

# **Citizenship Law in Africa**

## A Comparative Study

By Bronwen Manby



Africa Governance Monitoring and Advocacy Project (AfriMAP)  
Open Society Justice Initiative

Second edition October 2010,  
incorporating revisions to the tables and other information relevant to  
Kenya, Libya, Namibia, South Africa, Sudan and Zimbabwe.

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## Sources and acknowledgments

This report was written by Bronwen Manby, of the Africa Governance Monitoring and Advocacy Project (AfriMAP) of the Open Society Foundations, based on a comparative analysis of the citizenship laws of 53 countries in Africa.

The report is twinned with a book on citizenship in Africa published by Zed Books during 2009 in its “African Arguments” series. The book gathers 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. These case studies also inform the analysis in the current report.

An almost complete set of African citizenship laws has been collected. These laws are listed in the appendix at the end of the report and, where not previously available, have also been supplied to the UN Refugee Agency for inclusion on their website in the Refworld database of resources. The study also refers to national and regional jurisprudence, and to reports to and the concluding observations of the UN committees responsible for monitoring compliance with the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racism, and the Convention on the Elimination of All Forms of Discrimination against Women.

In addition, the report relies on information collected as part of an “Africa citizenship audit” initiated by the Open Society Justice Initiative working with the Africa members of the Open Society Foundations. For this audit, national partners surveyed the law and practice in 14 African countries on equality, minority rights, nationality, refugees, and treatment of migrants. A steering committee for the project provided guidance throughout.

The country research for the “citizenship audit” was carried out by the following individuals and organisations: Amy Bauer, Basier Bandi, Alice Mogwe and Tim Curry (DITSHWANELO—The Botswana Centre for Human Rights), Botswana; Ibrahima Doumbia, Côte d’Ivoire; Marcel Wetsh’okonda Koso (Campagne pour les Droits de l’Homme au Congo), Democratic Republic of Congo; Wesal Afifi, Abduallah Khalil, Tarek Badawy, and Amal Abdel Hadi (Forced Migration and Refugee Studies Program, American University in Cairo), Egypt; Abebe Haliu, Ethiopia; Rose Ayugi, Kenya; Keiso Matashane-Marite and Libakiso Mathlo (Women and Law in Southern Africa), Lesotho; Moustapha Touré and A.S. Bouhoubeyni, Mauritania; Khadija Elmadmad, Morocco; Ilguilas Weila (Timidria), Niger; Jamesina King (Campaign for Good Governance), Sierra Leone; Karla Saller, South Africa; Sizakele Hlatshwayo

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The Africa audit team reviewed the national research at meetings with its partners in Dakar in July 2004 and in Johannesburg in February 2005. The audit research led the Justice Initiative to become involved in litigating several citizenship- and discrimination-related cases before national and regional courts and to conduct further research and advocacy in Mauritania and Côte d'Ivoire. In February 2007, the Justice Initiative convened a workshop in Kampala, Uganda, attended by experts from around the continent, to discuss the findings of the research and the concept of a new regional treaty on citizenship in Africa. Advocacy for such a treaty is underway in partnership with African civil society groups.

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## 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. The provisions on citizenship by descent and loss of citizenship are particularly varied, subject to interpretation, and difficult to represent in tabular form. In some cases, we are not sure that we have used the most up-to-date text. Suggested corrections and updates are most welcome and can be incorporated in future editions of the report and in the website version.

## Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACmHPR	African Commission 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
DRC	Democratic Republic of Congo
EAC	East African Community
ECOWAS	Economic Community of West African States
OUA	Organisation of African Unity
SADC	Southern African Development Community
SADR	Sahrawi Arab Democratic Republic
STP	São Tomé and Príncipe
UDHR	Universal Declaration of Human Rights
UK	United Kingdom (of Great Britain and Northern Ireland)
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	UN High Commissioner for Refugees

## Definitions

**Citizenship/Nationality:** “Citizenship” is a term commonly used in the social sciences to indicate different types of belonging to a political community and the rights that such belonging brings with it.<sup>1</sup> Citizenship in law is defined somewhat differently, where the legal bond between the state and the individual is at the core of its meaning. This bond provides the basis for other rights, including the right to diplomatic protection by the state concerned. In the 1955 *Nottebohm* case, the International Court of Justice said about citizenship: “According 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.”<sup>2</sup>

In this report citizenship and nationality are used interchangeably as in contemporary usage to refer to the legal relationship between an individual and a state, in which the state recognises and guarantees the individual’s rights.<sup>3</sup> Precisely which rights the state guarantees to its citizens varies by state, but the most common rights of citizens 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, the right to diplomatic protection when outside the country, and other rights that are guaranteed to noncitizens as well as citizens.

Neither “citizenship” nor “nationality” is used to indicate the ethnic origin of the individual concerned: the terms refer only to the legal bond between a person and a state.

**Citizenship from birth/of origin:** Citizenship from birth (*nationalité d’origine* in French, and similarly in the other civil-law countries) is used in this report to mean citizenship that an individual has by right from birth rather than acquired

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<sup>1</sup> See, for example, William A. Barbieri, *Ethics of Citizenship: Immigration and Group Rights in Germany*, 1998; Jürgen Habermas, “Citizenship and National Identity,” in: Bart van Steenberghe (ed.), *The Condition of Citizenship*, London, 1994; R. Grawert, *Staatsvolk und Staatsrechts*, 1987; and T. Alexander Aleinikoff and Douglas Klusmeier, *Citizenship Policies for an Age of Migration*, 2002.

<sup>2</sup> *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.

<sup>3</sup> In some contexts, however, an individual can have the nationality of a state—be recognised by the state as belonging and having some claim upon it—without the full citizenship rights that are granted to others. This situation was more widespread in the past than it is today. For example, in African countries under colonial rule or South Africa under apartheid, only those of European descent had both nationality and full citizenship rights. Similarly, it used to be common for women to have nationality of a state but not full citizenship, because they did not have the right to vote. Today, human rights law principles of nondiscrimination require that all those who are nationals of a state enjoy the same rights.

as an adult or following any administrative process. In some circumstances in some countries, the law provides that an individual can obtain retroactive recognition of citizenship from birth/of origin *after* birth. Citizenship granted solely on the basis of birth in a territory (by *jus soli*) is a separate concept, and explicitly described as such in this report. (In many Commonwealth countries, the term used in law for citizenship from birth in this sense is often citizenship “by birth”; however, given the common confusion this phrasing creates with the concept of citizenship *jus soli*, we have restricted use of the phrase “citizenship by birth” to references to the wording of particular national laws rather than to discussion of the principles that should be respected.)

***Citizenship by descent:*** When an individual obtains citizenship on the basis of his or her father’s and/or mother’s citizenship (regardless of place of birth), this is termed herein “citizenship by descent.”

***Citizenship by acquisition:*** Citizenship that has been acquired by an administrative process after birth such as by naturalisation, registration, option, or marriage is termed generically “citizenship by acquisition.”

***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.<sup>4</sup> Since only states can have nationals, a person whose status is recognised only by a non-state entity is by definition stateless. The phrase “considered as a national ... under the operation of its law” includes not only the letter of the law, but also the way in which the law is applied by the state. A theoretical claim to nationality is inadequate to establish that a person is not stateless if in practice she or he is not recognised as a citizen by the state concerned.

***Habitual residence:*** There is no agreed-upon definition of what is meant by “habitual residence” in different jurisdictions, although the European Court of Justice, for example, has established some jurisprudence on the subject. 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.

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4 Convention relating to the Status of Stateless Persons, 1954, Article 1(1).

## Summary

Laws and practices governing citizenship in too many African countries effectively leave hundreds of thousands of people without a nationality. These stateless Africans are among the continent's most vulnerable populations: they 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 intercommunal, interethnic, and interracial tensions in many regions of the continent.

Few African countries provide for an explicit right to a nationality. Moreover, though the laws in more than half of the continent's countries grant children born on their soil the right to citizenship at birth or the right to claim citizenship when they reach the age of majority, the observance of these laws is often lacking. The laws of some African countries explicitly restrict citizenship rights on racial or ethnic bases, and in many other countries ethnic or racial discrimination in the recognition of citizenship is widespread in practice. The legal provisions of at least half a dozen African countries effectively ensure that those persons who do not have the "right" skin colour or speak the "right" languages at home can never obtain nationality from birth, and neither can their children nor can their grandchildren.

The citizenship laws of more than half of Africa's states discriminate against women. Women in these countries are unable to pass on their citizenship to their foreign spouses or to their children if the father is not a citizen. Encouragingly, however, in recent years laws drawing on the international conventions on women's rights have introduced gender neutrality in many countries, and others have enacted reforms providing for greater gender equality.

Another cause of statelessness is the failure by many African states to provide effective naturalisation procedures, especially for refugees. In practice, even where the law is unproblematic, some countries' procedures are available in theory only. A final critical problem is the widespread lack of due process protections, especially when the government wishes to revoke citizenship. The laws in too many countries give almost unfettered discretion to the executive, allowing for incumbent governments to abuse the law in order to silence critics and exclude political opponents from public office.

African states should address the problems of citizenship that the continent's history of colonisation and migration has created and should bring their citizenship laws into line with international human rights norms. They should adopt a protocol to the African Charter on Human and

Peoples' Rights on the right to nationality. 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 nondiscrimination and due process already enshrined in the African Charter on Human and Peoples' Rights.

The laws, and preferably the constitutions, of African states should provide for an explicit right to a nationality from birth. In general, laws should provide for citizenship (whether from birth or by naturalisation) to be granted on the basis of any strong connection to the country, including birth on its territory, having a father or mother (including adoptive father or mother) who is a citizen, marriage to a citizen, and long-term residence. The laws regulating citizenship should not refer to membership of any particular race or ethnic group as the basis for inclusion in or exclusion from citizenship rights.

Citizenship rights should be based on gender equality in all respects, including the right of a woman to pass her citizenship on to her children and spouse. African states should take legal and other measures to ensure that members of all ethnic groups resident in their territory are given equal rights to citizenship, and in particular to ensure that members of groups that have historically been excluded from such benefits are included from now on. Obtaining citizenship by naturalisation should be possible for anyone able to prove legal residence in a country for a reasonable period. Any additional requirements—such as knowledge of national languages—must be reasonably possible to achieve for someone who has arrived in a country as an adult.

### **African citizenship laws**

The laws governing citizenship in most African countries—as in most countries in the world—reflect a compromise between two basic concepts: *jus soli* (literally, law or right of the soil), whereby an individual obtains citizenship because he or she was born in a particular country; and *jus sanguinis* (law or right of blood), where citizenship is based on descent from parents who themselves are or were citizens. In addition to these two principles based on birth, two other factors are influential in determining citizenship for adults: marital status, in that marriage to a citizen of another country can lead to the acquisition of the spouse's citizenship, and residence within a country's borders.

Few African countries provide for an explicit right to a nationality. Only South Africa and Ethiopia provide in their constitutions for a child to have a right to a nationality, and a handful of other countries establish such a right in other laws. In Ethiopia, moreover, the citizenship 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. Even so, the citizenship laws of many African countries are generous. 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 citizenship to any child born on national soil.

Those countries whose laws do this (with an exception for the children of diplomats or other representatives of foreign states) include Chad, Lesotho, and Tanzania. However, the laws of more than 20 other countries either provide automatic citizenship from birth for children born to parents who were themselves also born there or give children born on the territory to non-citizen parents the right to claim citizenship from birth by origin if they are still resident in the given country when they reach the age of majority. A handful of other countries (Cape Verde, South Africa, Namibia, and São Tomé and Príncipe) grant citizenship to 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 citizenship papers without the need for further proof of descent or location of birth. Gabon's 1998 Nationality Code states that children born in the border zones of countries neighbouring Gabon or raised by Gabonese citizens who have lived in Gabon for 10 years can claim Gabonese nationality by origin when they reach the age of majority.

More than half Africa's countries thus provide—at least in law—for most children born on their soil to have the right to citizenship from birth or to claim it at the age of majority. But more than 20 other countries either fail to make any provision for children born on their territory with no other option to have a right to a nationality, or provide the fallback right to a nationality only for children born on the territory with unknown parents, an extremely rare circumstance. These countries include some obvious and some surprising names. Among them are: Algeria, Botswana, Burundi, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Gambia, Guinea-Bissau, Kenya, Liberia, Libya, Madagascar, Mauritius, Nigeria, Seychelles, Sierra Leone, Somalia, Sudan, Swaziland, and Zimbabwe. This issue is of particular concern where citizenship by descent discriminates on the basis of gender, leaving the children of non-citizen fathers especially vulnerable. This situation exists in its most acute form in Madagascar and Swaziland, and, in some cases—despite recent reforms—Morocco.

Children and adults affected by these laws are spread throughout the continent. They comprise 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 citizenship 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 descent” can be citizens from birth. Sierra Leone also provides for more restrictive rules for

naturalisation of “non-negroes” than of “negroes”; 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.

Other countries exercise elements of racial preference. In Malawi, citizenship from birth is restricted to those who have at least one parent who is not only a citizen of Malawi but is also “a person of African race.” Mali does not generally have an ethnic requirement for citizenship, but it does grant citizenship by origin to any child born in Mali of a mother or father “of African origin” who was him- or herself also born there (but not if neither parent is “of African origin”). Several other countries put a positive spin on the same distinction, giving preferential treatment in terms of naturalisation to those who are from another African country (defined in practice by race rather than citizenship). Ghana has recently 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.

Several north African countries discriminate on grounds of religion in their laws. In Egypt, Morocco, and (until recently) Libya, the rules on naturalisation and recognition or deprivation of nationality discriminate against non-Muslims as well as non-Arabs. 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 by origin privilege those with Muslim parents.

