199
Burundi				x	x							L2000Arts30-34
Cameroon	x	x		x		x		x				L1968Arts31,34,39
Cape Verde												C1992(2010)Art40 DL1993Art17
CAR	x	x		x	x	x	x	x		10 yrs		L1961Arts46-54& 63,69
Chad				x	x	x		x				L1962Arts26-28&40
Comoros !!	x	x		x	x	x	x	x		10 yrs		C2001Art5 L1979Arts51-59,68
Congo Republic !!	x	x			x	x	x	x		10 yrs		C2002Art13 L1961(1993)Arts47-56 &65-66
Côte d'Ivoire	x	x			x	x	x	x				L1961(2013)Arts48-56, 65-66
DR Congo	x				x							L2004Arts1,27-29,
Djibouti		x			x	x	x	x				L2004Art11 L1981Arts34-35
Egypt	x	x	x	x	x	x	x	x	x			L1975(2004) Arts10,12,15-19
Equatorial Guinea	x	x		x		x	x	x				L1990Art19
Eritrea	x	x	x	x	x	x	x	x				L1992Arts3,6,8
Ethiopia	x										yes	C1994Art33 L2003Arts19&20
Gabon					x	x	x			7 yrs		L1998Arts34-36
Gambia !!					x		x	x				C1996(2001)Art13 L1965Art7-10

	Dual cit.	Citizenship from birth		Citizenship by naturalisation								
Country	Acquires another citizenship	Work for/act like national of another state	Crime vs state	Work foreign state (incl. army)	Fraud/misrep.	Crime vs state	Ordinary crime	Disloyal/incompatible behaviour	Res. out of country	Time limit for deprivation	Protection vs statelessness	**Relevant legal provisions**
Ghana					x	x		x				C1992Art9 L2000Art18
Guinea	x	x			x	x	x	x	x			L1983Arts95-108, 130-131,135
Guinea-Bissau					x	x						L1992(2010)Art10
Kenya					x	x	x					C2010Art17 L2011Arts19(4)&21
Lesotho	x				x		x	x	x		yes	C1993Art42(2) L1971Arts22-23
Liberia	x	x			x			x	x			C1984Art28 L1973Art21.50-54& Art22.1-4
Libya	x				x	x		x	x	10 yrs		L2010Arts5,12,13
Madagascar	x	x			x	x	x	x		10 yrs		L1960Art42-54&63
Malawi	x				x	x	x	x	x			L1966(1992)Arts23-27
Mali			x		x	x	x	x				L2011Arts249-254
Mauritania	(x)				x	x	x	x		20 yrs		L1961(2010)Arts22, 30-31,33
Mauritius					x	x	x	x	x		yes	L1968(1995)Arts11&14
Morocco		x			x	x	x	x		10 yrs		L1958(2007)Arts14, 19-24
Mozambique !!		x				x						C2004Art31 L1975Arts14-15
Namibia					x	x	x	x	x		yes	C1990(2010) Art4(7)&(8) L1990Arts7-9
Niger		x				x	x	x		10 yrs		L1984(2014)Arts34-36
Nigeria				x		x	x	x				C1999Arts28-30
Rwanda					x	x						C2003Art7 L2008Arts18-21
Sahrawi ADR	n/a											
STP		x		x		x		x				L1990Art12
Senegal						x	x	x		15 yrs	partial	L1961(2013)Arts18&20
Seychelles					x	x	x	x				L1994Arts10-11&11A
Sierra Leone						x	x	x	x			L1973(2006)Arts15-18

Country	Dual cit.	Citizenship from birth		Citizenship by naturalisation							Protection vs statelessness	Relevant legal provisions
	Acquires another citizenship	Work for/act like national of another state	Crime vs state	Work foreign state (incl. army)	Fraud/misrep.	Crime vs state	Ordinary crime	Disloyal/incompatible behaviour	Res. out of country	Time limit for deprivation		
Somalia !!					x	x						C2012Art8 L1962Arts10-11
South Africa !!	(x)			x	x	x	x				partial	C1996(2009)Art20 L1995(2010)Arts6-8
South Sudan !!		x		x	x	x						C2011Art45 L2011Art15
Sudan		x			x	x	x	x				L1994(2011)Arts10&11
Swaziland					x				x		partial	C2005Arts49-50 L1992Arts10&11
Tanzania	x				x	x	x	x	x			L1995Arts7,13-17
Togo	x	x		x	x	x	x	x				L1978Arts23-29,41
Tunisia		x			x	x	x	x		10 yrs		L1963(2010)Arts30-38
Uganda	(x)			x	x	x	x	x				C1995(2005)Arts14-15 L1999(2009)Arts17-20
Zambia !!	x				x							C1991(1996)Arts7&9 L1975(1994)Art19-23
Zimbabwe !!	(x)				x	x					yes	C2013Art39 L1984(2003) Art10(4),10-13

Notes

n/a not available
(x) permission of government required for dual citizenship
!! constitution conflicts with legislation, constitutional provisions noted here

Renunciation and reacquisition

While the nationality laws of most African countries include provisions allowing a person to renounce his or her nationality, not all do so. There are no provisions in DRC, Cameroon, Chad, Djibouti, Equatorial Guinea, Eritrea, Liberia, Libya, Mauritania, Niger, South Sudan or Tunisia. In addition, a large proportion of the remainder require the person to obtain permission to release himself or herself from obligations to the state, at least in some circumstances: Algeria, Benin, Botswana, Burkina Faso, Central African Republic, Comoros, Republic of Congo, Cote d'Ivoire, Egypt, Ethiopia, Gambia, Guinea, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Morocco, Namibia, Nigeria, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe. This requirement to be released from nationality is derived from the feudal concept of perpetual allegiance previously prevalent in Europe, but largely relinquished by European states during the 20th century (under pressure from the United States, wishing the possibility of gaining naturalised citizens in the context where dual nationality was not considered a possibility), and is also linked to Islamic law.[287]

These provisions are sometimes merely routine, providing a protection against statelessness, but can be problematic, in some contexts effectively depriving citizens of a right to free movement and expression.[288] For example, an individual who has obtained refugee status and then nationality in another country because of persecution suffered in his or her country of birth may wish no longer to be a national of this first country. Yet the government of the latter country, responsible for the persecution, may be unwilling to release the individual from the alleged obligations of nationality.[289] Even where a person wishes to acquire the nationality of a new country of residence in other circumstances, but dual nationality is not permitted, restrictions on renunciation may prevent change of nationality (one of the elements guaranteed by Article 15 of the Universal Declaration).

Another way in which provisions on renunciation may be problematic is if there is no protection against statelessness, requiring an assurance that the person has already acquired, or will definitely acquire, another nationality, or

287 Spiro, "A new international law of citizenship", pp. 707–709; Parolin, *Citizenship in the Arab World,* p. 108.

288 In the case of Morocco, this rule led to official protests from Morocco at the proposal by the Netherlands to end recognition of dual nationality, since more than 200,000 people hold Dutch and Moroccan nationality; ultimately, the new law provided exceptions where the other country required permission to renounce nationality. Sarah Touahri, "Morocco decries move by Netherlands to eradicate dual nationality", *Magharebia,* 9 July 2008.

289 For example, the Sudanese government has for political reasons harassed and detained former citizens who have obtained refugee status and then nationality in other countries when they have returned to Sudan. See Amnesty International, "UA 325/08 Incommunicado detention/risk of torture: SUDAN", AI Index: AFR 54/044/2008, 26 November 2008.

be able to reacquire the nationality of origin in case this does not happen. While such provisions are present in most countries permitting renunciation, they do not exist or are not watertight in: Cameroon, Chad, DRC, Equatorial Guinea, Eritrea, Gabon, Liberia, Libya, Niger, Nigeria, Rwanda, South Africa, Sudan, Tanzania and Zimbabwe.