Another version of these distinctions has been applied in the countries that have citizenship 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 “indigenous community” present in the country at the date of independence. The application and interpretation of the different versions of this provision have helped over many years to fuel conflict. The constitution of Uganda in the same way largely restricts citizenship from birth to those persons with ancestors of “indigenous origin.” Nigeria’s constitution, though not as strict, has provisions that imply some similar rules. Eritrea provides that nationality from birth is given to a person born to a father or mother “of Eritrean origin”; Somalia’s 1962 citizenship law provides for any person “who by origin, language or tradition belongs to the Somali Nation” and is living in Somalia to obtain citizenship. In Côte d’Ivoire—where ethnic discrimination in the granting of citizenship is not written into law but is widely practised—legal reform may not be enough, but it is an essential starting point to address this discrimination and exclusion.

## Gender discrimination

At independence and until recently, most countries in Africa discriminated on the basis of gender in the granting of citizenship. Women were unable to pass on their citizenship to their foreign spouses, or to their children if the father was not a citizen. This situation has begun to change, as reform laws based on the international human rights consensus on women's rights have introduced gender neutrality in many countries. In recent years, Algeria, Botswana, Burkina Faso, Burundi, Côte d'Ivoire, Djibouti, Egypt, Ethiopia, Gambia, Kenya, Lesotho, Mali, Mauritius, Morocco, Niger, Rwanda, Senegal, Sierra Leone, Tunisia, Uganda, and other 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.

At least a dozen countries (including Benin, Burundi, Guinea, Liberia, Libya, Madagascar, Mali, Mauritania, Senegal, Somalia, Sudan, Swaziland, Togo, and Tunisia) still discriminate on the grounds of gender in granting citizenship from birth to children either born in their territory or abroad, though the child of a citizen mother and noncitizen father born in these countries may be able to apply for citizenship. A few countries also still effectively discriminate on the basis of a child's birth in or out of wedlock; and several other countries have provisions that disadvantage children born out of wedlock, but the effect is not significant in practice. In some countries, such as Ethiopia, the law is gender-neutral on its face; but often in practice the children of citizen mothers and noncitizen fathers are not regarded as citizens.

Assuring the right of women to pass citizenship 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 citizenship to their noncitizen spouses at all, or apply discriminatory residence qualifications to foreign men married to citizen women who wish to obtain citizenship. These countries include Benin, Burundi, Cameroon, Central African Republic, Comoros, Republic of Congo, Côte d'Ivoire, Egypt, Equatorial Guinea, Guinea, Lesotho, Libya, Madagascar, Malawi, Mauritania, Morocco, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, and Tunisia.

## Naturalisation

Most African countries permit in principle the acquisition of citizenship by naturalisation. In many there is also the possibility or alternative for some people, such as spouses of citizens, to acquire citizenship by an easier process, usually known as "registration" in Commonwealth countries, or "declaration" or "option" in civil-law countries.<sup>5</sup> In practice, however, obtaining citizenship by naturalisation or by these other processes can be very difficult.

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<sup>5</sup> The terminology is not, however, consistent: in some Commonwealth countries the only process is known as "registration" and it includes the same provisions that are known as "naturalisation" elsewhere.

The criteria on which naturalisation or registration is granted vary, but usually include long-term residence or marriage to a citizen. In some countries, acquiring citizenship by naturalisation is straightforward, at least in theory. 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 usually takes five years; following acquisition of permanent residence, a further five years' residence is required to become a citizen (except for spouses).

The other conditions applied for naturalisation are often designed to make it more difficult for those persons who are not "natives" of the country to obtain citizenship. In many countries, investigations are required, including interviews and police inquiries. 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. In Egypt, naturalisation is exceedingly rare and the grounds for it discriminate in favour of those who are of Arab or Muslim heritage. Although obtaining a presidential decree in some countries involves only a routine administrative procedure, the requirement does leave a great deal of discretionary power in the executive branch.

Similarly, some countries add requirements based on cultural assimilation, in particular knowledge of the national language(s). Ethiopia's 1930 Nationality Law, though now repealed, was the most extreme example: it required an applicant to "know [the] Amharic language perfectly, speaking and writing it fluently"; today, the 2003 Proclamation on Ethiopian Nationality requires only 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. In practice, these laws are in some cases used to restrict citizenship on an ethnic basis.

Acquiring citizenship by naturalisation may be very difficult even where the rules are not onerous on paper. In Sierra Leone, for example, citizenship by naturalisation is in theory possible after an (already-long) 15-year legal residence period; in practice it is nearly impossible to obtain. According to available records, in the whole of Sierra Leone there are roughly a hundred naturalised citizens. In Madagascar, naturalisation is very difficult to obtain for those not of ethnic Malagasy origin.

Among the groups most seriously affected by deficiencies in laws for naturalisation are long-term refugees. The record of African countries in granting citizenship to long-term refugee populations varies greatly, and many

countries do not have laws that establish procedures for refugees to acquire permanent residence and citizenship. In Egypt, the case of the Palestinian refugees stands out. A 1959 decision by the Arab League that the Palestinian refugees should not be granted citizenship 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 situation. 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. Even though the general law may theoretically provide a right to naturalisation, this may not be available in practice, as in the case of Kenya.

There is, however, movement in some other countries toward allowing for the acquisition of citizenship 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 generous 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 promote national integration of refugees is by those states where the general naturalisation law is generous, with only a short period of permanent residence required for naturalisation and a functioning system to implement this rule. Senegal has provisions to this effect for refugees from neighbouring states. But these examples are too few and far between and leave too many refugees excluded.

## Dual citizenship

At independence, most African countries took the decision that dual citizenship should not be 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 the European and Asian migrations. These "hyphenated" Africans, whose roots are 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 citizenship and concede that someone with two identities 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 among ethnic groups living on the frontiers between two states—who also wish to be able to carry the passports of both.

In recent years, many African states have changed their rules to allow dual citizenship or are in the process of considering such changes. Among those that have changed the rules in the last decade or so are Angola, Burundi, Djibouti, Gabon, Gambia, Ghana, Kenya, Mozambique, Rwanda, São Tomé and Príncipe, Sierra Leone, Sudan, and Uganda. Others, including Egypt, Eritrea, and South Africa, allow dual citizenship but only with the official permission of the government.

Today just under half of all African countries still prohibit dual citizenship on paper—though in many cases the rules are not enforced, so that a citizen can acquire another citizenship without facing adverse consequences in practice. Some African countries—notably Ghana and Ethiopia—have created an intermediate status for members of their diaspora, in addition to or instead of creating a right to dual nationality.

Many countries have rules prohibiting those with dual citizenship or who are naturalised citizens rather than citizens from birth from holding senior public office on the grounds that the loyalty of such persons should not be divided. In Ghana, dual citizens may not hold a set of listed senior positions; in Senegal and several other countries, they may not be president; and in Côte d'Ivoire, the constitution prohibits those who have ever held another citizenship from becoming the president of the republic or the president or vice president (speaker and deputy speaker) of parliament. Mozambique has a prohibition on naturalised citizens' being deputies or members of the government or working in the diplomatic or military services. Around 20 countries impose delays of between three and 10 years before naturalised citizens can hold office.

### **Due process: Revocation of citizenship and expulsion of citizens**

Provisions allowing a state to revoke citizenship acquired by naturalisation in case of fraud or other abuse of process, or if the person joins the military or diplomatic service of another state, are relatively common throughout the world and are permitted by the 1961 UN Convention on the Reduction of Statelessness. Even in these cases, however, minimum standards of due process should be applied, including the right to challenge the decision in a court of law.

Revocation of citizenship from birth is far more problematic. More than 20 African countries do not allow revocation of citizenship enjoyed from birth, including Burkina Faso, Burundi, Cape Verde, Chad, Comoros, Djibouti, Gabon, Gambia, Ghana, Kenya, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, and Uganda. A dozen others allow revocation of citizenship from birth only in the case where the person acquires another citizenship (Algeria, Botswana, Cameroon, DRC, Ethiopia, Lesotho, Malawi, Mauritania, Senegal, Zambia, and Zimbabwe).

Some countries, however, provide sweeping powers for revocation of citizenship, even citizenship from birth. These powers go well beyond the question of fraud or service to a foreign state. The Egyptian nationality law, for example, gives extensive powers to the government to revoke citizenship, whether from birth or by naturalisation, including on grounds that an individual has acquired another citizenship 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 citizenship from those who obtained it by naturalisation.

Even in those countries where citizenship may be taken only from those who have become citizens by naturalisation, the grounds are often very broad, and extend far beyond cases in which citizenship might have been acquired by fraud. The decision to deprive someone of citizenship is not always subject to appeal or court review: many countries have provisions allowing for revocation of naturalisation at the discretion of a minister and without appeal to any independent tribunal. At the other end of the process, the laws of many countries provide explicitly that there is no right to challenge a decision to reject an application for naturalisation.

These broadly drafted provisions have been used by many different African governments (for political purposes) to revoke the nationality of a troublesome critic or of someone who is running for high office and shows signs of winning. Although there are other means of silencing journalists and blocking political candidates, the usefulness of denationalisation is that the person affected then has a 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 Gambia, Ghana, and South Africa, establish explicit due-process protections in case of deprivation of citizenship acquired by naturalisation, limiting grounds for removal, requiring reasons to be given, and granting a right to challenge the decision in court—and, in the best cases, providing for the decision to be made in the first place by the courts and not the executive.

### **International norms**

International law related to nationality is relatively undeveloped. The grant of nationality has historically been regarded as being within the discretion of the state concerned, though it was generally assumed that if you were born in a territory you had the nationality of that state. 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 racial, ethnic, gender or political discrimination in granting or revoking citizenship; and basic rules of due process in the granting and revoking of citizenship. The UDHR provides that “everyone has a right to a nationality.” The 1961 Convention on the Reduction of Statelessness mandates that “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.”

Another international-law principle important in Africa is that related to “succession of states”: all African states except Ethiopia were at one time colonised by a power external to Africa; and in the case of Ethiopia, the state has been split into two (Ethiopia and Eritrea). Under international law, individuals who had the nationality of a predecessor state should have the right to the nationality of at least one of the successor states. However, this rule has not always been respected in African national laws: indeed, the manipulation of

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

African treaties relating to nationality rights are relatively weak. The African Charter on Human and Peoples' Rights does not mention the right to a nationality. The African Charter on the Rights and Welfare of the Child, ratified by 41 African countries, follows the UN Convention on the Rights of the Child by providing for the right to a name from birth and the right to acquire a nationality, as opposed to the right to a nationality from birth. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa even goes against the grain of international norms by not mentioning a woman's right to pass citizenship to her husband and by providing for national law to override the treaty's provision for nondiscrimination in granting citizenship to children.

Many African states, however, have more generous provisions than these. 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 from birth/ of origin for that child if he or she is still living in the state at adulthood; and a majority of states now allow men and women citizens equal rights to pass citizenship to their children.

African states should move toward 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 nationality from birth, and that those who have migrated themselves can naturalise as citizens on reasonable terms. They should allow dual nationality. They should harmonise their laws to adopt in all countries the best practices that already apply in some. The African Union (AU) 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 nondiscrimination, due process, and respect for human rights.

## 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 nondiscrimination 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 Charter 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 citizen, marriage to a citizen, 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 citizens; 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 citizen, marriage to a citizen, 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.

*Nondiscrimination*

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 citizens), benefit from such measures.
20. African states should take measures to ensure equality of rights among persons possessing their nationality, and 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 citizenship 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 at 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 citizens who are born abroad.

28. The law should provide that all citizens 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 citizen, persons born in the country, former citizens, 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 citizens 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 citizens 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 citizen 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 citizen 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 citizens, whether from birth or by acquisition, may acquire other nationalities without any penalty and that citizens 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 citizens 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 revoked only 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 citizens 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 noncitizens 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 citizen.
62. The law should provide that those who are habitually resident in the country but who for whatever reason have not acquired citizenship nonetheless acquire rights that give them greater protection against expulsion than nonresidents. 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 citizens 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 citizen, has the right to leave the country.

## International norms on citizenship

Legal recognition of nationality or citizenship is the most critical link between an individual and the state whose nationality is claimed.<sup>6</sup> 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 grant of nationality was historically—and is still, except in limited circumstances—regarded as being within the discretion of the state concerned, though it was generally understood that if you were born in a territory you assumed the nationality of that state. 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 (the exercise of civil 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.

### The right to a nationality

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.<sup>7</sup> Since that date, however, international human rights law has increasingly asserted limits to state discretion, in this as in other areas.

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<sup>6</sup> See definitions section for discussion of the meaning of “nationality” and “citizenship”: in general, the two words are used as synonyms in this report.

<sup>7</sup> *Tunis and Morocco Nationality Decrees case, PCIJ Ser.B., No. 4 (1923)*. See also, Weiss P., *Nationality and Statelessness in International Law* (2nd Edn), 1979, 126: “the right of a State to make rules governing the loss of its nationality is, in principle—with the possible exception of clearly discriminatory deprivation—not restricted by international law, unless a state has by treaty undertaken specific obligations imposing such restrictions.”

In 1930, the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws affirmed in its preamble that it is in the interest of the international community to ensure that all countries recognise that “every person should have a nationality.” While providing that each state may determine its own citizenship laws, Article 1 of 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.”<sup>8</sup> The Hague Convention was an attempt to guarantee citizenship to all while minimising dual citizenship, by harmonising citizenship practices among states.

When the Universal Declaration of Human Rights was adopted in 1948, citizenship was one of the rights guaranteed. Article 15 provides that “[e]very one has a right to a nationality” and that “[n]o one shall be arbitrarily deprived of his nationality.” Scholars are split on whether the Universal Declaration is itself international customary law or is simply a reflection of such law,<sup>9</sup> but in either case the inclusion of citizenship in the declaration implies that even states that have ratified none of the relevant treaties are bound to respect citizenship as a human right.

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 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 (where, for example, citizenship has been gained by fraud or where a citizen swears allegiance to another state) for the deprivation of nationality even if the deprivation would result in statelessness, such deprivation can occur only through a procedure that respects due process. In regard to persons who would not become stateless, the convention also forbids denationalisation “on racial, ethnic, religious or political grounds.”

Many human rights treaties mention citizenship briefly in relation to their own subject matter. The International Convention on the Elimination of Racial Discrimination requires that the right to nationality not be denied for discriminatory reasons. The Convention on the Elimination of All Forms of Discrimination against Women provides that women be granted equal rights with men in respect of citizenship. The International Covenant on Civil and

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<sup>8</sup> “It is for each State to determine under its own laws who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.” Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930 (entered into force 1937), Article 1.

<sup>9</sup> See for example, Hurst Hannum, “The Status and Future of the Customary International Law of Human Rights: The Status of the Universal Declaration of Human Rights in National and International Law,” *Georgia Journal of International and Comparative Law*, 287; Henry J. Steiner, Philip Alston, and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals—Texts and Materials*, Oxford: Oxford University Press (3rd Edn), 2007.

Political Rights does not discuss the citizenship of adults, but recognises the right of “[e]very child ... to acquire a nationality.”<sup>10</sup> 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.<sup>11</sup>

In its General Comment 17 on the rights 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.<sup>12</sup>

The African Charter on Human and Peoples’ Rights, adopted in 1981 (entry into force 1986), does not contain a provision on nationality. However, the African Charter on the Rights and Welfare of the Child repeats the provision of the UN Convention on the Rights of the Child on the right of a child to acquire a nationality and also requires states parties to “undertake to ensure that their Constitutional legislation recognises the principles according to which 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.”<sup>13</sup>

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa places strong nondiscrimination requirements on states in general, but is very weak on citizenship rights, thanks largely to the efforts of the North African states.<sup>14</sup> It provides 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.

<sup>10</sup> International Covenant on Civil and Political Rights, Article 24(3).

<sup>11</sup> Convention on the Rights of the Child, Articles 7(1) and 8(1).

<sup>12</sup> CCPR General Comment No. 17: Rights of the child (Art. 24), 07 April 1989, para 8.

<sup>13</sup> African Charter on the Rights and Welfare of the Child, Article 6. The difference between the right to a nationality and the right to *acquire* a nationality is subtle, but the addition of “acquire” was apparently intended by some states to remove any implication that a state party accepted an unqualified obligation to accord its nationality to every child born on its territory regardless of the circumstances. Whether it has this effect in fact is arguable. See African Charter on the Rights and Welfare of the Child, 1990, Article 6(4); Jaap E. Doek, “The CRC and the right to acquire and to preserve a nationality,” *Refugee Survey Quarterly*, Vol. 25, No. 3, 2006.

<sup>14</sup> 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.

In other regional treaties, the 1969 American Convention on Human Rights (entry into force 1978) contains an explicit right to a nationality.<sup>15</sup> The European Convention on Nationality adopted by the Council of Europe in 1997 (entry into force 2000) establishes as a basic principle that everyone has the right to a nationality.<sup>16</sup>

None of these treaties compels states to grant their nationality.<sup>17</sup> Nonetheless, they do limit state discretion over citizenship, by requiring measures to reduce statelessness, including the grant of nationality to children who would otherwise be stateless, and by prohibiting discrimination in granting citizenship and arbitrary deprivation of citizenship. These principles were 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.<sup>18</sup>

## State succession and citizenship

Africa's colonial history has made the rules governing the transition to independence—the rules of state succession—particularly sensitive in the context of citizenship law. Many of the most well-known cases of individuals or groups deprived of citizenship relate to the status of those who were recognised as colonial subjects but whose presence is resented today, to the inhabitants of regions whose borders were altered during the colonial period, or to the determination of where someone belongs whose parents came from another part of a common colonial territory and who migrated as part of colonial policy.

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

<sup>15</sup> 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.”

<sup>16</sup> 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.”

<sup>17</sup> However, the 1997 European Convention on Nationality 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.

<sup>18</sup> *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Inter-American Court of Human Rights Case No. 12.189, 8 September 2005.

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.<sup>19</sup>

The International Law Commission (ILC), an inter-governmental body established under UN auspices in 1948, has 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.<sup>20</sup>

Article 4 of the ILC Draft Articles obliges states to take “all” appropriate measures to prevent statelessness arising from state succession.

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.<sup>21</sup>

Particular historical circumstances create complications for these rules. 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 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

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

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

21 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, Article 2—Right to a Nationality. “Everyone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned in accordance with the [provisions of the treaty].”

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.<sup>22</sup>

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.

### **Discrimination and arbitrary deprivation of citizenship**

Only nine African states have ratified the International Convention on the Reduction of Statelessness, but the numerous legal dicta, judgments of regional courts, and declarations on statelessness are evidence of increased insistence on this duty of states not to deprive citizenship from, or positively to grant citizenship to, those who would otherwise be stateless.<sup>23</sup> Also militating against the acceptance of state acts that increase the number of stateless persons is the simple fact that it is nearly impossible for an individual to enjoy all of her protected human rights in a condition of statelessness. The state that creates statelessness is not only violating the right to nationality but necessarily violating many other rights as well.

Article 15 of the Universal Declaration of Human Rights provides that "No one shall be arbitrarily deprived of his nationality." Thus, any decision to revoke citizenship, which has such an important effect on an individual's rights, must be judicial and not administrative, and must respect due process of law. 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 law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body." Even treaties that do not specifically mention citizenship, such as 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.<sup>24</sup>

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,"<sup>25</sup> and that "the concept

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

23 Ruth Donner in *The Regulation of Nationality in International Law* (2nd Edn), 1994, p. 181, concludes that "denationalization may, however, be disregarded as contrary to public policy because [it is] openly discriminatory and unjust."

24 African Charter on Human and Peoples' Rights, Article 7.

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

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 International Covenant on Civil and Political Rights (ICCPR) and should be, in any event, reasonable in the particular circumstances.”<sup>26</sup> Thus, the grounds for revocation of citizenship provided under law should be restrictive, nondiscriminatory, and allow for appeals through the regular court system.<sup>27</sup>

Denationalisation or revocation of citizenship on racially discriminatory criteria will be considered arbitrary no matter what procedural due-process guarantees are in place, because of the *jus cogens* (a fundamental principle from which no derogation is permitted) international prohibition on racial discrimination.<sup>28</sup> The UN Commission on Human Rights, guided by Articles 2 and 15(2) of the Universal Declaration, reaffirmed in 2005 that the right to a nationality is a fundamental human right and that “arbitrary deprivation of nationality on racial, national, ethnic, religious, political, or gender grounds is a violation of human rights and fundamental freedoms.”<sup>29</sup> The Human Rights Council (HRC) that replaced the Commission has confirmed this statement, most recently in 2009.<sup>30</sup> The definition of prohibited discrimination continues to develop and now clearly includes “indirect” discrimination, that is, discrimination based upon ostensibly race-neutral provisions that have a disproportionate effect on specific ethnic groups.<sup>31</sup>

In 2005, the UN Committee on the Elimination of Racial Discrimination adopted a General Recommendation on discrimination against noncitizens that included specific provisions affirming that states parties to the International Convention on the Elimination of All Forms of Racial Discrimination have the obligation to provide access to citizenship, including that to “ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalisation” and to “recognise that deprivation of

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

27 See *Oppenheimer v. Cattermole, Inspector of Taxes* [1975] 1 All E.R. 538, where Lord Salmon, for the majority, held (the major question at issue was recognition of German war-time denationalization legislation): “Legislation enacted by a foreign State such as the 1941 decree, which takes away without compensation from a section of the citizen body singled out on racial grounds all their property on which the State can lay its hands and, in addition, deprives them of their citizenship, is contrary to international law and constitutes so grave an infringement of human rights that the English courts ought to refuse to recognise it as law at all” (p. 556).

28 See for instance ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, 2001; text adopted by the International Law Commission at its 53rd session, in 2001, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/56/10).

29 Resolution 2005/45, Human Rights and Arbitrary Deprivation of Nationality, adopted at the 61st session of the Commission on Human Rights, 19 April 2005.

30 Resolution 10/13 Human rights and arbitrary deprivation of nationality, A/HRC/10/L/11, 31 March 2009, by which the Council, inter alia, “Recognises 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.”

31 See, for example, the European Court on Human Rights’ landmark decision in the case *D.H. and Others v. The Czech Republic*, ECtHR Grand Chamber (application No. 57325/00), 13 November 2007, at paragraph 175, in which it reiterated that “a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group.”

citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States parties' obligations."<sup>32</sup>

### Due process in relation to expulsion

Under international law a person cannot be expelled from his or her country of citizenship, no matter what the destination.<sup>33</sup> 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.<sup>34</sup>

The African Charter on Human and Peoples' Rights supports these rules and specifically includes an additional blanket prohibition on mass expulsion of individuals based only on their membership in a particular national, racial, ethnic or religious group (Article 12).

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 Commission on Human and Peoples' Rights

Numerous articles of the African Charter on Human and Peoples' Rights apply to cases related to citizenship, including the rights to nondiscrimination (Article 2); to equal treatment before the law (Article 3); to dignity (Article 5); and to due process and a fair trial (Article 7).

Article 12 of the Charter also provides specific protections relevant to citizenship, immigration, and protection of refugees:

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

<sup>32</sup> 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.

<sup>33</sup> This prohibition does not include extradition of a person (of whatever 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.

<sup>34</sup> Legislative Order No. 83-033 of 12 September 1983, concerning immigration control, expressly ruled out a right of appeal in case of refusal of entry. See Case concerning Ahmadou Sadio Diallo (*Republic of Guinea v Democratic Republic of Congo*), Preliminary Objections, International Court of Justice, 24 May 2007, paragraph 46.

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
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.

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 "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" 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.<sup>35</sup> 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."<sup>36</sup>

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 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 citizenship, the Commission has held that the fact that someone is not a citizen "by itself does not justify his deportation"; there must be a

<sup>35</sup> Communication 97/93, *Modise v. Botswana* (2000) *African Human Rights Law Reports* (AHRLR) 30 (ACHPR 2000), paragraph 91.

<sup>36</sup> Communication No. 212/98, *Amnesty International v. Zambia*, (2000) AHRLR 325 (ACHPR 1999), paragraph 50.

right to challenge expulsion on an individual basis.<sup>37</sup> In the case of Banda and Chinula, Zambia had also denied their rights to freedom of expression.

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.<sup>38</sup> 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.”<sup>39</sup> 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.<sup>40</sup> 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 Conte, in which he incited soldiers and civilians to attack Sierra Leonean refugees.<sup>41</sup> 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 preempt 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.<sup>42</sup>

37 *Amnesty International v. Zambia*, paragraph 33. See also Communication No.159/96, *Union Interafricaine des Droits de l'Homme and Others v. Angola* (2000) AHRLR 18 (ACHPR 1997); *Modise v. Botswana*; Communications Nos. 27/89, 49/91 and 99/93, *Organisation Mondiale Contre la Torture and Others v. Rwanda* (2000) AHRLR 282 (ACHPR 1996); Communication No.71/92, *Rencontre Africain pour la Défense des Droits de l'Homme v. Zambia* (2000) AHRLR 321 (ACHPR 1996).

38 Communication 211/98, *Legal Resources Foundation v. Zambia* (2001) AHRLR 84 (ACHPR 2001).

39 *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*, 24<sup>th</sup> Activity Report, 2008.

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

41 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) AHRLR 57 (ACHPR 2004).

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

## Citizenship under colonial rule

As in other areas of law, differences in the legal systems of the colonisers have influenced the principles that have been applied since independence, though both African and European states have since amended and modified the principles on which their nationality law was originally based. At the same time, the practical effect of colonisation was to create new territorial units that were mostly not rooted in any preexisting state structures, and indeed often cut through territorial boundaries, splitting populations speaking the same language and sharing the same political institutions. The colonisers also encouraged—either deliberately or as a side effect of the pattern of economic development produced by membership of an empire—migration both within Africa (as of mineworkers to South Africa) and from other continents to Africa (including not only white Europeans but for example, also the south Asians brought to 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 and Freetown); of these, South Africa later became a self-governing “dominion.” The remaining territories, including all those added in the late nineteenth century “scramble for Africa” were designated “protectorates,” into which the early colonies were later mostly merged. Colonies and dominions were part of the “crown dominion”; while “protectorates,” including most other British-controlled territories in Africa, were nominally foreign territory managed by local government structures established under British protection.<sup>43</sup> 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 in the British crown 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,” also created by the new law and applied to persons born in a protectorate, provided some rights both in the protectorate concerned and in the UK but was a lesser status than citizenship of the United Kingdom and colonies.<sup>44</sup> British protected persons were in general governed by the customary law of

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<sup>43</sup> 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.

<sup>44</sup> The term “British protected person” still exists, and confers some rights in the United Kingdom, but has a different legal meaning today.

the territory concerned, as modified by statute and interpreted by the colonial courts; British subjects were governed by the common law also as modified by statute.<sup>45</sup>

At independence, most Commonwealth countries whose constitutions were drafted according to the standard “Lancaster House”<sup>46</sup> 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 at the date of independence who were at that time citizens of the United Kingdom and colonies or British protected persons; and secondly, persons born outside the country whose fathers became citizens in accordance with the other provisions. Those persons born in the country whose parents were both born outside the country were entitled to citizenship by way of registration, as were others who were ordinarily resident in the country. The laws were not gender neutral, and special provisions relating to married women were included, usually making them dependent on their husband’s status.

In 1881, France adopted a law which divided nationals of its territories into two 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. The *Code de l’indigénat*, which eventually extended across the empire, standardised laws already adopted in Algeria and elsewhere, and remained legally in force until 1946 (though its practical application lasted far longer). It established an inferior legal status for French subjects compared to French citizens, and provided for the application of local customary law as interpreted by colonial courts to French subjects, while French citizens were governed by the French civil code. 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 naturalised as citizens by the same arduous process.<sup>47</sup> Whether in north or sub-Saharan Africa, there were few exceptions to these rules;<sup>48</sup> but among them was the higher status given to the inhabitants (black Africans as well as white) of four communities in Senegal who had enjoyed special privileges since the 1830s, including the option to access the courts under the civil code and the right to elect a deputy to the French parliament from

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45 See Laurie Fransman, *British Nationality Law* (2nd Edn), Butterworths, 1998, for an exhaustive discussion of British nationality law.

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

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

48 French territories in sub-Saharan Africa were from the early 20th century divided between French West Africa (*Afrique occidentale française*, AOF), French Central Africa (*Afrique équatoriale française*, AEF), and Madagascar.