Table 8: Renunciation and reacquisition

	Renunciation			
Country	Conditions applied	Protection vs statelessness	**Reacquisition**	**Relevant legal provisions**
Algeria	If auth by decree	Yes	After 18 months residence	L1970(2005)Arts14,18
Angola	By declaration (*manifestarem a pretensão*)	Yes	After 5 yrs residence, if renounced If deprived, Nat. Ass. must authorise; reacquisition may be opposed on grounds similar to those for deprivation	L2005Arts15-17
Benin	If auth by decree	Yes	By decree after inquiry, if resident in Benin, not if deprived or expelled	L1965Art37-39&42
Botswana	By registration, minister may withhold if resident in Botswana	Yes	Only if lost for dual nationality and is resident in Botswana	L1998(2004)Arts16,17
Burkina Faso	If auth by kiti (decree)	Yes	Must be resident	L1989Arts171-175,186
Burundi	By declaration	Yes	If lost because of dual nationality	L2000Arts30-32&38-41
Cameroon	By decree; no conditions	No	If resident in Cameroon, not if deprived	L1968Arts28-31&36-39
Cape Verde	By declaration	Yes	By declaration if lost because of dual nationality	L1993Arts17-19
CAR	If auth by decree	Yes	By decree after inquiry, must be resident in CAR, not if deprived	L1961Arts32-36&47
Chad	If auth by decree	Yes	By decree after inquiry, not if deprived	L1962Arts19-20,26,30&40
Comoros	If auth by decree	Yes	By decree after inquiry, must be resident	L1979Arts37-41&51-52
Congo Rep.	If auth by decree	Yes	Must be resident, not if expelled or under house arrest	L1961(1993)Arts36-40&51
Côte d'Ivoire	If auth by decree	Yes	By decree after inquiry, must be resident, not if deprived	L1961(2013)Arts34-38,48-49
DRC	No provision	–	By decree if naturalised and must fulfil same conditions as for naturalisation; by declaration if of origin and must have maintained links to DRC	L2004Arts30-33
Djibouti	No provision	–	No provision	–
Egypt	No provision	–	By decree, after delay of 5 yrs since withdrawn or forfeited	L1975(2004)Arts10&18
Eq. Guinea	No provision	–	Only by a law	L1990Art20
Eritrea	May be deprived if renounces	No	No provision	L1992Art8

Country	Renunciation		Reacquisition	Relevant legal provisions
	Conditions applied	Protection vs statelessness		
Ethiopia	Shall not be released unless fulfils military obligations and serves any criminal penalty	Yes	If domiciled in Ethiopia and renounces other nationality	L2003Arts19&22
Gabon	By decree, no conditions	No	By decree after inquiry, must be resident in Gabon, not if deprived	L1998Arts27-29&34
Gambia	By registration, minister may withhold if resident in Gambia and would be contrary to public policy	Yes	If lost because of dual nationality	C1996(2001)Art14 L1965Art7
Ghana	By registration, no conditions	Yes	If lost because of dual nationality	L2000Arts16&17
Guinea	If auth by decree	Yes	By decree after inquiry, must be resident, not if deprived	L1983Arts81-84&99
G. Bissau	By declaration	Yes	By declaration, if established domicile in country	L1992(2010)Arts10-11
Kenya	By registration, no conditions	Yes	If lost because of dual nationality, on application	L2011Arts10&19
Lesotho	By registration, minister may withhold if not conducive to public good or during a war	Yes	If renounced or because of dual nationality, and renounces other nationality	L1971Arts22&25
Liberia	No provision	–	No provision	–
Libya	No provision	–	No provision	–
Madagascar	If auth by decree	Yes	By decree after inquiry, must be resident, not if deprived	L1960Arts30-34&45
Malawi	By registration, may be withheld if during a war or if contrary to public policy	Yes	If has renounced other nationality	L1966(1992)Arts23&27
Mali	By declaration	Yes	By decree after inquiry	L2011Arts243-244&249-250
Mauritania	No provision	–	By decree after inquiry, not if deprived	L1961(2010)Arts25-29&31
Mauritius	By registration, minister may withhold	Yes	In case of marriage, if marriage ends	L1968(1995)Art14
Morocco	If auth by decree	Yes	On application	L1958(2007)Arts15&19
Mozambique	By declaration	Yes	Must be domiciled in Mozambique and satisfy conditions relating to integration	C2004Arts31-32 L1975(1987)Arts14&16
Namibia	By registration, may be withheld if during a war	Yes	If lost because of dual nationality or some forms of deprivation, not if is a national of another country	L1990Arts8&13
Niger	No provision	–	By decree after inquiry, must be resident, not if deprived	L1984(2014)Arts38-42
Nigeria	By registration, may be withheld if during a war or contrary to public policy	No	No provision	C1999Art29
Rwanda	Shall inform director-general, shall not compromise laws of Rwanda or for purpose of seeking refugee status	Yes	If deprived because of dual nationality, not if deprived as naturalised citizen or if expelled as security threat	L2008Arts18,22-24

Country	Renunciation		Reacquisition	Relevant legal provisions
	Conditions applied	Protection vs statelessness		
SADR				n/a
STP	By declaration	Yes	By declaration after 2 yrs residence in STP	L1990Arts12&13
Senegal	If auth by decree	Yes	No provision	L1961(2013)Art18-19
Seychelles	By registration, may be withheld if gains nationality of country with which at war	Yes	No provision	L1994(2013)Art10
S. Leone	By registration, may be withheld if resident in SL, if has rights inconsistent with an alien nationality, or if contrary to public good	Yes	If lost because of dual nationality	L1973(2006)Arts15&19A
Somalia	By declaration, must be resident abroad	Yes	If resident in Somalia for 3 yrs and fulfils conditions for naturalisation	L1962Arts10&12
South Africa	By registration, no conditions	No	If reasons for loss or deprivation no longer exist or are of no consequence	L1995(2010)Arts7&13
South Sudan	By presidential order	No	No provision	L2011Art15
Sudan	By presidential order, may refuse if Sudan at war	No	May reinstate for person from whom withdrawn, without prejudice to automatic withdrawal from person of S. Sudan nationality	L1994(2011)Arts10&16
Swaziland	By declaration	Yes	No provision	C2005Art50 L1992Art11
Tanzania	By registration, minister may withhold if during war or contrary to public policy	No	No provision	L1995Art13
Togo	If auth by decree	Yes	By decree after inquiry if resident in Togo, not if deprived	L1978Arts15-18&23-24
Tunisia	No provision	–	No provision	–
Uganda	By registration, may be withheld if acquires nationality of country with which at war or contrary to public policy	Yes	If lost because of dual nationality and no adverse effect to public order and security	L1999(2009)Arts19G&20
Zambia	By registration, may be withheld if during war	Yes	If lost because of dual nationality and board satisfied that not aware of loss	L1975(1994)Arts21&23
Zimbabwe	By registration, may be withheld if is a national of a country with which at war	No	Not if a national of another country	L1984(2003)Arts10&14

Notes

* Only in case of repudiation of nationality attributed at birth

Most rules on reacquisition have exemptions for "exceptional circumstances", which are not noted here.

Evidence and documentation

The rules for proof of the facts on the basis of which nationality is claimed and for issuing documents that show that a person is recognised as a national are, in practice, often as important as the provisions of the law on the conditions that must be established. If there are onerous requirements or costs attached to proof of entitlement to nationality, then the fact that a person actually fulfils the conditions laid down in law may be irrelevant. The laws of many countries explicitly provide that nationality can only be established if the necessary conditions are proved during the individual's childhood, and in some cases only through the formal processes of civil registration. If the systems to do so do not exist or are discriminatory, then many individuals will be left undocumented and at risk of statelessness.

In the context where many people are not registered at birth, access to definitive proof of nationality for those whose status is in doubt becomes even more important. In addition, the systems for issuing national identity cards and passports are critical to ensuring respect for the right to a nationality, even where these documents are not formally proof of nationality.

Birth registration and evidence of entitlement to nationality

Although a birth certificate does not usually serve as proof of nationality (there are exceptions), the importance of birth registration for the right to acquire a nationality is recognised by the inclusion of both rights within the same article of the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.[290] This significance was reaffirmed by the African Committee of Experts on the Rights and Welfare of the Child in the Kenyan Nubian Children's Case, where the decision noted that "there is a strong and direct link between birth registration and nationality".[291] Birth registration is critical to establishing, in legal terms, the place of birth and parental affiliation, which in turn serves as documentary proof underpinning acquisition of the parents' nationality or the nationality of the state where the child is born.

Low rates of birth registration thus place many children at risk of statelessness. According to UNICEF, 56 per cent of African children under five years old have not been registered (85 million children), with the situation much worse in rural areas; in some countries more than 90 per cent of children are not registered. Even where higher rates are reported,

290 Convention on the Rights of the Child, Article 7; African Charter on the Rights and Welfare of the Child, Article 6.

291 Kenyan Nubian Children's Case, paragraph 42.

individual children may not actually have a birth certificate, due to high fees or a lack of legal entitlement to proof of registration: for instance, in eastern and southern Africa, only about half of the registered children have a birth certificate, compared to 88 per cent of registered children in west and central Africa. In Rwanda, where 63 per cent of children under five are reportedly registered, only one in 10 have a document proving that registration. In Eritrea, the issue of a birth certificate can involve major bureaucratic hurdles and cost the equivalent of one week's average rent in rural areas of the country: the rate of registration is not available. In Angola, the 2005 nationality law provides that nationality of origin is proved by a birth certificate, and the 2007 birth registration law provides for free registration, yet UNICEF estimated in 2013 that only 36 per cent of Angolan children were registered, and only 26 per cent in rural areas.[292]

In some countries, registration of births is not even compulsory. For example, in southern Africa, registration of births was, as of 2004, compulsory for all children in Mauritius, South Africa, Swaziland, Zambia and Zimbabwe, but not in Botswana, Malawi or Tanzania.[293] In Malawi and Tanzania, the requirement to register was at that time racially based: registration was compulsory only if one or both parents were of European, American, or Asiatic "race" or origin, and in Tanzania also if they were of Somali origin.[294] Law reform and new efforts supported by UNICEF have changed this situation, but registration rates remain low.[295]

Several of the francophone countries allow for those persons who have always been treated as nationals (a status known as *possession d'état de national*) to obtain official recognition that they are nationals of origin, without needing to establish further facts through the civil registration system. This provision should in principle assist in countries with low rates of birth registration. For example, Senegal provides that if someone has his or her habitual residence in Senegal and has always behaved and been treated as a national, it shall be presumed that he or she is a national, and a tribunal may issue a nationality certificate on that basis.[296] Similar provisions exist in Benin, Congo Republic, Morocco, Togo and elsewhere.