1848.<sup>49</sup> A final category was that of French-administered persons (*administrés français*) from Togo and Cameroon, placed under French control by League of Nations mandate following World War I.

Though French subjects had the theoretical right to become full citizens, no more than 16 West Africans were granted naturalisation each year between 1935 and 1949: the famed French commitment to assimilation effectively applied only in the cultural domain until the very last years before independence.<sup>50</sup> Only then did France offer full citizenship and greater rights of representation within the French democratic system to a much larger number of its subjects. At independence, those who already had French nationality could keep it, if they made an application to do so to the French authorities.<sup>51</sup>

When the French colonial territories became independent, citizenship law was based on the French Civil Code, as it had evolved since the Revolution and was applied in France. From 1889, the civil code provided that a child born in France of one parent also born in France became French; while a child born in France of foreign parents could claim citizenship at majority; the code also allowed for naturalisation after a residence period (reduced from 10 years to three years in 1927, and increased again to five years in 1945).<sup>52</sup> Since independence, most francophone countries have maintained the framework of the civil code, while also amending their laws on the basis of national politics and changing international norms. In addition to provisions relating directly to citizenship, the laws relating to the family are also influential.

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.<sup>53</sup> 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

49 Dakar, Saint Louis, Gorée and Rufisque.

50 Catherine Coquery-Vidrovitch, “Nationalité et citoyenneté en Afrique occidentale française: Originaires et citoyens dans le Sénégal colonial,” *Journal of African History*, Vol. 42, 2001, pp. 285–305.

51 See 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.

52 Patrick Weil, *Qu’est-ce qu’un Français? Histoire de la nationalité française depuis la Révolution*, Paris, Grasset, 2002; “La nationalité française” in J-F Sirinelli (ed.), *Le dictionnaire de la vie politique française (XXème siècle)*, PUF, Paris, 2003.

53 See Malyn Newitt, *A History of Mozambique*, Hurst, 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.

Cape Verde and São Tomé and Príncipe, was applied administratively, without possible appeal to any court of law.<sup>54</sup> Gradually, a third category emerged, that of *assimilado*, that is, a person (initially usually Asian or Afro-Portuguese but including some Africans) who claimed the status of *não-indígena* on the basis of his or her education, knowledge of Portuguese language and culture, profession, and income.<sup>55</sup> 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.

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

55 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.

## The basis of citizenship law today

Most African countries—like most countries in the world—apply a compromise in their laws governing citizenship between the two basic concepts known as *jus soli* (literally, law or right of the soil), whereby an individual obtains citizenship because he or she was born in a particular country, and *jus sanguinis* (law/right of blood), where citizenship is based on descent from parents who themselves were citizens. In general, a law based on *jus sanguinis* will tend to exclude from citizenship 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 citizenship 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 citizenship determination for adults: marital status, in that marriage to a citizen of another country can lead to the acquisition of the spouse’s citizenship, and long-term residence within a country’s borders.

Today, citizenship in African countries is typically based on (i) birth in the country, usually with the requirement that at least one parent (in some cases still only the father) is a citizen (or was also born there); (ii) birth outside the country when at least one parent (sometimes only the father) is a citizen; (iii) marriage, where the spouse of a citizen automatically becomes a citizen or is entitled to register or opt for citizenship (in some cases, still only the wife of a male citizen); (iv) naturalisation, based on length of residence and other qualifications such as knowledge of a national language and a clean criminal record; (v) an additional category of citizenship by registration or option (usually an easier process than naturalisation) for citizens of countries with particular ties (usually African states), in case of marriage, or for children by adoption.<sup>56</sup>

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 position.

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<sup>56</sup> Where the concept of a privileged system of registration for African or Commonwealth citizens exists in the anglophone countries, it often remains on the statute books only as a transitional provision dating from independence.

There is a common distinction in law and practice between citizenship “from birth” (termed “by origin” in the civil law countries) and citizenship “by acquisition.” Citizenship from birth/by origin may be based either on descent (*jus sanguinis*) or on birth in the country (*jus soli*), but implies that a child has a citizenship from the moment of birth without any further procedures required for its recognition by the state.<sup>57</sup> In most cases citizenship by acquisition relates to those who have become citizens as adults, as a result of marriage or naturalisation. However, in some countries there is a distinction drawn at birth itself among children of mixed parentage, with the children of citizen fathers being citizens from birth, and the children of citizen mothers only having the right to acquire citizenship following an administrative procedure (which must sometimes be completed before majority). In many countries, the rights of those who are citizens from birth or by acquisition are the same; but others apply distinctions, especially in relation to the holding of public office. In addition, citizenship by acquisition may often be more easily withdrawn. Gender discrimination in relation to the award of citizenship from birth/of origin may thus be highly significant to the exercise of other rights.

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<sup>57</sup> The usage is not consistent, however, especially in English: these are not terms with a common interpretation across all legal systems. In countries using English as the official language, the law mostly refers to citizenship “by birth” to mean “from birth”; but, confusingly, in some cases citizenship “by birth” is used to mean citizenship based on birth in the country (*jus soli*).

## Right to a nationality

All African countries, with the exception of Somalia, have ratified the Convention on the Rights of the Child, which provides in Article 7 for the “right from birth to a name” and “the right to acquire a nationality,” and for states to ensure the implementation of these rights, in particular where the child would otherwise be stateless. 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.<sup>58</sup> The African Charter on the Rights and Welfare of the Child (ACRWC) also provides, in Article 6, for the right to a name from birth and the right to acquire a nationality. Forty-five countries have ratified the ACRWC, and the remainder have all signed.<sup>59</sup>

To date, only 15 African countries are parties to the 1954 UN Convention relating to the Status of Stateless Persons<sup>60</sup> and only nine countries to the 1961 UN Convention on the Reduction of Statelessness.<sup>61</sup>

Only a few countries provide for explicit rights to nationality in their constitutions or in domestic legislation, and even these countries may not grant citizenship to all children born on their territory. The Ethiopian and South African constitutions stand out, in that both provide that every child has “the right to a name and nationality.”<sup>62</sup> The South African Citizenship Act additionally 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.<sup>63</sup> However, despite recent reforms, Ethiopian law does not explicitly provide a right to Ethiopian nationality for a child born in the country

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58 “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 website of the UN High Commissioner for Human Rights, <http://www.unhcr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>, accessed 19 April 2010.

59 DRC and São Tomé and Príncipe, the last outstanding countries, signed in early 2010. See list of countries that have signed, ratified or acceded to the Charter, at <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child.pdf>, accessed 20 April 2010.

60 Algeria, Botswana, Chad, Guinea, Lesotho, Liberia, Libya, Malawi, Rwanda, Senegal, Swaziland, Tunisia, Uganda, Zambia, Zimbabwe. Madagascar ratified in 1962 but then denounced the Convention in 1965 effective from 1966. UNHCR, “States Parties to the 1954 Convention relating to the Status of Stateless Persons,” as of 15 October 2009, available at <http://www.unhcr.org/protect/PROTECTION/3bbboabc7.pdf>, accessed 19 April 2010.

61 Chad, Lesotho, Liberia, Libya, Niger, Rwanda, Senegal, Swaziland, Tunisia. UNHCR, “States Parties to the 1961 Convention on the Reduction of Statelessness,” as of 1 October 2009, available at <http://www.unhcr.org/3bbb24d54.html>, accessed 19 April 2010. Niger entered reservations to articles 11, 14 and 15 (providing for mechanisms for resolution of disputes); Tunisia entered reservations to articles 11 and 14 and declared that it retained the right to apply broader grounds for deprivation of nationality than set out in the Convention.

62 Constitution of the Federal Democratic Republic of Ethiopia, 1994, Article 36; Constitution of the Republic of South Africa, 1996, Article 28(1)(a).

63 South Africa Citizenship Act (No. 88 of 1995), Section 2(4)(b).

who would otherwise be stateless, while in practice problems continue in relation to gender discrimination in the implementation of its citizenship law as well as the fallout from the war with Eritrea that has left many Ethiopians of Eritrean origin effectively stateless.

Some other countries have established the right to a nationality in other laws. In 2001, Kenya adopted a new Children Act, which provides for every child to have a right to a name and nationality.<sup>64</sup> But other laws have not been amended to comply with this requirement. The Kenya Citizenship Act is extremely restrictive and takes no account of this concept; moreover, the new Constitution approved by referendum in August 2010 provides only for citizenship to be granted to children of unknown parents (an improvement on the previous situation) but not those who would otherwise be stateless, despite Kenya's obligations under the African Charter on the Rights and Welfare of the Child.<sup>65</sup> The only way for otherwise stateless persons to be granted citizenship is a provision in the Citizenship Act giving the minister power "under special circumstances" to cause any minor to be registered as a citizen,<sup>66</sup> but this study could find no case where this has actually happened. Following the entry into force of the new constitution, Kenya's Citizenship Act was also due to be replaced within one year, providing a further opportunity to rectify this situation. Tunisia's Child Protection Code provides, in Article 5, that "every child shall have the right to an identity from birth. The identity shall comprise name, surname, date of birth and nationality."<sup>67</sup> In 2007, Sierra Leone adopted a new Child Rights Act which provides, rather ambiguously, that "No person shall deprive a child of the right from birth to a name, the right to acquire a nationality or the right as far as possible to know his natural parents and extended family."<sup>68</sup> Malawi does not establish a right to a nationality as such for children, but 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 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.<sup>69</sup>

The vast majority of countries in Africa do not provide for an explicit right to nationality, and only 16 specifically provide in their laws (in accordance with

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64 "Every child shall have a right to a name and nationality and where a child is deprived of his identity the Government shall provide appropriate assistance and protection, with a view to establishing his identity." Kenya Children Act (No. 8 of 2001), Section 11.

65 Constitution of Kenya, 2010, Chapter 3, Article 14(4). See website of the Committee of Experts on Constitutional Review, <http://www.coekenya.go.ke/>, accessed 10 August 2010. For detailed commentary on the draft text, see submission by Citizenship Rights in Africa Initiative, available at <http://www.citizenshiprightsinafrica.org/Publications/2010/CRAIKenyaSubmission.030510.pdf>, accessed 19 April 2010.

66 Kenya Citizenship Act, Section 4(2).

67 Loi No. 95-92 du 9 novembre 1995 relative à la publication du Code de la protection de l'enfant, Article 5.

68 Sierra Leone Child Rights Act (No. 7 of 2007), Section 24. The obligations placed on the state by this section are not very clear, and appear not to include granting nationality to those who would have a clear claim upon Sierra Leone's protection.

69 Malawi Citizenship Act, 1966, Section 18.

Article 1 of the 1961 Convention on the Reduction of Statelessness) that children born on their territory of stateless parents or who would otherwise be stateless have the right to nationality. And even though these provisions do provide some protection against statelessness, they are often not effective in practice since they may depend on effective birth registration procedures or sympathetic officials. A much larger number of countries provide only that children born in the country of unknown parents have a right to citizenship, a provision of extremely limited effect. Egypt, for example, provides only for the child of unknown—but not stateless—parents to be a citizen. There are believed to be from 400,000 to over one million stateless individuals in the country.<sup>70</sup>

The countries with the strongest protections against statelessness for children are those that follow a *jus soli* rule, providing citizenship to any child born on their soil either automatically or if the child chooses to take it. Few countries in Africa (today only Chad, Lesotho, and Tanzania) base their law on *jus soli* in the first instance (with an exception for the children of diplomats or other state representatives).<sup>71</sup> Liberia applies the rule, but on a racial basis only for “Negroes.” However, more than 20 countries, mostly in the civil law tradition (Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Republic of Congo, Equatorial Guinea, Gabon, Ghana, Guinea, Mali, Mauritania, Morocco, Mozambique, Niger, Rwanda, Senegal, Togo, Tunisia, Uganda, and Zambia), have adopted a half measure between requiring descent from a citizen and a *jus soli* rule, by providing either that children born in their territory of noncitizen parents can claim citizenship from birth (“by origin” in the civil law usage) if they are still resident there at majority, or that children born in the territory of at least one parent also born there are citizens from birth.<sup>72</sup>

Even in these cases, however, problems can arise in practice. In the case of the Central African Republic (CAR) for example, which gives all children born in its territory the right to claim citizenship before they reach the age of majority, the Committee on the Rights of the Child expressed concern at violations of the right to a nationality for children whose birth has not been registered or for children whose parents are not nationals of the CAR. While all children born in the country can gain nationality from age 12, parents who are non-nationals have much greater difficulty in claiming nationality for their children.<sup>73</sup> In Uganda, children born in the country of noncitizens can apply for registration as citizens; but children of refugees, probably the most likely to need this right, are explicitly excluded.<sup>74</sup>

70 Maureen Lynch, *Lives on Hold: The Human Cost of Statelessness*, Washington, Refugees International, 2005, p. 28.

71 Some countries previously applied a *jus soli* rule but have since changed the law to remove this provision: Côte d'Ivoire in 1972, Mauritius in 1995, and Gambia in 2001, all at the same time as they removed gender discrimination in citizenship by descent. Botswana also ended *jus soli* in 1984, but substituted a rule that discriminated on the basis of gender (until challenged in court: see below).

72 The South African Citizenship Amendment Bill, No.17 of 2010, proposed allowing those born in South Africa of non-citizen parents to apply for citizenship by birth or naturalisation (depending on the status of the parents) at majority, but had yet to be finalised at the date of going to press.

73 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.

74 Uganda Citizenship and Immigration Control Act, 1999, Section 14(1); Constitution of Uganda, Article 12(1)(a)(ii).

Namibia, South Africa, and São Tomé and Príncipe grant citizenship to 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).<sup>75</sup> In South Africa, the Department of Home Affairs has established a practice of granting citizenship from birth to children with only one parent who is a permanent resident, even though the law provides for citizenship from birth to a child with both parents who are permanent residents (or with one who is a citizen).<sup>76</sup> Cape Verde provides simply that children of parents resident in the country for more than five years are citizens, and otherwise that, with the absence of any evidence to the contrary in their birth documentation, children born in the country are citizens.<sup>77</sup>

Seven countries fail to make any default provision for children with no other option to have a right to a nationality under their citizenship law, even if other laws indicate a right to citizenship (Botswana, Gambia, Libya, Nigeria, Seychelles, Sierra Leone, and Zimbabwe). Another 14 countries provide the fallback right to a nationality only for children born on the territory whose parents are unknown, a highly unusual circumstance (Algeria, Burundi, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Guinea-Bissau, Liberia, Madagascar, Mauritius, Somalia, Sudan, and Swaziland). In some countries, discriminatory provisions automatically or potentially exclude from citizenship from birth those not of the right race or ethnicity. (The countries affected in various ways include DRC, Eritrea, Liberia, Nigeria, Sierra Leone, Somalia, and Uganda). Thus, almost half of the African countries have citizenship laws that practically guarantee that some children born on their territory will be stateless. This issue is of particular concern where citizenship by descent is allowed only or primarily through the father, leaving the children of noncitizen fathers especially vulnerable. This situation exists in Madagascar, Sudan (though the 2005 constitution and citizenship act do allow children of Sudanese mothers to claim nationality), Swaziland, and, despite recent reforms that introduced greater gender equality, for some children of non-Muslim fathers in Morocco.

The complexities obvious in the tables below, and the many exceptions to each supposed rule, in fact *understate* the challenges of interpreting Africa's citizenship laws. In many countries—especially those where 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 citizenship, which represents only the first of many hurdles that someone seeking to claim that right will

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75 South African law grants citizenship to children born in the country except if one parent is a diplomat or was not lawfully admitted to the country. However, the exceptions are overridden if the other parent is a citizen. South Africa Citizenship Act (No. 88 of 1995), Section 2(1)(b) and 2(2). Constitution of the Republic of Namibia, 1990, Article 4(1); 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.

76 Jonathan Klaaren, "Post-Apartheid Citizenship in South Africa," in A Aleinikoff (ed.) *From Migrants to Citizens: Membership in a Changing World*, Brookings Institution Press, 2000, pp. 221–252.

77 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, however, is not clear.

have to clear. In some cases, the constitution and the nationality law provide for different rules, or the constitution establishes general principles which are not reflected in the law, or not applied in practice. 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.

**Table 1: Countries providing a right to a nationality**

Country	Right to citizenship based on birth in the country	Citizenship if parents unknown (u) or stateless (s)	Country	Right to citizenship based on birth in the country	Citizenship if parents unknown (u) or stateless (s)
<b>Algeria</b>		u	<b>Libya</b>		
Angola		u + s	<b>Madagascar</b>		u
Benin	(JS) JS/2	u + s	Malawi	~	s
<b>Botswana</b>			Mali	(JS) JS/2 <sup>Λ</sup>	u
Burkina Faso	(JS) JS/2	u + s	Mauritania	(JS) JS/2	u + s
<b>Burundi</b>		u	<b>Mauritius</b>		u
Cameroon	(JS) JS/2	u	<b>Morocco</b>	JS/2 <sup>Λ~</sup>	u
Cape Verde	(JS)*	u + s	Mozambique	(JS) JS/2	u + s
CAR	(JS)	u	Namibia	(JS)*	s
Chad	JS	u + s	Niger	JS/2	u
Comoros	(JS)	u	<b>Nigeria</b>		
Congo Rep.	(JS) JS/2	u	Rwanda	(JS)	u + s
<b>Côte d'Ivoire</b>		u	SADR	n/a	n/a
<b>DRC</b>	(JS)~	u + s	STP	(JS)*	u + s
<b>Djibouti</b>		u	Senegal	JS/2	u
<b>Egypt</b>		u	<b>Seychelles</b>		
Eq. Guinea	(JS)		<b>S. Leone</b>	~	
<b>Eritrea</b>		u	<b>Somalia</b>	~	u
<b>Ethiopia</b>	C	u	South Africa	C (JS)*	s
Gabon	(JS) JS/2	u + s	<b>Sudan</b>		u
<b>Gambia</b>			<b>Swaziland</b>		u
Ghana	JS/2	u	Tanzania	JS	
Guinea	(JS) JS/2	u	Togo	(JS)	u + s
<b>G-Bissau</b>		u	Tunisia	L JS/2 <sup>Λ</sup>	u + s
<b>Kenya</b>	L	u	<b>Uganda</b>	(JS) †~	u
Lesotho	JS	s	Zambia	(JS)	
<b>Liberia</b>	JS~	u	<b>Zimbabwe</b>		

**Notes**

- n/a not available  
s also includes where a child would otherwise be stateless, even if parents not stateless (Malawi and South Africa)  
C / L right to nationality provided for in constitution or legislation  
JS right to nationality based on birth in country alone (usually not for children of diplomats etc)  
(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 parents who are (legal) permanent residents has right to citizenship  
JS/2 child born in country of one parent also born in the country has right to citizenship  
~ Racial or ethnic discrimination in granting citizenship from birth  
<sup>Λ</sup> Exceptions to JS/2 rules: in Mali, the parent born in the country must be "of African origin"; in Morocco if the parents were born before a 2007 decree came into effect the rule applies only to the father, who must also be a Muslim Arab and from a country where Muslim Arabs are the majority; in Tunisia it applies only if both father and grandfather born in Tunisia  
† In Uganda, the right to apply for citizenship at the age of majority does not apply if either parent was a refugee  
**Countries indicated in bold have particularly weak legal protections against statelessness**  
NB. There is simplification of complex provisions

## Citizenship by descent

Most African countries require descent from citizen parents before they accord a right to citizenship from birth. More than 30 countries provide a right to citizenship from birth on a nondiscriminatory basis for any child born on their territory (and in most cases also outside the territory) when either of the parents is a citizen. Among the most generous countries are Ghana and Cape Verde, providing citizenship if one grandparent is a citizen, whether or not the person was born in the country.

A significant number of countries, however, still discriminate by giving only a citizen father the unequivocal right to pass citizenship 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 citizenship to a child born out of the country (see below, under heading on gender discrimination). Only a few countries still effectively discriminate additionally on the basis of whether a child is born in or out of wedlock (and for some of these the effect is not significant in practice).<sup>78</sup>

Racial or ethnic discrimination is present in the laws of half a dozen countries (see below, under heading on racial and ethnic discrimination).

A handful of countries allow for citizenship to be passed for only one generation outside the country: a citizen from birth born in the country can pass his or her citizenship to a foreign-born child but that child cannot pass his or her citizenship on in turn. Provisions to this effect are in force in Gambia, Lesotho, Malawi, Mauritius, Tanzania, and Uganda, and permitted to be established by legislation according to the Kenyan 2010 constitution. In 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.

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<sup>78</sup> For example, in the case of Madagascar, citizenship is passed to a child born in wedlock by the father, however: "The law affords an opportunity to claim Malagasy nationality up to the age of majority (21 years) for a legitimate child born of a Malagasy mother (Nationality Code, Section 16(1)) and a child born out of wedlock when one of the parents in respect of whom filiation has been established in second place is Malagasy (section 16(2))" Committee on the Rights of the Child, *Consideration of reports submitted by States parties pursuant to Article 44 of the convention, Initial reports of States parties due in 1993, Madagascar*, CRC/C/18/Add.5, 13 September 1993, p. 92.

**Table 2: Right to citizenship by descent**

Country	Born in country				Born abroad			
	In wedlock + Father (F) &/or Mother (M) is citizen		Out of wedlock + Father (F) &/or Mother (M) is citizen		In wedlock + Father (F) &/or Mother (M) is citizen		Out of wedlock + Father (F) &/or Mother (M) is citizen	
	F	M	F	M	F	M	F	M
Algeria	R	=	=	=	=	=	=	=
Angola	R	=	=	=	=	=	=	=
Benin	R	=	=	=	=	=	=	=
Botswana	R	=	=	=	=	=	=	=
Burkina Faso	R	=	=	=	=	=	=	=
Burundi †	R	C*	C	C*	R	C*	C	C*
Cameroon	R	=	C	=	R	=	C	=
Cape Verde	R∧	=	=	=	=	=	=	=
Central African Republic	R	=	=	=	=	=	=	=
Chad	R	=	=	=	=	=	=	=
Comoros	R	=	=	=	=	=	=	=
Congo Republic	R	=	=	=	=	=	=	=
Côte d'Ivoire	R	=	=	=	=	=	C	=
DRC	R~	=	=	=	=	=	=	=
Djibouti	R	=	=	=	=	=	=	=
Egypt	R	=	=	=	=	=	=	=
Equatorial Guinea	R	=	=	=	=	=	=	=
Eritrea	R	=	=	=	=	=	=	=
Ethiopia	R	=	=	=	=	=	=	=
Gabon	R	=	C	=	R	=	C	=
Gambia	R	=	=	=	Rx1	=	=	=
Ghana	R∧	=	=	=	R	=	=	=
Guinea	R	=	C	=	R	=	C	=
Guinea-Bissau	R	=	=	=	C	=	=	=
Kenya	R	=	=	=	=	=	=	=
Lesotho	R	=	=	=	Rx1	=	=	=
Liberia †	R~	=	=	=	C	-	C	-
Libya	R	C*	R	C*	R	-	R	-
Madagascar	R	C*	C*	R	R	C*	C*	R
Malawi	R~	=	=	=	Rx1~	=	=	=
Mali	R	=	C	=	R	=	C*	=
Mauritania	R	=	R	=	R	C	R	C
Mauritius	R	=	=	=	Rx1	=	=	=
Morocco	R	=	=	=	=	=	=	=
Mozambique	R	=	=	=	C	=	=	=
Namibia	R	=	=	=	C	=	=	=

CITIZENSHIP BY DESCENT

Country	Born in country				Born abroad			
	In wedlock + Father (F) &/or Mother (M) is citizen		Out of wedlock + Father (F) &/or Mother (M) is citizen		In wedlock + Father (F) &/or Mother (M) is citizen		Out of wedlock + Father (F) &/or Mother (M) is citizen	
	F	M	F	M	F	M	F	M
Niger	R	=	C	=	R	=	C	=
Nigeria	R <sup>Λ</sup>	=	=	=	R	=	=	=
Rwanda	R	=	=	=	=	=	=	=
Sahrawi Arab Dem. Rep.	n/a							
São Tomé and Príncipe	R	=	=	=	C	=	=	=
Senegal	R	C*	C	C	R	C*	C	C
Seychelles	R	=	=	=	=	=	=	=
Sierra Leone	R <sup>Λ~</sup>	=	=	=	=	-	R	-
Somalia	R	-	R	-	R	-	R	-
South Africa	R	=	=	=	=	=	=	=
Sudan †	R	C	R	C	R	C	R	C
Swaziland †	R	-	R	C*	R	-	R	C*
Tanzania	R	=	=	=	R <sub>x1</sub>	=	=	=
Togo †	R	C*	R	C*	R	C*	R	C*
Tunisia	R	=	=	=	R	C*	R	C*
Uganda	R <sup>Λ~</sup>	=	=	=	R <sub>x1</sub>	=	=	=
Zambia	R	=	=	=	=	=	=	=
Zimbabwe	R <sup>Λ</sup>	=	=	=	=	=	=	=

**Notes**

- n/a not available
- = same as column to the left
- no rights
- R child is citizen from birth as of right
- R<sub>x1</sub> child is citizen from birth as of right only if parents born in country/citizens from birth
- ~ racial/ethnic discrimination in citizenship law: specified groups listed for preferential treatment
- C can claim citizenship following an administrative process (including to establish parentage but excluding birth registration)
- \* mother (or father) passes citizenship only if father (or mother) of unknown nationality or stateless or if father does not claim
- † the position is ambiguous in that legislation conflicts with the constitution—the constitutional provisions are noted here, unless they provide only general principles and the detailed rules are established by legislation
- Λ Rights to citizenship from grandparents: if born in the country & one grandparent is a citizen (Ghana, Nigeria & Sierra Leone); if born in or outside the country & one grandparent is a citizen (Cape Verde, Uganda & Zimbabwe if birth registered in Zimbabwe)
- NB. There is simplification of complex provisions

## Racial and ethnic discrimination

In half a dozen countries, citizenship 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 descent” may be citizens from birth. Sierra Leone provides for more restrictive rules for naturalisation of “non-Negroes.” 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—ostensibly “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 real property in Liberia.<sup>79</sup>

A number of other countries have elements of the same racial preference. In Malawi, citizenship from birth is restricted to those who have at least one parent who is not only a citizen of Malawi but is also “a person of African race” (unless they would otherwise be stateless); there is also preferential treatment to allow registration as a citizen for those “of African race,” or with Commonwealth or Malawian ties.<sup>80</sup> Though Mali does not generally discriminate in the rules it applies for children with citizen parents, it provides privileged treatment to children born in Mali of a mother or father “of African origin” who was also born in the country—treatment not extended to those without a parent “of African origin.”<sup>81</sup>

The terms agreed in the 2004 peace deal that ended the civil war in most of the DRC form the basis of the new constitution and citizenship law, which today recognise as a Congolese citizen 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 been 1885—the basis of Congolese nationality is still founded on ethnicity rather than on birth, residence, or other objective criteria.<sup>82</sup>

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

79 Constitution of the Republic of Liberia, 1986, Articles 22 and 27.

80 Malawi Citizenship Act, 1966, Sections 4, 5, and 12–15.

81 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.

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

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 him- 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.

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”<sup>83</sup>. 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.<sup>84</sup>

Eritrea has a provision that is not explicitly racial or ethnic, but has the same effect: nationality by birth is given to any person born to a father or mother “of Eritrean origin,” defining “Eritrean origin” to mean resident in Eritrea before 1933. Those who entered Eritrea between 1934 and 1951 may be naturalised as of right, and their children are also citizens by birth.<sup>85</sup> Somalia’s 1962 citizenship law provides for any person “who by origin, language or tradition belongs to the Somali Nation,” is living in Somalia, and renounces any other nationality to obtain citizenship by operation of law.<sup>86</sup>

In some countries, racial or ethnic discrimination is not written into the law, but nonetheless obtains in practice. In Côte d’Ivoire, constitutional amendments that nominally affected only candidates for the presidency or vice presidency of the country, requiring that they be born of parents who are *both* “Ivorian by origin,” nevertheless created 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 citizenship.<sup>87</sup> In Madagascar, members of the economically significant, 20-thousand-strong Karana community (of Indo-Pakistani origin) who failed to register for Malagasy or Indian citizenship following India’s

83 Constitution of the Republic of Nigeria, 1999, Article 25.

84 See Human Rights Watch, “*They Do Not Own This Place*”: Government discrimination against “non-indigenes” in Nigeria, April 2006.