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292 UNICEF, *Every Child's Birth Right: Inequities and trends in birth registration*, 2013. See also UNICEF "Information by country and programme", available at http://www.unicef.org/infobycountry/, last accessed 24 September 2015; and concluding observations of the committee monitoring compliance with the UN Child Rights Convention, available at http://www.unhchr.ch/tbs/doc.nsf, last accessed 24 September 2015.

293 Jonathan Klaaren and Bonaventure Rutinwa, "Towards the Harmonisation of Immigration and Refugee Law in SADC" *Migration Dialogue for Southern Africa (MIDSA), Report No.1*, 2004, pp. 40–41.

294 Tanzania Births and Deaths Registration Act 1920 (Cap.108), sections 26 & 27; Malawi Births and Deaths Registration Act 1904 (Cap.24), section 18.

295 "The Government of Tanzania launches a new national birth registration system set to massively accelerate the number of children under 5 with birth certificates", UNICEF, 23 July 2013; "In Malawi, the launch of universal birth registration guarantees protections for children", UNICEF, 30 March 2012. However, the Tanzanian Births and Deaths Registration Act (Cap.108), dating from 1920, which made registration compulsory only for non-natives, had not yet been replaced by late 2015. In Malawi, the National Registration Act 2009 replaced the previous legislation dating from 1904 and made registration compulsory.

296 Loi No. 61–70 du 7 mars 1961 déterminant la nationalité sénégalaise (as amended), article 1.

However, the concept of *possession d'état* will often only benefit those who fit in with the general ethnic profile of the country, and sometimes this is made explicit. For example, Algeria's nationality code includes the common provision on the *possession d'état de national*, if a person has always been treated as Algerian. In addition, it provides that nationality of origin can be claimed by showing evidence of two generations of ancestors born in the country (one parent and one of his or her parents)—but only if those ancestors were Muslim, introducing religious discrimination in an apparently procedural article.[297] In Chad, the provision on *possession d'état de Tchadien* is restricted to those of "African ancestry" (*de souche africain*).[298]

The African Centre for Statistics hosted by the UN Economic Commission for Africa launched a major initiative to improve civil registration systems, with a meeting of African ministers responsible for civil registration held in 2010 in Addis Ababa, and biannual follow up meetings. In February 2015, the Third Ministerial Conference on Civil Registration and Vital Statistics launched a "decade of civil registration" recognising "the significance of CRVS as a tool to facilitate development with all that entails, from honouring human rights starting with the right to identity, to enhancing economic opportunity and Africa's commitment to regional integration". They also committed to "[p]ursue actively the ideal of 'leaving no country behind' and 'leaving no one out' especially the vulnerable including the refugees, Internally Displaced Person (IDP) and stateless people as well as implement the General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child".[299]

Based on these efforts and with the support of UNICEF, there has been progress in many countries. For example, from 2006 to 2011 birth registration rates increased in Benin from 60 to 80 per cent; in Senegal, from 55 to 75 per cent; in Mozambique, from 36 to 48 per cent; in Namibia, from 60 to 78 per cent; and in Uganda, from 21 to 30 per cent. In Tanzania, the registration of children under five doubled between 1999 and 2010—from 6 per cent to 16 per cent—but remained very low, and the proportion of those with a physical birth certificate given to the parents (and not just an entry on the register) was unchanged; further efforts were underway to secure more improvements.[300]

Proof of nationality

A national ID card will usually indicate nationality as one of the pieces of information shown on the face of the card, and in many countries it is assumed that possession of a national ID card is proof of nationality. National

297 Ordonnance No. 05-01 du 27 février 2005 revising Ordonnance No. 70–86 du 15 décembre 1970 portant code de la nationalité algérienne, article 32.

298 Ordonnance No. 33/PG-INT du 14 août 1962 portant Code de la nationalité tchadienne, articles 14–16.

299 The Third Conference of African Ministers Responsible for Civil Registration: Yamoussoukro Declaration, 13 February 2015; website for the conference at http://www.uneca.org/crmc3, last accessed 24 September 2015.

300 UNICEF, *Every Child's Birth Right*; also UNICEF statistics on birth registration available at http://data.unicef.org/child-protection/birth-registration.html, last accessed 24 September 2015.

identity cards have, however, different levels of evidentiary value in law, and in most countries are not legally proof of nationality, even in those countries where an identity card is mandatory only for nationals and is commonly taken to form such proof.

National identity cards have been obligatory for adults in most of the civil law countries since the 1960s; in the Commonwealth, some countries have had identity cards since before independence (such as Kenya), but others (such as Ghana or Nigeria) have introduced them more recently, as has Liberia. There is an increasing push to introduce biometric systems for identity cards to increase their level of security and reduce fraud: ECOWAS is introducing a region-wide requirement for a standard-form biometric identity card. However, not even in the civil law countries do all citizens carry such a card—in Guinea, for example, coverage is estimated at only around 20 per cent.[301]

Nonetheless, possession of an identity card may be key to accessing all sorts of rights restricted to citizens, including not only voting and other political rights, but also health care and education, as well as participation in the formal economy. A national identity card may also be necessary to obtain a passport.[302] The administration of these systems is thus critical to the realisation of rights, and there are many problems reported in practice.[303]

Given that identity card applications are usually treated in the first instance by quite low-ranking civil servants, this gives the power to determine someone's right to proof of nationality—for practical if not legal purposes—to a person who is in no way trained in nationality law. Although complaints mechanisms may theoretically exist within the identity card management system for those whose applications are wrongfully rejected, they are usually quite inaccessible unless the person is connected or has some legal assistance. At the same time, a large number of people may "pass" as nationals who are not entitled to do so.

In the civil law countries definitive proof of nationality is rather provided by a certificate of nationality issued by a tribunal, a process provided for in all the nationality codes; the attribution of this authority to decide if someone is a national to the courts provides both in principle and in fact some protection against arbitrary decision-making. A person whose nationality is seen as being in doubt by the personnel responsible for ID card management will be referred to the tribunal for adjudication on the case. In addition, the possibility of obtaining a nationality certificate means that there is a document that cannot be challenged at moments when conclusive proof

301 Jaap van der Straaten, *Towards Universal Birth Registration in Guinea: Analysis and recommendations for civil registration reform in Guinea for Government and UNICEF*, Civil Registration Centre for Development—CRC4D, December 2013.

302 For southern Africa, see Klaaren and Rutinwa, "Towards the Harmonisation of Immigration and Refugee Law", Chapter 2, Population Registration and Identification, pp. 26–38.

303 See Manby *Struggles for Citizenship*, pp. 115–126. The importance of documentation is recognised by Target 16.9 of the Sustainable Development Goals: "By 2030, provide legal identity for all, including birth registration".

of nationality is required for official purposes. Although this procedure can be very cumbersome and onerous for an individual to fulfil, the decision is tied to a standard of due process, which creates a basis for challenge of any decision.

By contrast, in the Commonwealth countries, although there may be the theoretical provision for a certificate of nationality in cases of doubt, this is delivered by the executive, and is effectively unknown in practice.[304] Thus, there is no single document that provides conclusive proof of nationality: while the passport has highest status, most people do not have an international passport. In practice, a variety of documents may be accepted as proof of nationality, depending on the circumstances.

In Nigeria, for example, the law establishes no document or process that conclusively proves nationality. Constitutional provisions referring to membership of an "indigenous community" in relation to the nationality of those born before independence, reinforced by the legal framework of federalism, have created a strong emphasis on proof of "indigeneity" that pervades identification systems and that impacts both internal migrants and those who have come from other countries.[305] These problems are replicated somewhat in Togo, which is one of the few francophone countries where a certificate of nationality is issued by the Ministry of Justice rather than a court, and a "certificate of origin" is commonly demanded to prove the right to nationality based on *possession d'état*.[306] If the Ministry of Justice does not supply a certificate of nationality within two months of the date of request, it is presumed that the certificate has been refused—and it is not clear if there is any appeal from this outcome.[307]

Those affected by discrimination in gaining access to nationality documentation are often those who are alleged to have another nationality. There are daily examples of such practices even in countries not at all known for discrimination and conflict. In Botswana, for example, the introduction of a new computerised passport system in 2011 found many who had always been recognised as Botswanan suddenly denied the right to renew their passports unless they renounced another nationality that they had never

304 For example, the Ghana Citizenship Act 2000 provides in its Section 20 that the Minister *may* certify that a person is a citizen of Ghana. There is a similar provision in Section 14 of the Gambia Nationality and Citizenship Act 1965, and in Section 24 of the Sierra Leone Citizenship Act 1973; but not in Nigeria. In southern Africa, Botswana, Lesotho, Malawi, Swaziland, Zambia and Zimbabwe also have such provisions, as does Tanzania; however, the laws in Kenya and Uganda have no such provision (though the Uganda Citizenship and Immigration Control Act 1999 does provide in section 33 for a "duly certified citizenship certificate" to be proof of nationality but it does not establish how to obtain one).