85 Eritrean Nationality Proclamation No.21 of 1992, Articles 2 and 3.

86 Law No. 28 of 22 December 1962 on Somali Citizenship, Section 2.

87 See Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 81–93.

independence in 1947 are no longer eligible for either citizenship. They find it impossible to obtain travel documentation.<sup>88</sup> 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.<sup>89</sup>

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88 Ordonnance No.60-064 du 22 juillet 1960 portant Code de la nationalité malgache, Articles 9 and 16; Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2007*, US Department of State, 11 March 2008.

89 “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.

## Gender discrimination

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. Twenty-seven countries had ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa as of early 2009; another 22 had signed.<sup>90</sup> As noted above, the Protocol is weak on citizenship rights, allowing national law to override the nondiscrimination presumptions of the treaty in relation to passing citizenship to children, and not even mentioning the right of a woman to pass citizenship to her husband.

At independence and until recently, most countries in Africa discriminated on the basis of gender in granting citizenship. Female citizens were not able to pass on their citizenship to their foreign spouses or to their children, if the father was not also a citizen. Often, the law also required a woman to have her husband's or father's permission in order to travel outside the country.

In recent years, however, this situation has begun to change, as reforming laws based on the international human rights consensus on women's rights have introduced gender neutrality in many countries. A key moment was the 1993 *Unity Dow* case in Botswana, where the Court of Appeal upheld a woman's right to pass Botswanan citizenship to her children (see below, p. 48). Since then, Algeria, Botswana, Burkina Faso, Burundi, Côte d'Ivoire, Djibouti, Egypt, Ethiopia, Gambia, Kenya, Lesotho, Mali, Mauritius, Morocco, Niger, Rwanda, Senegal, Sierra Leone, Tunisia, Uganda, Zimbabwe, and no doubt others have enacted reforms providing for greater, if not in all cases total, gender equality.

Despite this trend, many countries still discriminate, rendering hundreds of thousands of people effectively stateless. Among the most discriminatory laws are those of Libya, where virtually every article enshrines lesser rights for women. In Madagascar, meanwhile, perhaps 5 percent of the long-established two million-strong Muslim community finds itself effectively stateless because complex citizenship rules restrict citizenship by origin to those born of a

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<sup>90</sup> The parties are Angola, Benin, Burkina Faso, Cape Verde, Comoros, Djibouti, DRC, Gambia, Ghana, Guinea-Bissau, Lesotho, Liberia, Libya, Mali, Malawi, Mozambique, Mauritania, Namibia, Nigeria, Rwanda, South Africa, Senegal, Seychelles, Tanzania, Togo, Zambia, and Zimbabwe. The countries taking no action were Botswana, Egypt, Eritrea, and Tunisia. São Tome & Príncipe signed in January 2010. See status of ratifications available at <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>, accessed 19 April 2010.

Malagasy father. Those with a Malagasy mother and non-Malagasy father have to claim citizenship before reaching the age of majority or risk losing it.<sup>91</sup>

Some relatively recent nationality laws still discriminate. The nationality code Burundi adopted in 2000, for example, gives full rights to pass on their citizenship by descent or marriage only to men.<sup>92</sup> This law has not yet been amended, despite a new constitution explicitly stating that men and women have the same rights in relation to nationality.<sup>93</sup> 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.<sup>94</sup> The unrecognised state of Somaliland has also adopted a citizenship law that explicitly discriminates on the basis of gender, providing that citizenship from birth is granted to “anyone whose father is a descendant of persons who resided in the territory of Somaliland on 26 June 1960 and before.”<sup>95</sup>

At least a dozen countries still discriminate on the grounds of gender in granting citizenship rights to children who are either born in their country or born overseas (including Benin, Burundi, Guinea, Liberia, Libya, Madagascar, Mali, Mauritania, Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Togo, and Tunisia. See Table 2: Right to citizenship by descent—which, however, does not reflect absolutely all provisions that discriminate by gender.) In several of these countries, the child of a citizen mother and noncitizen father born in the country can claim citizenship, but does not have citizenship automatically as of right; thus, the law is discriminatory in individual provisions relating to citizenship from birth, but the total effect of all the provisions is to allow both sexes to pass citizenship to their children. In Burundi, for example, the 2005 constitution provides that children of Burundian men or women have the same right to a nationality, the nationality code of 2000 provides that the status of children born of a citizen mother is technically the right to acquire citizenship “by declaration”; citizenship from birth is restricted to those born of a citizen father.<sup>96</sup> Sometimes, for example in Benin and Mali, the discrimination appears only in provisions allowing for the child of a citizen mother to repudiate nationality at majority, but if no action is taken he or she will have citizenship (these provisions are not noted in Table 2).<sup>97</sup> In Zimbabwe, advocacy by the women's movement led to the removal of discrimination on grounds of gender and marital status of the parents in 1996, but only with effect from that date: children born between 1980 (attainment of majority rule) and 1996 could not claim Zimbabwean citizenship if only their mother was

91 Ordonnance No. 60-064 du 22 juillet 1960 portant Code de la nationalité malgache, Articles 9 and 16; Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2007*, US Department of State, 11 March 2008.

92 Loi No. 1-013 du 18 juillet 2000 portant Code de la nationalité burundaise, Articles 2, 4, and 5.

93 Constitution of Burundi, 2005, Article 12.

94 Constitution of the Kingdom of Swaziland, 2005, Article 43.

95 Republic of Somaliland, Citizenship Law, No. 22/2002 (unofficial translation).

96 See Loi No. 1-013 du 18/07/2000 portant reforme du code de la nationalité burundaise, Sections 2 and 5.

97 See Loi No. 95-70 du 25 aout 1995 portant modification du code de la nationalite malienne, Article 8-5 (Nouveau).

Zimbabwean, unless born out of wedlock.<sup>98</sup> In 2009, as part of a constitutional amendment allowing for the installation of a government of national unity, gender discrimination was completely removed from the constitution in relation to citizenship by birth and marriage<sup>99</sup>—though the Citizenship Act (last amended in 2003) continued to quote the pre-1996 version.

The most common ground for acquiring citizenship as an adult is on the basis of marriage (see Table 3 below). In most countries, marriage to a citizen 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). In some countries, especially those using civil law, the state may object to the acquisition of nationality by the spouse for up to a year after the application is made. Among these countries are: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Republic of Congo, Côte d'Ivoire, DRC, Gabon, Guinea, Madagascar, Mali, Mauritius, Niger, Senegal, Togo, and Tunisia.

Achieving gender equality in the right of a woman to pass citizenship to her husband has proved more of a struggle. In some countries, the very concept of a right to citizenship by marriage has been challenged. In Côte d'Ivoire and the DRC, for example, anxiety has been expressed in constitution- or law-drafting processes about the ease with which foreign men marrying female citizens may acquire nationality. In the DRC, the law now provides, extraordinarily, that an application for citizenship by marriage must be approved by decree of the Council of Ministers and considered by the National Assembly.<sup>100</sup>

In 1995, a Constitution Review Commission in Zambia considered the subject of citizenship in detail, and received many submissions suggesting that citizenship was too easy to obtain for people who were not members of the “indigenous” Zambian population.<sup>101</sup> Critics said the acquisition of citizenship by marriage was open to abuse and that existing constitutional provisions on marriage discriminated by gender. The Commission recommended restricting citizenship to birth, descent, and registration; and the amendments to the constitution adopted on its recommendation included deleting altogether the clause providing for marriage to be the grounds for citizenship by registration.<sup>102</sup> Botswana and Zimbabwe also responded to advocacy for an end to gender discrimination by removing altogether any additional rights in case of marriage (in Zimbabwe, this was the case between 1996 and 2009,

98 Constitution of Zimbabwe Amendment (No. 14) Act, 1996; see also Tandeka C. Nkiwane, “Gender, Citizenship, and Constitutionalism in Zimbabwe: The Fight Against Amendment 14”, *Citizenship Studies*, Vol. 4, No. 3, 2000.

99 Constitution of Zimbabwe Amendment (No.19) Act, 2009.

100 In DRC, gender discrimination was ultimately removed, though the conditions under which citizenship may be required by marriage are extremely restrictive (Loi No. 04/024 du 12 novembre 2004 relative à la nationalité congolaise, Article 19); in Côte d'Ivoire, since 2004 a man may acquire Ivorian citizenship from his wife, but only after a delay of 2 years; a woman may acquire citizenship from an Ivorian man immediately (Loi No. 2004-662 du 17 décembre 2004, Article 12).

101 Zambia Constitution Review Commission report, 16 June 1995, p. 40.

102 Deletion of Article 6(1)(c) from the Constitution of the Republic of Zambia of 1991 by Act No. 18 of 1996, Article 6.

when further amendments to the constitution increased the general period for naturalisation to 10 years, but provided that those married to a citizen could naturalise in five). Similarly, representations made to a Special Law Commission on Land Related Laws established in Malawi in 2004 expressed the view that economically vulnerable Malawian women could be exploited by foreign men seeking to acquire property in the country.<sup>103</sup> In 2010, Namibia amended its constitution to change the period for acquisition of citizenship by marriage from two to 10 years.<sup>104</sup>

More than two dozen countries today still do not allow women to pass their citizenship to their noncitizen spouses, or apply discriminatory residence qualifications to foreign men married to citizen women who wish to obtain citizenship. (These countries are Benin, Burundi, Cameroon, Central African Republic, Comoros, Republic of Congo, Côte d'Ivoire, Egypt, Equatorial Guinea, Guinea, Lesotho, Libya, Madagascar, Malawi, Mauritania, Morocco, Niger, Nigeria,<sup>105</sup> Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, and Tunisia. See Table 3: Right to pass citizenship to a spouse). In some cases, marriage provides an automatic right to citizenship, but in others marriage only shortens the period within which naturalisation can be applied for and all other conditions for naturalisation must still be fulfilled (this is not indicated in Table 3, but rather in the table on naturalisation).

### Botswana: The *Unity Dow* Citizenship Case

In 1992, a landmark court case brought by Unity Dow, a lawyer,<sup>106</sup> challenged the constitutionality of Botswana's Citizenship Act on the grounds that it discriminated on the basis of gender. Although the original text of the Citizenship Act adopted in 1982 had provided for any person born in Botswana to be a citizen on a *jus soli* basis, the law had been amended in 1984 to provide that a person would become a citizen at birth only if, irrespective of where he or she was born, his or her father (or his or her mother if he or she was born out of wedlock) was a citizen of Botswana. A woman married to a citizen of Botswana could apply for naturalisation on preferential terms, but not a man in the same situation.<sup>107</sup> Thus Unity Dow, a citizen of Botswana married to an American, was prevented from passing on her Botswanan 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.

<sup>103</sup> See *Malawi: Democracy and Political Participation*, AfriMAP and OSISA, 2009.

<sup>104</sup> Namibian Constitution Second Amendment Act, 2010 (Act No. 7 of 2010), section 1.

<sup>105</sup> Constitution of the Republic of Nigeria, 1999, Article 26. For the most part, immigration authorities have accepted applications for registration by foreign husbands, but there have been some cases brought to court where this has been denied. See comment by Ayo Obe on the Claiming Equal Citizenship website, available at <http://www.learningpartnership.org/citizenship/2006/09/survey1-national-marries-nonnational>, accessed 12 December 2007.

<sup>106</sup> 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.

<sup>107</sup> Botswana Citizenship Act, 1982, Sections 4, 5 and 13 (version in effect after amendments in 1984).

**Table 3: Right to pass citizenship to a spouse**

Country	Citizenship by marriage	Res. period (if any)*	Marriage period (if any)	Country	Citizenship by marriage	Res. period (if any)*	Marriage period (if any)
Algeria	=	2 yrs	3 yrs	Libya	m		2 yrs
Angola	=		5 yrs	Madagascar	m		
Benin	m		aut.	Malawi	m		
Botswana	-			Mali	=		aut.
Burkina Faso	=		aut.	Mauritania	m		aut.
Burundi	m		aut.	Mauritius	=	4 yrs	
Cameroon	m			Morocco	m	5 yrs	
Cape Verde	=			Mozambique†	=		5 yrs
CAR	m		aut.	Namibia	=	10 yrs	
Chad	=			Niger	m		
Comoros	m		aut.	Nigeria	m		
Congo Rep.	m	5 yrs		Rwanda	=		3 yrs
Côte d'Ivoire	m+w		m: 2 yrs	SADR	n/a		
DRC	=		7 yrs	STP	=		
Djibouti	=		10 yrs‡	Senegal	m		aut.
Egypt	m		2 yrs	Seychelles	=		
Eq. Guinea	m		aut.	Sierra Leone	m		
Eritrea	=	3 yrs		Somalia	m		aut.
Ethiopia	=	1 yr	2 yrs	South Africa	=	2 yrs	
Gabon	=		3 yrs	Sudan	m	2 yrs	
Gambia	=	7 yrs		Swaziland	m		
Ghana	=			Tanzania	m		
Guinea	m		aut.	Togo	m		aut.
G-Bissau	=	1 yr	3 yrs	Tunisia	m	2 yrs	
Kenya	=		7 yrs	Uganda	=		5 yrs
Lesotho	m			Zambia	-		
Liberia	-			Zimbabwe	-		

**Notes**

n/a Not available

\* If residence period noted then residence is after marriage

= Equal rights for men and women to pass citizenship

m Only men are permitted to pass citizenship to their spouses

m+w men and women can both pass citizenship, but not on equal terms

aut. Spouse acquires citizenship automatically, without further procedures (unless chooses to refuse)

- No additional rights in case of marriage (except in some cases reduction of residence period for naturalisation, as noted in Table 5)

† The position is ambiguous in that legislation conflicts with the constitution – the constitutional provisions are noted here

‡ 5 yrs if there are children from the marriage

NB. There is some simplification of complex provisions

In 1991 and 1992, first the High Court and then the Court of Appeal found in favour of Dow.<sup>108</sup>

The Court of Appeal judgment stated 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.<sup>109</sup>

The Court 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.

The Citizenship Act was amended to conform with the judgment in *Dow* in 1995, and now allows naturalisation of foreign spouses for both men and women—though only on the same terms as for any other person applying for naturalisation, and the acquisition of citizenship by descent if either the father or the mother was a citizen of Botswana at the time of birth.<sup>110</sup>

## Reforms in North Africa

Several of the countries of North Africa have taken steps in the last decade to reform their laws to reduce gender discrimination in the grant of citizenship. However, much still remains to be done, even in those countries that have amended their laws.

Egypt’s 1975 Nationality Law originally provided that a 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. In 2004, however, an important reform amended the law to provide that children born to Egyptian mothers were Egyptian citizens regardless of their father’s status or

108 See Metlhaetsile Women’s Information Centre, “The Citizenship Case: *The Attorney General of the Republic of Botswana vs. Unity Dow*, Court Documents, Judgments, Cases and Materials,” 1995, available at <http://www.law-lib.utoronto.ca/Diana/fulltext/dow1.htm>, accessed 13 November 2007.

109 *Unity Dow v. Attorney-General*, High Court of Botswana, Misc. 124/1990, June 1991 reported in (2001) AHRLR 99 (BwCA 1992).

110 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.

their place of birth.<sup>111</sup> Those born before the law came into effect (in November 2005) could apply for their citizenship to be recognised. Thousands of people immediately applied for Egyptian citizenship under the new law, and by 2006 it was estimated that 17,000 people had obtained citizenship, most of them born of Sudanese and Syrian fathers. More were then expected to apply, as the Ministry of the Interior announced that applicants for Egyptian citizenship would be exempted from the LE1,200 fee previously required.<sup>112</sup>

The law also provided for foreign wives of Egyptian men to be eligible for citizenship by naturalisation, provided the relevant minister does not object (Article 7); however, this right is not granted to non-Egyptian spouses of Egyptian women, who must follow the criteria stipulated for naturalisation, as for any other foreigner living in the country (Article 4).

Although the new law creates new opportunities for citizenship for children born to foreign fathers, the application of the law places considerable constraints in terms of access to the provision. Applicants for citizenship have to provide, among other documents, the birth certificates of both parents, the mother's identity card and her father's birth certificate, and the marriage contract. The process of obtaining an identity card and passport can be long and frustrating, even for members of the educated elite.

Most problematically, probably the largest group of children in Egypt affected by this law—those children born of Palestinian fathers and Egyptian mothers—are still not regarded as eligible for Egyptian citizenship, though the law does not explicitly state this exception. The roots of the Palestinian exception go back to 1959, when the Arab League issued a decree that Palestinians, as a way of preserving their identity, should not be given citizenship in other Arab countries.<sup>113</sup> There are no available statistics on how many children of such marriages are believed to be stateless as a result, though some may be included among the approximately 70,000 Palestinian refugees believed to be in Egypt.<sup>114</sup>

In 2005, Algeria followed Egypt's lead, amending the nationality law to allow an Algerian woman married to a foreigner to transmit Algerian nationality to her children and spouse on equal terms.<sup>115</sup>

In April 2007, after a long campaign by women's rights organisations, amendments to the Nationality Code came into force in Morocco. The reform

111 Law No. 154 of 2004 amending some provisions of Law No. 26 of 1975 concerning Egyptian nationality, *Official Gazette*, Vol. 28, 14 July 2004. See also <http://www.learningpartnership.org/citizenship/category/countries/egypt>, accessed 13 November 2007. 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, p. 2.

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

113 League of Arab States Decree (No. 1547 for 1959).

114 UN High Commissioner for Refugees, *Statistical Yearbook 2005*, available at <http://www.unhcr.org/statistics/STATISTICS/464478a72.html>, accessed 30 November 2007.

115 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.

finally gave Moroccan women married to foreign men the right to pass Moroccan citizenship to their children, and benefited many children who had previously been effectively stateless, notably the children of Palestinian men and Moroccan women. In practice, however, this new equality may be restricted in the case of marriages of Moroccan women with non-Muslim foreign men. 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 woman cannot marry a non-Muslim man, and the two codes read together indicate that the family code should take preference, even in relation to refugees recognised by Morocco.<sup>116</sup> In practice, it seems that the requirement to show that the prospective husband is Muslim is not consistently applied.

The *Association Démocratique des Femmes du Maroc* welcomed the law, but called for further reform, including the extension of gender neutrality to the passing of citizenship to a spouse. A foreign woman can acquire Moroccan citizenship after five years of marriage to a Moroccan man and residence in the country, but this possibility is not open to a foreign man married to a Moroccan woman.<sup>117</sup> 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.<sup>118</sup>

Although Tunisian law has provided since 1993 for both women and men married to foreigners to pass citizenship to their children—whether born in or out of the country—the *Code de la nationalité* is still discriminatory on its face. Moreover, Tunisian women cannot pass citizenship to their husbands,

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116 See Dahir No. 1-04-22 du 12 Hija 1424 (3 Février 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.

117 *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/citizenship/2007/01/won-battle-morocco>, accessed 14 November 2007. Other information provided by Khadija Elmadmad. See also Khadija Elmadmad, "Moroc: La dimension juridique des migrations," in *Mediterranean Migration Report 2007–2008*, Euro-Mediterranean Consortium for Applied Research on International Migration, European University Institute, 2008.

118 *Code de la nationalité marocaine*, Article 9.

while additional administrative procedures are required if they wish to pass citizenship to their children born abroad.<sup>119</sup>

Libya also still discriminates on gender grounds, whether a child is born in or out of the country. Despite the adoption of a new nationality law in 2010 which included important reforms, Libya still gives the 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.<sup>120</sup> Those born outside the country can obtain citizenship only from their father. 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.”<sup>121</sup> 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.<sup>122</sup> But the 2010 law only implements this promise in the most limited way possible, and leaves gender discrimination entrenched.

### **Ethiopia: The constitution and law are gender neutral, but practice is not**

The 1995 Ethiopian Constitution is gender neutral in its provisions on nationality. It also includes a general provision on the right to equality, which provides, among other things, for nondiscrimination on the basis of sex.<sup>123</sup> The 1930 Ethiopian Nationality Law, repealed in 2003, was also gender-neutral at first sight, stating that: “Any person born in Ethiopia or abroad, whose father or mother is Ethiopian, is an Ethiopian subject.” However, in the context of setting out the arrangements through which children born of mixed marriages could establish their Ethiopian nationality, the 1930 law also contained a provision that reads: “Every child born in a lawful mixed marriage follows the nationality of its father.”<sup>124</sup> Thus, children of Ethiopian

119 Loi No. 63-7 du 22 avril 1963 portant refonte du Code de la nationalité tunisienne, sections 12 and 13. In 1993, Act No. 93-62 of 23 December 1993 amended section 12 of the Tunisian Nationality Code to provide for women to pass citizenship to their children born outside of Tunisia. The code now states: “A child born abroad of a Tunisian mother and a non-Tunisian father shall become Tunisian, provided that this status is applied for through a declaration within the period up to one year preceding his majority. However, before reaching the age of 19, the applicant shall become Tunisian on the basis of a joint declaration by his mother and father.” See also United Nations High Commissioner for Human Rights, International Human Rights Instruments, *Core Document Forming Part of the Reports of States Parties: Tunisia*, 16 May 1994, paragraph 76(h), available at <http://www.unhcr.ch/tbs/doc.nsf/o/55662928a5017fa941256324005ocddo?Opendocument>, accessed 13 November 2007.

120 Libya Nationality Law No. 24 of 2010, Articles 3 and 11.

121 Convention 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.

122 Convention 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.

123 Constitution of The Federal Democratic Republic of Ethiopia, 8 December 1994, Articles 6 and 25. Article 6 provides that: “(1) Any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian. (2) Foreign nationals may acquire Ethiopian nationality. (3) Particulars relating to nationality shall be determined by law.”

124 Ethiopia Nationality Law, July 1930, Sections 1 and 6.

women and foreign men were not regarded as Ethiopian—both in law and in popular understanding—even if they were born and had lived all their lives in Ethiopia.<sup>125</sup>

The 1930 law also reflects a double standard with regard to the effects of marriages of Ethiopian subjects to foreigners. Whereas “a lawful marriage [in Ethiopia or abroad] of an Ethiopian [man] with a foreign woman confers Ethiopian nationality upon her,” “a lawful marriage contracted abroad of an Ethiopian woman with a foreign [man] deprives her of Ethiopian nationality if her marriage with the foreigner gives her the nationality of her husband.”<sup>126</sup> Article 33 of the 1995 Constitution did remedy this inconsistency by providing that marriage of an Ethiopian, male or female, to a foreigner does not result in the loss of Ethiopian nationality unless he or she chooses to take the nationality of his or her spouse; but statutory law still conflicted with this provision for several years.

Even excluding those Ethiopians with a parent from what is now Eritrea, tens of thousands of Ethiopia’s people are of mixed blood. Many Arabs, Italians, Greeks, Armenians, and others have lived in Ethiopia since the late nineteenth century. Many of them are or have been married to Ethiopians, and their children born and raised in Ethiopia. Some took the citizenship of their non-Ethiopian parent; as soon as they did so, they automatically lost any right to Ethiopian citizenship. Some of these people left Ethiopia during the turbulent years of military rule, but many others chose to stay. Those whose mothers were Ethiopian found themselves effectively stateless.

In 2003, a comprehensive reform to the nationality law significantly improved this situation, at least on paper. The 2003 Proclamation on Ethiopian Nationality removed this gender discrimination, providing that an Ethiopian national of either sex may pass nationality to his or her spouse, and also simply that “any person shall be an Ethiopian national by descent where both or either of his parents is Ethiopian.” The proclamation also eased restrictions on naturalisation and provided that “all Ethiopian nationals shall have equal rights and obligations of citizenship regardless of the manner in which nationality is acquired.”<sup>127</sup> The law is not stated to have retroactive effect, however, and in practice it seems that those with non-Ethiopian fathers find it difficult to obtain recognition of a right to nationality on equal terms.

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125 “A child born in a lawful marriage of an Ethiopian mother with a foreigner is always able to recover the benefit of Ethiopian nationality, provided he lives in Ethiopia and proves he is completely divested of the paternal nationality” (section 7); “If the lawful marriage according to the national law of the foreign father is posterior to the birth of the child issued from his relations with an Ethiopian woman, the child legitimated through this subsequent marriage follows the nationality of his foreign father only on condition that the national law of the latter confers upon him the foreign nationality with all inhering rights. Otherwise, the child preserves his Ethiopian nationality” (section 8). Ethiopia Nationality Law, July 1930, Sections 7 and 8.

126 Ethiopia Nationality Law, July 1930, Sections 2 and 4.

127 Proclamation 378/2003 on Ethiopian Nationality, Sections 3, 5, 6, and 18.

## Proof of nationality

The systems for proof of nationality are in practice often as important as the provisions of the law on the qualifications in principle. 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 the right to nationality can be established only if the necessary conditions are proved during the individual's minority. If the systems to do so do not exist or are discriminatory, then many individuals will be left effectively stateless.

In principle, recognition of citizenship should start at the time of birth, with registration of the birth itself.<sup>128</sup> Birth registration is usually fundamental to the realisation of all other citizenship rights: lack of birth certificates can prevent citizens from registering to vote, putting their children in school or entering them for public exams, accessing health care, or obtaining identity cards, passports, and other important documents. Yet, according to UNICEF, the UN Children's Fund, 55 percent of African children under five years old have not been registered, with the situation much worse in rural areas; in some countries more than 90 percent of children are not registered.<sup>129</sup> In Angola, for example, the 2005 nationality law provides that nationality of origin is proved by a birth certificate; yet UNICEF estimated in 2007 that only 29 percent of Angolan children were registered, and even fewer in rural areas.<sup>130</sup>

In some countries, registration of births is not even compulsory. For example, in southern Africa, registration of births is compulsory for all children in Mauritius, South Africa, Swaziland, Zambia, and Zimbabwe; but not in Botswana, Malawi, and Tanzania. In Malawi and Tanzania, the requirement to register is racially based. Registration is compulsory only if one or both parents are of European, American, or Asiatic "race" or origin, and in Tanzania also if they are of Somali origin.<sup>131</sup> Such racially discriminatory practices do not comply with the requirements of the African Charter on Human and Peoples' Rights and other international treaties.

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128 "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." Convention in the Rights of the Child, 20 November 1989, Article 7(1). The African Charter on the Rights and Welfare of the Child repeats this provision (Article 6(2)).

129 UN Children's Fund (UNICEF), *Child Protection Information Sheets*, 2006, p. 13. See also concluding observations of the committee monitoring compliance with the UN Child Rights Convention, available at <http://www.unhcr.ch/tbs/doc.nsf>, accessed 3 December 2007.

130 UNICEF statistics on Angola, available at [http://www.unicef.org/infobycountry/angola\\_statistics.html](http://www.unicef.org/infobycountry/angola_statistics.html), accessed 29 April 2009.

131 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.

Several of the francophone countries allow for those persons who have always been treated as citizens (*possession d'état de national*) to obtain official recognition that they are citizens by origin, without needing to establish further facts. Senegal provides that if someone has his or her habitual residence in Senegal and has always behaved and been treated as a citizen, it shall be presumed that he or she is a citizen.<sup>132</sup> Chad is similarly generous in providing that if a person of African origin has lived in the country for 15 years “as a Chadian”—that is, living in and assimilated to a Chadian community and treated as a Chadian by others and by the authorities—they can obtain a certificate of nationality by origin (though the authorities may object within one year).<sup>133</sup> Similar provisions exist in Benin, Republic of Congo, Morocco, Togo, and elsewhere.