305 See above, in the section on racial and ethnic discrimination; also "Indigeneity, Belonging, & Religious Freedom in Nigeria: Citizens' Views from the Street", Nigeria Research Network, *Policy Brief No. 5*, University of Oxford/Development Research and Project Centre, Kano, 2014.

306 *Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité*, Lomé, 12–16 septembre 2011, on file with author. See also *Rapport Alternatif de la société civile sur la mise en œuvre de la Convention relative aux droits de l'enfant, 2005–2010*, Forum des organisations de défense des droits de l'enfant au Togo (FODDET), April 2011.

307 Ordonnance No. 78–34 du 7 septembre 1978 portant Code de la nationalité togolaise, art 72.

claimed.[308] Meanwhile, the Bazezuru, members of an ethnic group found also in Zimbabwe, faced what was described as a "citizenship crisis" in relation to their efforts to acquire Botswanan identity cards and passports.[309]

There are some positive initiatives to address this problem. For example, assisted by the UNHCR, the Namibian government negotiated with the Angolan, Botswanan, South African and Zambian governments to undertake a joint identification exercise among undocumented populations in its border regions; the process started in 2010 and by November 2011, more than 900 persons had been naturalised or officially recognised as Namibian through this process. Among them were around 200 people of Nama and Damara heritage removed in the 1970s by the South African government from the Riemvasmaak area of the Northern Cape to what was then South West Africa, as well as people who fled from Angola to Namibia during the Angolan civil war.[310]

The right to a passport

One of the most common actions of repressive governments seeking to silence their critics is to stop them from travelling abroad either by denying them a passport or by confiscating existing passports when they try to leave the country. During 2007, governments in Chad, Djibouti, Eritrea, Sudan, and Zimbabwe—and no doubt other countries—denied or confiscated passports from individual trade unionists, human rights activists, opposition politicians, or minority religious groups. In 2013, these countries included Egypt, Eritrea, Rwanda, South Sudan, Sudan, Swaziland and Zimbabwe (despite the provisions of the new constitution).[311] This practice escalated in Egypt during 2015.[312]

Historically, British law regarded the grant of travel documentation as being within the "crown prerogative", a privilege and not a right, though this position has changed in recent years. African jurisprudence in the Commonwealth countries has regrettably often followed this rule. In the 1985 *Mwau* case in Kenya, for example, the High Court ruled that "in the absence of any statutory provisions ... the issue and withdrawal of passports is the prerogative of the president".[313] In some countries the law makes this

308 Lawrence Seretse, "Thousands of Batswana become foreigners overnight", *Mmegi* (Gaborone), 18 November 2011. See also Francis B. Nyamnjoh, "Local attitudes towards foreigners in Botswana: An appraisal of recent press stories", *Journal of Southern African Studies*, Vol. 28, No. 4, pp. 755–775.

309 Sesupo Rantsimako, "Bazezuru still in citizenship predicament", *Botswana Gazette*, 6 February 2014; See also, Sesupo Rantsimako, "Bazezuru seek clarity on their citizenship", *Botswana Gazette*, 3 October 2012; Goitsemodimo Williams, "Bazezuru want minister's intervention", *Botswana Daily News* (no date: 2012?); "Commissioner urges Bazezuru to register", BOPA, 29 February 2012.

310 Information provided at UNHCR regional meeting on statelessness in Southern Africa, Mbombela, South Africa, 1–3 November 2011.

311 Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices* for 2007 and 2013, US Department of State.

312 "Egypt: Scores Barred From Traveling", Human Rights Watch, 1 November 2015.

313 *In re application by Mwau*, 1985 LRC (Const) 444.

discretion explicit: in Seychelles, the law states that the minister may deny a passport or identity certificate to any citizen if it is "in the national interest".[314]

But litigation and new laws have begun to push back the tide of executive discretion: court cases in several Commonwealth countries ruled that a citizen is entitled to a passport, even though this is not provided for in legislation. In Zimbabwe, the Supreme Court confirmed in 1993 that the state had no right or power to withhold the passport of a citizen, since a passport was needed in order to exercise the constitutional right to travel;[315] other cases confirmed this right in the face of repeated efforts to deny passports to citizens.[316] In Nigeria, where seizure of passports from activists attempting to travel was a common practice of the military regimes, the Nigerian Court of Appeal in 1994 upheld the fundamental right of every citizen to hold a passport and to leave the country. The judges ordered that the passport of well-known lawyer Olisa Agbakoba, seized at the airport as he was on his way to attend a conference, be returned to him.[317] In Zambia, the courts have also ruled that a citizen is entitled to a Zambian passport, though this is not provided for in legislation.[318] In Kenya, a 2007 ruling overturned the *Mwau* decision: "In Kenya the right of travel is an expressed constitutional right, and its existence does not have to depend on a prerogative, inference or any implied authority."[319]

Some constitutions and legislation are also beginning to recognise this right. The 2010 Kenya constitution provides that "[e]very citizen is entitled to a Kenyan passport and to any document of registration and identification issued by the State to citizens".[320] The South African constitution provides for citizens to have a right to a passport,[321] and the Ugandan citizenship law adopted in 1999 similarly gives all citizens the right to a passport.[322] The Zimbabwe constitution of 2013 confirmed the rights of all citizens to passports and other travel documents.[323]

314 Passport Act, 1991 (Cap.155), sections 6 & 12.

315 *Chirwa v. Registrar-General* 1993 (1) ZLR 1 (H); *Registrar-General v Chirwa* 1993(1) ZLR 241 (S).

316 *Piroro v. Registrar General* 2011(2) ZLR 26 (H); *Trevor Ncube v. Registrar-General* (HH 7316/06), 25 January 2007.

317 Obiora Chinedu Okafor, "The fundamental right to a passport under Nigerian law: An integrated viewpoint," *Journal of African Law*, Vol. 40, No. 1, 1996.

318 *Cuthbert Mambwe Nyirongo v. Attorney-General* (1990-1992) ZR82 (SC).

319 *Deepak Chamanlal Kamani v. Principal Immigration Officer and 2 Others* [2007] eKLR; see also Peter Mwaura, "Passport is a right for every citizen, not a privilege" *The Nation* (Nairobi), 7 July 2007.

320 Constitution of Kenya, 2010, Article 12.

321 Article 21(4), Constitution of the Republic of South Africa.

322 Citizenship and Immigration Control Act, 1999, section 39: "Every Ugandan shall have the right to a passport or other travel documents."

323 Constitution of Zimbabwe 2013, Article 35(3).

Egypt recognises the right of adherents of "non-recognised" religions to documentation

Identification documents are mandatory for all Egyptians and necessary to obtain access to employment, education, registration of births and deaths, recognition of marriage, and other state services, as well as most commercial transactions. A person who cannot produce a national ID upon request by a law enforcement official commits an offence punishable by a fine. For years, the Egyptian government denied Egyptians who were not members of one of the three recognised religions—Islam, Christianity, or Judaism—the right to access such documents. Members of the small Baha'i minority in Egypt, numbering some 2,000, were those most affected by these laws.

In addition, on the basis of their interpretation of *shari'a* rather than any Egyptian law, government officials regularly deny those who convert from Islam to any other religion the option to change their religious affiliation on their official documentation. The courts have usually supported officials in this practice.

In March 2009, the Supreme Administrative Court overturned a previous 2006 decision and upheld the right of Egypt's Baha'is to obtain official documents, including identity cards and birth certificates, without having to identify themselves as Muslim or Christian. Three days later, the Egyptian Interior Ministry accepted the ruling by issuing a decree that introduced a new provision into the Implementing Statutes of Egypt's Civil Status Law of 1994 and instructed Civil Status Department officials to leave the line for religion blank for adherents of religions other than the three the state recognises. The decree came into force on April 15.[324] Baha'i representatives nonetheless reported ongoing problems in relation to identity documentation, especially the registration of marriages.[325]

Supreme Court rules on proof of nationality in DR Congo

The Congolese nationality laws of 1965 and 1972 required that evidence of Congolese nationality must include "proof of all the conditions established by the law". However, a court could also take into account "weighty, precise and corroborating presumptions" (*présomptions graves, précises et concordantes*) as evidence of nationality, drawing inferences from known to unknown facts. This provision was not included in later versions of the law (including that of 1981, which set the date of ethnic qualification for nationality as 1885, as well as the most recent, of 2004), which state only that evidence of nationality is provided by an official certificate of nationality supplied by the correct state authority. However, the decree implementing the 1981 law also cancelled the certificates of nationality issued under the 1972 law.

324 *Egypt: Prohibited Identities: State Interference with Religious Freedom*, Human Rights Watch, November 2007; "Egypt: Decree Ends ID Bias Against Baha'is," Human Rights Watch, 15 April 2009.

325 Bureau of Democracy, Human Rights and Labor, "International Religious Freedom Report for 2013: Egypt", US State Department, 28 July 2013.

In 1996, the Supreme Court considered a request by two members of the long-running "transitional" parliament (*le Haut Conseil de la République—Parlement de transition*), Mutiri Muyongo and Kalegamire Nyirimigabo, that it set aside the decision of the parliament to exclude them on grounds of doubt about their Congolese (in fact, at that time Zairian) nationality. The court granted the requests and annulled the decision of the transitional parliament on both procedural and substantive grounds. Most importantly, it ruled that the Congolese nationality of the two parliamentarians was sufficiently proved by the certificates of nationality or identity cards that they had obtained from the Ministry of the Interior and did not require any further evidence. The court declined, however, to award any damages.[326]

326 Mabanga Monga Mabanga, *Le contentieux constitutionnel congolais*, Editions Universitaires Africaines, Kinshasa, 1999, pp. 56–58. See also Manby *Struggles for Citizenship*, pp. 66–80.

State successions since independence

There have been few cases of state succession in Africa since the departure of the European colonial powers, but those that have occurred illustrate that the rules governing transitions in state authority are always critical: deeply political even when they seem most tediously technical, and with the potential to cause problems long after the rules were first adopted. Two main types of state succession have taken place: the separation of part of an existing state to create a new state, while the former state remains in existence; and the transfer of territory between states as a result of border adjustments.

Separation of part of a territory

The most damaging example so far in the postcolonial history of the continent has been around the secession of Eritrea from Ethiopia—itself never colonised. In 1998, former comrades in arms against dictatorship in Ethiopia's central government, who had together successfully overthrown that regime and then, to the world's admiration, peacefully managed the process of creating a new state of Eritrea along Ethiopia's northern border, decided to turn their guns on each other instead. The brutal war that followed between the Ethiopian and Eritrean armies, fought out in an arid mountainous version of World War I trenches, devastated the lives of tens of thousands: not only the soldiers who were killed and injured and their families, but of all those who became instant suspected traitors in the land of their birth. The conflict rendered people born of parents from the "wrong" side of the border of what had been one country open to treatment as foreigners and subject to deportation.[327]

The 2011 secession of South Sudan from Sudan may yet have equally serious consequences. The failure of the parties to agree a joint definition and a joint mechanism to adjudicate cases in doubt on the succession of states left many former citizens of the united Sudan for the first time at risk of denial of their rights as continuing citizens of the Republic of Sudan and some at risk of statelessness, excluded from both the successor states.[328]

The Transitional Constitution of South Sudan, adopted in 2011 pending the appointment of a commission to draft a final constitution, did not in fact include transitional provisions on nationality, but echoed the wording of the 1998 and 2005 constitutions of Sudan that "[e]very person born to a South Sudanese mother or father shall have an inalienable right to enjoy South

327 Manby, *Struggles for Citizenship in Africa*, pp. 98–105.

328 Bronwen Manby, *The Right to Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws*, Open Society Foundations, June 2012, and Bronwen Manby, *International Law and the Right to Nationality in Sudan*, Open Society Foundations, February 2011.

Sudanese citizenship and nationality", thus providing for a gender-neutral descent-based citizenship regime. It explicitly permitted dual nationality.[329] The new South Sudanese Nationality Act, adopted in June 2011 just before the secession of South Sudan, in turn provided for an extremely broad attribution of South Sudanese nationality, regardless of an individual's current residence. Article 8 stated that an individual would be considered a South Sudanese national if he or she had a parent, grandparent or great-grandparent born in South Sudan; if he or she "belongs to one of the indigenous tribal communities of South Sudan"; or based on long-term residence (dating back to 1956). The law also provided for acquisition of citizenship by naturalisation based on 10 years' residence (longer than the five years applied in the north since 1994) and other conditions.

On 19 July 2011, the National Assembly of the Republic of Sudan adopted amendments to the Sudan Nationality Act 1994. New section 10(2) provided that:

> An individual will automatically lose his Sudanese nationality if he has obtained, de jure or de facto, the nationality of South Sudan.

A minor child of an affected parent would also lose his or her nationality. The law provides no process to allow a person to argue that he or she has not obtained the nationality of South Sudan (or even to renounce any such right in order to remain a citizen of the Republic of Sudan).

The paradox was that the very broad terms of the South Sudanese law, which appeared to attribute nationality automatically to those eligible even if they were born and resident outside the territory of South Sudan, allowed Khartoum to argue that a very large number of people (anyone with one great-grandparent born in South Sudan) were "really" South Sudanese and thus automatically lost their Sudanese nationality.[330] Several hundred thousand people with South Sudanese ancestry were thus automatically deprived of their Sudanese nationality and placed at risk of statelessness.

Transfers of territory

In general, people who are living in a border region, or are members of ethnic groups whose main territory is in a border region, are at greater risk of statelessness than those whose clearly "come from" a zone within the boundaries of the state. A particular category of border population most affected by doubts around nationality are those affected by border disputes; including those where administration of territory has been transferred as a result of a ruling by the International Court of Justice (ICJ).

329 Transitional Constitution of the Republic of South Sudan, Article 45.

330 In similar circumstances, however, the Eritrea-Ethiopia Claims Commission, set up by the comprehensive peace agreement of December 2000 that ended the war between the two countries, found that individuals became dual national, even though Ethiopian law did not allow dual nationality: see above, the section on international norms on nationality on page 21.

The best known ICJ decision transferring territory in Africa, and the one affecting the most people, was handed down in 2002 and awarded the Bakassi peninsula bordering Nigeria and Cameroon to Cameroon, placing a population of perhaps one hundred thousand people at risk of statelessness.[331] Other cases relate to disputed frontiers where borders were not firmly established during the colonial period or on the transition to independence, especially where territories were administered by the same colonial power, so administrative boundaries had been less important to determine. They include rulings on the "Aouzou Strip" between Chad and Libya, and on disputes between Burkina Faso and Mali, Botswana and Namibia, Benin and Niger, and Burkina Faso and Niger.[332]

Often the populations affected by such border disputes have long had limited contact with the central administrations of either country, and thus are likely to have few documents of an existing nationality; in addition, they may be members of minority ethnic groups, or of nomadic or semi-nomadic lifestyle, making them more vulnerable to doubts about their nationality, whether or not any dispute is resolved. The ICJ—following recognised principles of international law—notably fails either to take into account the wishes of the inhabitants of these territories in relation to their nationality or to make any ruling on the steps that should be taken to ensure that those affected have a recognised nationality after the transfer of territory.

331 *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, ICJ Judgment of 10 October 2002. See also Bronwen Manby, *Nationality, Migration and Statelessness in West Africa*, UNHCR and IOM, 2015.

332 *Frontier Dispute (Burkina Faso/Mali)*, ICJ Judgment of 22 December 1986; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, ICJ Judgment of 3 February 1994; *Case concerning Kasikili/Sedudu Island (Botswana/Namibia)*, ICJ Judgment of 13 December 1999; *Frontier Dispute (Benin/Niger)*, ICJ Judgment of 12 July 2005; *Frontier Dispute (Burkina Faso/Niger)*, ICJ Judgment of 16 April 2013.

Naturalisation as a "durable solution" for refugees

In the language of the UNHCR, there are three "durable solutions" to the situation of individuals who have crossed an international border seeking refuge from persecution or from civil war: voluntary repatriation, local integration in the country of first asylum, or resettlement in a third country. Although voluntary repatriation to their home country is in principle the best outcome for refugees, the reality is that for many refugees repatriation may not be possible because of continued insecurity in their home countries. Resettlement in a third country is only ever going to be possible for a small minority of those affected. Many refugee populations in Africa have lived in their countries of asylum for decades or generations, and better systems for local integration into the country of refuge are urgently needed.

Under international law, African states have a duty to promote such local integration. The 1951 UN Convention Relating to the Status of Refugees provides (Article 34) that states parties "shall as far as possible facilitate the assimilation and naturalisation of refugees" by such measures as expediting proceedings and reducing the costs of naturalisation. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa does not include a similar provision on naturalisation, though its requirement (Article II.1) that countries of asylum should use their best endeavours to "secure the settlement" of refugees who are unable to return home could be interpreted in the same way. Both conventions require countries of asylum to issue travel documents to refugees. Almost all African countries are parties to the UN Refugee Convention,[333] and the great majority to the African Refugee Convention.[334]

The UNHCR estimated in 2004 that there were approximately 2.3 million people living in sub-Saharan Africa in a protracted refugee situation—defined by the UNHCR to mean those who have been in exile for more than five years without immediate prospects for implementation of durable solutions.[335] Since that date, under pressure both from donor governments to the UNHCR and from some of the countries of origin of the refugees, there have been efforts to

333 Excluding only Comoros, Eritrea, Libya and Mauritius. Several countries have entered reservations to Article 34 of the UN Refugee Convention, including Botswana, Malawi and Mozambique, indicating that they did not accept any obligation to grant more favourable naturalisation rights to refugees than to other foreigners. List of participants at the UN Treaty Collection website https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en, last accessed 24 September 2015.

334 Excluding Djibouti, Eritrea, Madagascar, Mauritius, Namibia, Somalia, and São Tomé & Príncipe, as well as the SADR. List of participants at http://www.au.int/en/treaties, last accessed 24 September 2015.

335 Protracted Refugee Situations, Executive Committee of the High Commissioner's Programme, EC/54/SC/CRP.14, 10 June 2004; Conclusion on Protracted Refugee Situations, No. 109 (LXI) – 2009, UNHCR ExCom Conclusions, 8 December 2009.

resolve some of these protracted situations by invoking the "cessation clauses" from the 1951 Refugee Convention, which set out the situations in which refugee status may properly come to an end.[336]

The cessation clauses have been invoked four times on the continent, relating to the situation in Sierra Leone (at the end of 2008), Angola and Liberia (in 2012) and Rwanda (in 2013). On invocation of the cessation clause, the refugees become simply foreigners with the same status (and requirements to regularise their status) as any other foreigner. The UNHCR thus enters into agreements with the countries of refuge and origin on measures for the voluntary repatriation or local integration of the former refugees; or for individual exemption from the cessation clause on the grounds of a need for continued international protection.

In practice, as the UNHCR puts it, with restraint: "[p]rogress has been rather modest in terms of local integration throughout the continent".[337] Though there are exceptions, such as Tanzania's offer to naturalise long-term Burundian refugees (see box) and Senegal's offer of naturalisation to Mauritanian refugees,[338] there is often no possibility of converting refugee status into a more permanent legal status, whether that of permanent residence or nationality. Without nationality refugees may be unable to obtain schooling beyond primary school for their children or employment in the formal economy, and they are unable to vote or stand for election or public office in their adoptive country.

Very few, if any, African states provide for easier terms of access to nationality for refugees, despite their obligations under the African and international refugee conventions, and a move, prompted by lobbying from the UNHCR, towards greater ratification of the 1961 UN Convention on the Reduction of Statelessness. Few countries globally have adopted legislation to facilitate naturalisation specifically for stateless persons.[339] A few countries provide in general terms that refugees who qualify under the normal rules

336 These situations may be based on actions by the refugee himself or herself (such as voluntarily returning to the country concerned, or naturalisation in another country), but in cases where the reason for ending refugee status is that the situation in the country of origin has changed sufficiently to make return possible, there is a process for a statement to be made by the UNHCR and the authorities of the country in question that, as a group, refugees from that country no longer have a well-founded fear of being persecuted (though individuals may rebut the presumption). "The Cessation Clauses: Guidelines on their Application", UNHCR, Geneva, April 1999; "Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the 'ceased circumstances' Cessation Clauses", UNHCR, 31 December 2011.

337 United Nations Secretary-General, *Assistance to refugees, returnees and displaced persons in Africa*, report to the General Assembly, A/61/301, 29 August 2006.

338 Manby, *Struggles for Citizenship*, pp. 105–108.

339 See the EUDO global statelessness database at http://eudo-citizenship.eu/34-uncategorised/1111-global-database-on-protection-against-statelessness, last accessed 24 September 2015.

may be assisted to obtain naturalisation.[340] In Africa, only Malawi and Lesotho have explicit measures in their nationality law, providing for registration of stateless persons in some circumstances.[341]

Even where the law appears to provide for naturalisation, it is not always interpreted as doing so: for example, Uganda adopted a groundbreaking new Refugee Act in 2006 to replace the tellingly named 1960 Control of Alien Refugees Act. Whereas the former legislation had excluded any period spent in Uganda from counting as residence for the purposes naturalisation, the new version simply stated that the normal law applied to the naturalisation of a refugee.[342] While the 1995 constitution excludes refugees from the easier process of registration as a citizen for those born before independence, it delegates the provision of terms for naturalisation to legislation.[343] The Uganda Citizenship and Immigration Control Act of 1999 provides no exclusion for refugees from the provisions on naturalisation, though the residence period required for anyone to naturalise is very long, at 20 years, and other conditions apply.[344] Nevertheless, some remaining ambiguities (including the fact that persons born in Uganda of refugee parents or those who did not themselves "legally and voluntarily" immigrate to Uganda are excluded from the non-discretionary process of registration), have led Ugandan officials to interpret the law to mean that refugees may not naturalise. Forms and procedures used as of 2011 still referred to the long-repealed 1964 Citizenship Act.[345] In 2015, the Constitutional Court confirmed the interpretation that refugees were not eligible for the easier process of registration, though it stated (but for technical reasons did not give a formal ruling) that they were eligible for naturalisation.[346]

In 2007, Sierra Leone adopted a new Refugees Protection Act, which provides explicitly for the "facilitation of lasting solutions" and local integration of refugees but stops short of providing for naturalisation of long-term refugees and speaks, rather, of promoting voluntary repatriation or resettlement in

340 For example, Nigeria's National Commission For Refugees, etc. Act, 1989, Article 17 states that "[s]ubject to the provisions of relevant laws and regulations relating to naturalisation, the Federal Commissioner shall use his best endeavours to assist a refugee, who has satisfied the criteria relating to the acquisition of Nigerian nationality, to acquire the status of naturalisation under such relevant laws and regulations". Ghana has a provision that "[s]ubject to the relevant laws and regulations relating to naturalisation, the Board may assist a refugee who has satisfied the conditions applicable to the acquisition of Ghanaian nationality to acquire Ghanaian nationality". Ghana Refugee Law, 1992 (PNDCL 305D), section 14.

341 Lesotho Citizenship Order 1971, Article 10; Malawi Citizenship Act 1966 (as amended to 1992), Section 18.

342 Control of Alien Refugees Act 1960, Art 18; Refugee Act 2006, Art. 45.

343 Uganda Constitution, 1995, Article 12(1), 12(2)(b) and 13.

344 Uganda Citizenship and Immigration Control Act 1999, section 16.

345 Walker, *From refugee to citizen*? Article 14 of the Citizenship and Immigration Control Act 1999, as amended 2009, provides for various categories of person to be registered as a citizen on application, including a person born in Uganda who has lived continuously in Uganda since 1962 unless neither parent nor any grandparent had diplomatic status or was a refugee; and a person who has legally and voluntarily migrated to and has been living in Uganda for at least ten years. The "legal and voluntary" caveat does not apply to naturalisations under Article 16, but in that case 20 years' residence is required.

346 *Centre for Public Interest Law Ltd and Salima Namusobya v. Attorney General*, Constitutional Petition No. 34 of 2010, Judgment of 6 October 2015.

third countries.[347] Ghana allows for refugees to naturalise according to the usual provisions of the law,[348] though studies of long-term Liberian refugees in Ghana showed many difficulties in practice.[349] Guinea-Bissau's 2008 law provides for naturalisation of refugees to be facilitated.[350] Other longer-standing laws that provide for naturalisation include Lesotho's 1983 Refugees Act, which allows a refugee to apply for naturalisation after six years (the 12 months prior to the application and another five years). In Mozambique, the 1991 Refugee Act explicitly provides for naturalisation of refugees on the same terms as other foreigners.[351] In Kenya, a Refugee Act adopted in 2006 finally brought Kenyan law largely into line with international standards of refugee protection, but the act did not give refugees the right to work, nor did it contain any explicit right to naturalise as a Kenyan citizen.[352] Although a new constitution and citizenship Act adopted in 2010 and 2011 placed no barriers on access to citizenship, in practice Kenyan nationality remains virtually impossible to obtain for refugees.[353]

Egypt, host to at least 250,000 refugees and asylum seekers in 2015,[354] excluding approximately 70,000 Palestinians,[355] fails to make any serious provisions for refugee integration. Refugees and their children do not qualify for Egyptian nationality, regardless of the length of their residence in the country, unless they are married to or have a parent who is an Egyptian national (see also the section on partial reforms on gender equality in North Africa on page 69). After the Palestinians in Egypt and elsewhere, the 150,000 Western Saharan refugees in Algeria constitute one of the largest and longest standing populations of unintegrated long-term refugees. They live in isolated refugee camps in Algeria, with no possibility of naturalisation; although they can obtain documents from the institutions of the Sahrawi Arab Democratic Republic, these give few rights and are not recognised by many countries. Those who remained in their homes face significant

347 Sierra Leone Refugees Protection Act, No. 6 of 2007, Part V, Article 23. However, the Act also annexes (among others) Article 34 of the UN Refugee Convention relating to naturalisation, which requires states parties to "facilitate the assimilation and naturalisation of refugees" and "expedite naturalisation proceedings".

348 "Subject to the relevant laws and regulations relating to naturalisation, the Board may assist a refugee who has satisfied the conditions applicable to the acquisition of Ghanaian nationality to acquire Ghanaian nationality." Ghana Refugee Law (No. 305D of 1992), section 34(2).

349 Shelly Dick, *Responding to protracted refugee situations: A case study of Liberian refugees in Ghana*, UNHCR Evaluation & Policy Analysis Unit, EPAU/2002/06, July 2002. US Committee for Refugees and Immigrants, *World Refugee Survey 2008*.

350 The law reduces the period of residence required for naturalisation in Guinea-Bissau from 10 years to 7z years. Lei No. 6/2008, Estatudo do Refugiado, Article 34.

351 Jonathan Klaaren and Bonaventure Rutinwa, "Towards the Harmonisation of Immigration and Refugee Law in SADC" *Migration Dialogue for Southern Africa (MIDSA), Report No.1*, 2004, pp. 90–91.

352 Refugee Act, No. 13 of 2006.

353 Constitution of Kenya, 2010, articles 15 and 18; Kenya Citizenship and Immigration Act No. 12 2011, section 15, where the conditions include "has been a resident under the authority of a valid permit" (which may well not be obtained by an asylum seeker) and "has been determined, through an objective criteria, and the justification made, in writing, that he or she has made or is capable of making a substantive contribution to the progress or advancement in any area of national development within Kenya".

354 An increase of more than 100,000 in five years, largely made up of Syrians. UNHCR country operations profile – Egypt, 2015, available at http://www.unhcr.org/pages/49e486356.html, last accessed 24 September 2015.

355 US Committee for Refugees and Immigrants, *World Refugee Survey: 2009*.

restrictions on their civil liberties, sometimes including the right to identity papers and travel documents.[356]

Former refugees from countries where the cessation clauses have been invoked may be at particular risk of statelessness: no longer entitled to documentation as a refugee by the UNHCR or the national authorities of the host country, they may also face difficulties in obtaining recognition of the nationality of the country from which they (or their parents) originally fled, and if naturalisation is not available in the country of current residence they are left with no recognised nationality. In West Africa, at least 1,000 former Liberian refugees find themselves in this situation, as well as some Sierra Leoneans and Rwandans.[357]

Following its transition to democratic government in 1994, South Africa adopted both a new Refugees Act and a new Immigration Act. These laws draw a clear distinction between asylum seekers, refugees and other migrants, and establish a bureaucratic apparatus for dealing with applications for refugee status. There are difficulties in practice, but South Africa's system does provide for a transfer of status from refugee to permanent residence and then to naturalisation. After five years of continuous residence in South Africa from the date that asylum was granted, the Immigration Act allows for the granting of permanent residence to a refugee if the Standing Committee for Refugee Affairs provides a certificate that he or she will remain a refugee indefinitely.[358]

The system has, however, struggled to cope. By 2012, around 65,000 people had been granted refugee status in South Africa; but there was a backlog of almost a quarter of a million people who had applied for asylum.[359] Dual nationality restrictions introduced in 2010 for counties not permitting dual nationality could also pose problems for refugees seeking to naturalise, as did the requirement that the Standing Committee must confirm that the refugee will need asylum for the foreseeable future.[360]

Ultimately, the countries that deal most effectively and humanely with long-term refugees are those with the most liberal naturalisation regimes for foreigners in general, in which special measures for naturalisation of refugees are not required because the existing system works and refugees can access this system. At the same time, especially for refugees who have been held in camps or settled in particular areas, there is often the need for specific measures to facilitate access to naturalisation procedures.

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356 Manby, *Struggles for Citizenship*, pp. 152–156. For the North African countries and Djibouti, see, generally, Khadija Elmadmad, *Asile et Réfugiés dans les pays afro-arabes*, Editions EDDIF, Casablanca, 2002.

357 Manby, *Nationality, Migration and Statelessness in West Africa*.

358 Immigration Act (No. 13 of 2002), section 27(d), read with the Refugees Act (No. 130 of 1998), section 27(c).

359 UN High Commissioner for Refugees, *Statistical Yearbook 2012* (annexes, table 1).

360 Requirements to apply for permanent residence for a refugee set out at the website of Immigration South Africa (a private legal firm): http://immigrationsouthafrica.com/permanent-residence-for-refugee-status/, last accessed 24 September 2015. See also Jessica P. George and Rosalind Elphick, *Statelessness and Nationality in South Africa*, Pretoria: Lawyers for Human Rights, 2013.

Burundian refugees in Tanzania

Tanzania is one of the African countries that has made the most positive efforts to grant citizenship to refugees, especially refugees it has received from Rwanda and Burundi over the years. In 1980, refugees who had come to Tanzania from Rwanda and Burundi in 1959 and during the 1960s were given the right to Tanzanian citizenship on a group basis in which normal application procedures and fees were waived. The large influxes of refugees to Tanzania from both Rwanda and Burundi in the mid-1990s, however, put a strain on this policy of integration. In 1996, as Rwandan refugees were driven back to their country from DRC, the Tanzanian army also herded more than 500,000 Rwandan refugees back across the border and the Rwandan border remained closed until 1998.

In 1998, a new Refugee Act was passed, incorporating the UN and OAU refugee definitions into national law, though still requiring refugees to live in designated sites; and, in 2003, a National Refugee Policy was adopted, which, however, still cast "local settlement" as a temporary solution. In May 2005 the government granted citizenship to the first 182 of around 3,000 Somali refugees of Bantu origin in Chogo settlement in the north-eastern part of Tanzania.

In 2007, Tanzania offered naturalisation to Burundian refugees resident in the country since 1972 and their descendants; of those eligible, 80 per cent, or 172,000 people, expressed their desire to remain in Tanzania, and the remaining 20 per cent were to receive assistance with repatriation from March 2008. However, the naturalisation procedure was then stalled when almost complete, leaving thousands in limbo; while thousands of others who had not applied for citizenship were expelled from Tanzania in 2013, even though many of them were likely entitled to recognition as citizens, based on their birth in the country. In 2014, the process of issuing naturalisation certificates resumed, with most of those who had been approved receiving their new documents during 2015.[361]

361 These processes have been quite extensively documented: Charles P. Gasarasi, "The Mass Naturalisation and Further Integration of Rwandese Refugees in Tanzania: Process, Problems and Perspectives," *Journal of Refugee Studies* Vol. 3, No. 2, 1990; Bonaventure Rutinwa, "The Tanzanian Government's Response to the Rwandan Emergency", *Journal of Refugee Studies*, Vol. 9, No. 3, 1996, pp. 291–302; James Milner, "Can Global Refugee Policy Leverage Durable Solutions? Lessons from Tanzania's Naturalization of Burundian Refugees", *Journal of Refugee Studies*, Vol. 27, No. 4, 2014, pp. 553–573; as well as a series of reports by the International Refugee Rights Initiative, Kampala (including *Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania*, 2008; *Resisting Repatriation: Burundian Refugees Struggling to Stay in Tanzania*; *An urgent briefing on the situation of Burundian refugees in Mtabila camp in Tanzania*, 2012; *'I can't be a citizen if I am still a refugee': Former Burundian Refugees Struggle to Assert their new Tanzanian Citizenship*, 2013; *From refugee to returnee to asylum seeker: Burundian refugees struggle to find protection in the Great Lakes region*, 2013).

Appendix: Legal sources

The list below indicates the version of the nationality laws (and constitutions, where relevant) used in the compilation of this report, as amended to December 2015.

Algeria	• Ordonnance No. 70-86 du 15 décembre 1970 portant code de la nationalité algérienne (modifiée par l'Ordonnance No. 05-01 du 27 février 2005)
Angola	• Constitution 2010 • Lei No. 1/05 da nacionalidade, de 1 de julho 2005
Benin	• Loi No. 65-17 du 23 juin 1965 portant Code de la nationalité dahoméenne
Botswana	• Citizenship Act Cap 01:01, Act 8 of 1998 (amended by Act 9 of 2002 and Act 1 of 2004)
Burkina Faso	• Zatu No. An VII 0013/FP/PRES du 16 novembre 1989, portant institution et application du Code des personnes et de la famille
Burundi	• Constitution 2005 • Loi No. 1-013 du 18 juillet 2000 portant réforme du Code de la nationalité
Cameroon	• Loi No. 1968-LF-3 du 11 juin 1968 portant Code de la nationalité camerounaise
Cape Verde	• Constitution 1992 (as amended to 2010) • Decreto-Lei No. 53/93 de 30 de Agosto de 1993
CAR	• Loi No. 1961.212 du 20 avril 1961 portant Code de la nationalité centrafricaine
Chad	• Ordonnance No. 33/PG-INT du 14 août 1962 portant Code de la nationalité tchadienne
Comoros	• Constitution 2001 • Loi No. 79-12 du 12 décembre 1979 portant Code de la nationalité comorienne
Congo Republic	• Loi No. 35-61 du 20 juin 1961 portant Code de la nationalité congolaise (modifiée par Loi No. 2-93 du 30 septembre 1993)
Côte d'Ivoire	• Loi No. 61-415 du 14 Décembre 1961 portant Code de la nationalité ivoirienne (modifiée par la loi No. 64-381 du 7 octobre 1964, la loi No. 72-852 du 21 Décembre 1972, la loi No. 2004-662 du 17 décembre 2004, les décisions No. 2005-03/PR du 15 juillet 2005 et No. 2005-09/PR du 29 aout 2005, et la Loi No.2013-654 du 13 septembre 2013)
DR Congo	• Constitution 2005 • Loi No. 04-024 du 12 novembre 2004 relative a la nationalité congolaise
Djibouti	• Loi No. 200/AN/81 portant Code de la nationalité djiboutienne • Loi No. 79/AN/04/5eme L du 24 octobre 2004 portant Code de la nationalité djiboutienne
Egypt	• Constitution 2014 • Law No. 26 of 1975 concerning Egyptian nationality (as amended by Law No. 154 of 14 July 2004)
Equatorial Guinea	• Ley Fundamental 2012 • Ley núm. 8/1990, de fecha 24 de octubre, reguladora de la nacionalidad ecuato-guineana
Eritrea	• Constitution 1997 • Eritrean Nationality Proclamation No. 21/1992
Ethiopia	• Constitution 1995 • Proclamation No. 378/2003 on Ethiopian Nationality
Gabon	• Loi No. 37-1998 portant Code de la nationalité gabonaise
Gambia	• Constitution 1997 (amended by Act No. 6 of 2001) • Gambia Nationality and Citizenship Act No. 1 of 1965

Ghana	• Constitution 1992 (amended by Act No. 527 of 1996) • Citizenship Act 591 of 2000 (amended by Act No. 91 of 2002)
Guinea	• Loi No. 98/034/CTRN du 31 décembre 1998 portant Code civil de Guinée, published in the Official Gazette of January 10,1999
Guinea-Bissau	• Constitution 1984 (as amended to 1996) • Lei da nacionalidade no. 2/92 de 6 de abril (amended by Lei no. 6/2010)
Kenya	• Constitution of Kenya 2010 • Kenya Citizenship and Immigration Act No. 12 of 2011 (amended by Act No. 12 of 2012).
Lesotho	• Constitution 1993 • Lesotho Citizenship Order No. 16 of 1971
Liberia	• Constitution 1986 • Aliens and Nationality Law 1973
Libya	• Law No. 24 of 2010 on the Provisions of Libyan Nationality
Madagascar	• Ordonnance no. 1960-064 portant Code de la nationalité malgache (modifiée par la loi no. 1961-052; la loi no. 1962-005 ; l'ordonnance no. 1973-049 ; et la loi no. 1995-021)
Malawi	• Constitution 1994 • Malawi Citizenship Act No. 28 of 1966 (amended by Acts no. 37 of 1967, 5 of 1971 and 22 of 1992)
Mali	• Loi No. 2011-087 du 30 décembre 2011 portant Code des personnes et de la famille
Mauritania	• Constitution 1991 • Loi No. 1961-112 du 12 juin 1961 portant Code de la nationalité mauritanienne (modifiée par la Loi No. 1962-157, la Loi No. 1976-207, et la Loi No. 2010-023 du 11 février 2010)
Mauritius	• Constitution 1968 (amended by Act No. 23 of 1995) • Mauritius Citizenship Act 1968 (as amended by Act No. 24 of 1995)
Morocco	• Dahir No. 1-58-250 du 6 septembre 1958 portant Code de la nationalité marocaine (modifiée par la Loi No. 62-06 promulguée par le dahir No. 1-07-80 du 23 mars 2007)
Mozambique	• Constitution 2004 • Lei da Nacionalidade de 20 de Junho de 1975 (amended by Lei No. 16/87 de 21 de Dezembro 1987)
Namibia	• Constitution 1990 (as amended by Act No. 7 of 2010) • Namibian Citizenship Act No. 14 of 1990
Niger	• Constitution 1999 • Ordonnance No. 84-33 du 23 août 1984 portant Code de la nationalité (modifiée par l'Ordonnance No. 99-17 du 4 juin 1999 et la Loi No. 2014-60 du 05 novembre 2014)
Nigeria	• Constitution 1999
Rwanda	• Loi organique No. 30/2008 du 25 juillet 2008 portant code de la nationalité rwandaise
SADR	• No information available
São Tomé and Príncipe	• Constitution 2003 • Lei da nacionalidade No. 6/90
Senegal	• Loi No. 61-70 du 7 mars 1961 déterminant la nationalité sénégalaise (modifiée par la Loi No. 61-10 du 7 mars 1961, la Loi No. 67-17 du 28 février 1967, la Loi No. 70-27 du 27 juin 970, la Loi No. 70-31 du 13 octobre 1970, la Loi No. 79-01 du 6 janvier 1979, la Loi No. 84-10 du 4 janvier 1984, la Loi No. 89-42 du 26 décembre et la Loi No. 2013-05 du 8 juillet 2013)
Seychelles	• Constitution 1993 (as amended to 2011) • Citizenship Act No. 18 of 1994 (as amended by Act No. 11 of 2013)
Sierra Leone	• Constitution 1991 • Sierra Leone Citizenship Act, 1973 No. 4 of 1973 (as amended by Act No. 13 of 1976 and Act No. 11 of 2006)
Somalia	• Law No. 28 of 22 December 1962 on Somali Citizenship • Provisional Constitution 2012
South Africa	• Constitution 1996 (as amended to 2013) • South African Citizenship Act No. 88 of 1995 (as amended by Act No. 19 of 1997, Act No. 17 of 2004 and Act No. 17 of 2010)

South Sudan	• Transitional Constitution of the Republic of South Sudan 2011 • Nationality Act 2011
Sudan	• Interim National Constitution of the Republic of Sudan 2005 • Sudanese Nationality Act 1994 (amended by Act No. 1 of 2006 and the Sudanese Nationality (Amendment) Act 2011)
Swaziland	• Constitution 2005 • Swaziland Citizenship Act No. 14 of 1992
Tanzania	• Tanzania Citizenship Act No. 6 of 1995
Togo	• Constitution 1992 • Ordonnance 78-34 du 7 septembre 1978 portant Code de la nationalité togolaise
Tunisia	• Constitution 2014 • Décret-Loi no. 63-6 du 28 février 1963 portant refonte du Code de la nationalité tunisienne, ratifié par la Loi no. 63-7 du 22 avril 1963 (modifiée par la loi no. 71-12 du 9 mars 1971, la loi no. 75-79 du 14 novembre 1979, la loi no. 84-81 du 30 novembre 1984, la loi no. 2002-4 du 21 janvier 2002, et la loi no. 2010-55 du 1 décembre 2010)
Uganda	• Constitution 1995 (amended by Act No. 11 of 2005 and Act No. 21 of 2005) • Uganda Citizenship and Immigration Control Act 1999 (Chapter 66) (amended by Act No. 5 of 2009)
Zambia	• Constitution 1991 (amended by Act No. 18 of 1996 and Act No. 20 of 2009) • Citizenship of Zambia Act No. 26 of 1975 (amended by Act No. 17 of 1986 and Act No. 13 of 1994)
Zimbabwe	• Constitution 2013 • Citizenship of Zimbabwe Act, No. 23 of 1984 (as amended by Act No. 7 of 1990, Act No. 12 of 2001, Act No. 22 of 2001, Act No. 23 of 2001, Act No. 1 of 2002 and Act No. 12 of 2003)

Few African countries provide for an explicit right to a nationality. Laws and practices governing citizenship effectively leave hundreds of thousands of people in Africa without a country. These stateless Africans can neither vote nor stand for office; they cannot enrol their children in school, travel freely, or own property; they cannot work for the government; they are exposed to human rights abuses. Statelessness exacerbates and underlies tensions in many regions of the continent. *Citizenship Law in Africa*, a comparative study by two programs of the Open Society Foundations, describes the often arbitrary, discriminatory, and contradictory citizenship laws that exist from state to state and recommends ways that African countries can bring their citizenship laws in line with international rights norms. The report covers topics such as citizenship by descent, citizenship by naturalisation, gender discrimination in citizenship law, dual citizenship, and the right to identity documents and passports. It is essential reading for policymakers, attorneys, and activists.

This third edition is a comprehensive revision of the original text, which is also updated to reflect developments at national and continental levels. The original tables presenting comparative analysis of all the continent's nationality laws have been improved, and new tables added on additional aspects of the law. Since the second edition was published in 2010, South Sudan has become independent and adopted its own nationality law, while there have been revisions to the laws in Côte d'Ivoire, Kenya, Libya, Mali, Mauritania, Namibia, Niger, Senegal, Seychelles, South Africa, Sudan, Tunisia and Zimbabwe. The African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child have developed important new normative guidance.

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