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 15 brought up by a Gabonese citizen or on state assistance, they can claim Gabonese nationality of origin.<sup>134</sup>

Algeria's nationality code includes the common provision on the *possession d'état de national algérien*, 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.<sup>135</sup> In Chad, the provision on *possession d'état de Tchadien* is restricted to those of “African ancestry” (*de souche africain*).<sup>136</sup>

### Supreme Court rules on proof of nationality in DRC

The disputed status of the Kinyarwanda-speaking populations of the provinces of North and South Kivu in eastern DRC has been at the heart of the wars that have devastated the region since the early 1990s. The question of who belongs to Congo and when they arrived has been central to this conflict, with different laws setting the “date of origin” for ethnic groups to claim to be “from” Congo variously at 1885 (the first date at which the borders of the state were described), 1908, 1950, and 1960 (independence). The argument over who is an indigenous (*autochtone*) Congolese has come to dominate the discourse over settlement of the various conflicts, linking comparatively local disputes over resources (especially land) to national and regional wars. For individual

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

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

134 Gabon code de la nationalité, Loi No. 37-1998, chapter 3, Section 14.

135 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.

136 Ordonnance No. 33/PG-INT du 14 août 1962 portant Code de la nationalité tchadienne, Article 14.

members of the Banyarwanda ethnic group, questions of documentary proof of citizenship have thus always been critical.

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 citizenship 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.

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.<sup>137</sup>

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<sup>137</sup> Mabanga Monga Mabanga, *Le contentieux constitutionnel congolais*, Editions Universitaires Africaines, Kinshasa, 1999, pp. 56–58. See also Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 66–80.

## Dual citizenship

At independence, many African countries took the decision that dual citizenship should not be allowed: they wished to ensure that those who might have a claim to another citizenship—especially those of European, Asian, or Middle Eastern descent—had to choose between the two possible loyalties. Those who did not take the citizenship of the newly independent country were then regarded with suspicion, as a possible “fifth column” for the former colonial powers and other interests.

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. 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 citizenship 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. Today, for example, 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 citizenship or are considering such changes. Among those countries that have changed the rules in the last 15 years are Angola, Burundi, Republic of Congo, Djibouti, Gabon, Gambia, Ghana, Kenya, Mozambique, Rwanda, São Tomé and Príncipe, Sierra Leone, Sudan, and Uganda. Others, including Egypt, Eritrea, and South Africa, allow dual citizenship but only with the official permission of the government. In other countries, amendment of the law is still under discussion; these countries include Tanzania (see below) and Liberia, where a Citizenship Retention Act was introduced to the House of Representatives in 2007, proposing that Liberians who had left during the civil war and naturalised as citizens in other countries should be allowed to retain (or reclaim) their Liberian nationality.<sup>138</sup>

In some other countries, the courts have re-interpreted 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

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<sup>138</sup> See Letter on behalf of Non-Resident Liberians to President Ellen Johnson Sirleaf, 14 December 2007, available at <http://szinnah.blogspot.com/2008/01/alvin-teage-jalloh-attorney-counselor.html>.

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.”<sup>139</sup> 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 seeking work to alleviate dire poverty), given what the court characterised as “the economic interdependence of the two countries.”<sup>140</sup> The reality of economic migration is explicitly recognised in the Guinea-Bissau law, which provides that dual citizenship is allowed if a person acquires another citizenship because he or she has emigrated “essentially for economic reasons.”<sup>141</sup>

A handful of countries provide in their laws for dual citizenship to be allowed only for citizens from birth: they include Comoros, Gambia, Namibia, São Tomé and Príncipe, Swaziland, and Uganda. In Zambia, a new draft constitution put forward by the government in 2007 proposed allowing dual citizenship from birth, but not by naturalisation; in 2008, a National Constitutional Conference resolved to approve this idea.<sup>142</sup> In a ground-breaking judgment in Namibia in 2008, the High Court found that the provisions of the citizenship law preventing naturalised citizens (but not citizens from birth) from holding two nationalities were unconstitutional—even though the constitution did not expressly provide for dual citizenship.<sup>143</sup> The Comoros constitution provides that no citizen from birth can have nationality taken away, though the (earlier) nationality law has not been amended and still states that dual nationality is not allowed.<sup>144</sup>

Other countries allow dual nationality only with the permission of the authorities: Egypt, Eritrea, Libya and South Africa. But whereas in South Africa

139 *Mokoena vs. Mokoena and Others* CIV/APN/216/2005 (unreported); see also *Mokoena vs. Mokoena and Others* C of A (CIV), No. 2 of 2007.

140 *Director of Immigration and others vs. Pholoana Adam Lekhoaba and Anor.* C of A (CIV) No.22/07 (unreported), available on the website of the Southern African Legal Information Institute (SAFLII) at <http://www.saflii.org/ls/cases/LSCA/2008/4.html>.

141 Lei No. 2/92 de 6 de abril, artigo 10. São Tomé & Príncipe has a similar provision allowing dual nationality “because of emigration.” Lei da nacionalidade No.6/90, artigo 12.

142 Constitution of Zambia Bill, 2007. See also debates on the *Zambian Economist* blog for June 2008, available at <http://zambian-economist.blogspot.com>.

143 *Tlhoru v Minister of Home Affairs* (Case No. (P) A159/2000) [2008] NAHC 65 (2 July 2008). See also Werner Menges, “Court confirms legality of dual citizenship for some Namibians,” *The Namibian*, 9 July 2008.

144 Constitution of the Union of Comoros, 2001, Article 5; Loi No. 79-12 du 12 décembre 1979 portant code de la nationalité comorienne, Article 51.

this is a purely administrative process and many people are dual nationals, the permission is only given in rare cases by the others.

Today more African countries permit than prohibit dual citizenship. But even in those countries where dual citizenship is prohibited, the rules are often not enforced in practice, so if a citizen acquires another citizenship no consequences result. In other cases, the law is ambiguous or silent but effectively allows dual nationality. In Senegal, the nationality code appears at first sight to prohibit dual nationality (except for Senegalese women marrying foreign men), yet the courts have not interpreted the law in this way.<sup>145</sup> For this reason, since 1991 the constitution has also specifically provided that any candidate for president has to hold Senegalese nationality alone.<sup>146</sup>

The laws of several countries are contradictory: they provide that a person automatically loses his or her nationality when another nationality is acquired, but also that the person must obtain a decree to release himself or herself from obligations to the state.<sup>147</sup>

Some governments, however, have moved in the opposite direction, using a prohibition on dual citizenship for political purposes. This is most evident in Zimbabwe, where, in recent years, those persons who have a potential claim on another citizenship have been required to renounce it, even if they have never had any legal relationship with the second state (though as of 2010, the reform of this provision was under active discussion).<sup>148</sup> The government of the “New Sudan,” as South Sudan is known, has (although not currently an independent state) adopted a Nationality Act that, in addition to discriminating on the basis of gender, also requires anyone acquiring “New Sudanese” nationality by naturalisation to renounce any other nationality.<sup>149</sup>

### A change of mind on dual citizenship in East Africa

The countries of the East African Community (EAC)—Burundi, Rwanda, Kenya, Tanzania, and Uganda—have all taken steps in recent years towards the legalisation of dual citizenship, illustrating the continental trend. As early as 2000, Burundi, not yet a member of the EAC, adopted a new law allowing dual

145 Loi No. 61-70 du 7 mars 1961 déterminant la nationalité sénégalaise, Article 18, provides that an adult who voluntarily acquires another nationality loses his or her Senegalese nationality (“*Perd la nationalité sénégalaise le sénégalais majeur qui acquiert volontairement une nationalité étrangère*”). Articles 1 and 16bis reinforce this provision. Article 20 allows Senegalese women who have married foreigners to retain their nationality unless they expressly state they wish to give it up. Yet, the notes to the law in the version published by *Editions Juridiques Africaines*, 1993, also cite jurisprudence that, in case of double nationality, the provisions of the Family Code relating to the jurisdiction of the Senegalese courts should be applied. (“*En cas de double nationalité, application des Articles 849 et 853 du Code de la Famille pour appliquer la compétence des tribunaux sénégalais au défendeur dont il est établi qu’il possède aussi la nationalité sénégalaise*.” CA Dakar No. 234 du 8.12.1972.)

146 Constitution 2001, Article 28: “*Tout candidat à la Présidence de la République doit être exclusivement de nationalité sénégalaise.*”

147 See for example, Code de la nationalité tunisienne, Article 30.

148 See Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 39–50.

149 Sudan Nationality Act, 2003, Laws of the New Sudan, Section 9.

nationality.<sup>150</sup> Rwanda changed its law in 2004.<sup>151</sup> Kenya, Tanzania, and Uganda have historically been among those countries most opposed to dual nationality because of suspicions about their large populations of Asian descent. The growing diaspora of people of African origin and the economic significance of their remittances to and investments in their countries of origin, however, have produced political pressure to change the law. Uganda has changed its constitution and law to allow dual citizenship, Kenya amended its constitution to the same effect in 2010, and Tanzania has initiated a debate about the possibility of doing so.

According to the 1967 constitution, Ugandan nationals holding dual citizenship who failed to renounce their other citizenship would lose their Ugandan citizenship. The most important purpose of these provisions was to deprive those Asians who had dual citizenship and those whose applications for Ugandan citizenship had not been approved by 1967 of any claim to be Ugandan nationals.<sup>152</sup> The 1995 Constitutional provisions were based on the 1962 and 1967 Constitutions, and reaffirmed the earlier position denying dual citizenship. Although there were submissions both for and against the issue of dual citizenship made to the Odoki Commission, which held countrywide hearings in preparation for the drafting of the 1995 constitution, the Commission, on a statistical assessment of the views submitted to it, recommended that dual citizenship be rejected.<sup>153</sup>

A new Constitutional Review Commission (CRC) was set up from 2001 to 2003 and reexamined the provisions on citizenship. The Commission noted that the majority view was that only people who are descendants of indigenous communities of Uganda should be recognised as citizens and therefore some communities such as the Banyarwanda should be excluded.<sup>154</sup> The majority of responses submitted to the CRC were against dual citizenship. As during the 1995 constitutional debate, the main arguments against dual citizenship revolved around the issue of loyalty, and the security and sovereignty of Uganda. Fears were also expressed that dual nationality investors would come to dominate the Ugandan economy. Proponents of dual citizenship argued that it was wrong to deny people Ugandan citizenship if political or economic circumstances had forced them to acquire foreign nationalities, while Ugandans in the diaspora also contribute substantially to the Ugandan economy through foreign exchange remittances. The Ugandan government's proposals to the CRC argued that it was necessary to allow dual citizenship for indigenous Ugandans living abroad and to potential foreign investors. The CRC recommended that parliament should allow dual citizenship both for Ugandans in the diaspora and for non-Ugandans. The government position

150 Burundi Loi No. 1-013 du 18 juillet 2000 portant reforme du code de la nationalité; IRIN Update 932 for the Great Lakes, 26 May 2000.

151 Loi organique No. 29/2004 du 3 décembre 2004 portant code de la nationalite rwandaise.

152 Rita M. Byrnes (ed.), *Uganda: A Country Study*. Washington, GPO for the Library of Congress, 1990.

153 Report of the Uganda Constitutional Commission (Odoki Commission), 1993.

154 Uganda Constitutional Review Commission report, 10 December 2003, p. 157.

on citizenship and dual citizenship in particular was reaffirmed in a white paper responding to the CRC report.<sup>155</sup> In 2005 legislation was finally passed to amend the constitution and allow both Ugandans and non-Ugandans to acquire dual citizenship. The Act also mandated that parliament prescribe the offices of state that those with dual citizenship are disqualified from holding.<sup>156</sup> In practice, implementation of the amendments has been problematic, with long backlogs in processing applications.<sup>157</sup> In May 2009, a new Uganda Citizenship and Immigration Control (Amendment) Act was finally passed by parliament, setting out the detailed rules for citizenship applications and listing the official positions that could not be held by dual citizens, including the presidency, prime minister, ministers, and senior positions in the armed forces, intelligence services and police.<sup>158</sup>

The Kenyan Constitution and Citizenship Act both prohibited dual citizenship for adults until 2010,<sup>159</sup> though the issue was on the table throughout the long drawn out negotiations for a new constitution that dominated the previous decade. The new constitution adopted by referendum in 2010 finally changed these rules to provide that a citizen by birth did not lose citizenship on acquiring another citizenship, while also requiring parliament to establish conditions on which citizenship could be granted to individuals who are citizens of other countries.<sup>160</sup> New legislation was due to be passed within one year of the constitution coming into force.

Tanzania's citizenship law of 1995 does not allow dual citizenship. However, in August 2007, the minister for home affairs presented a report on dual citizenship to the cabinet arguing for the law to be changed.<sup>161</sup>

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155 "Government white paper on (1) The report of the commission of enquiry (2) Government proposals not addressed by the report of the commission of inquiry," paragraph 1.11(f), available at <http://www.cmi.no/pdf/?file=/uganda/doc/government-whitepaper.pdf>, accessed 29 November 2007

156 Uganda Constitution (Amendment) Act, 2005, Part III, sections 5 to 8, amending Articles 14 to 17 of the 1995 Constitution.

157 "Let sanity begin at immigration," *The Monitor* (Kampala), 12 November 2007.

158 Felix Osike and Mary Karugaba, "Rules set for dual citizens," *New Vision* (Kampala), 18 August 2008; Henry Mukasa and Catherine Bekunda, "Parliament passes dual citizenship law" *New Vision*, 17 May 2009.

159 A person under 21 years of age could hold two nationalities, but once that person attained the age of 21 he or she ceased to be a citizen of Kenya, unless s/he renounced citizenship of the other country. Constitution of the Republic of Kenya 1963, article 97.

160 Constitution of Kenya, 2010, Articles 15(4) and 16.

161 "Tanzania: Nod to Dual Citizenship" *East African Business Week* (Kampala), 6 August 2007.

**Table 4: Countries permitting and prohibiting dual citizenship for adults**

Country	Dual Citizenship		Country	Dual Citizenship	
	Yes	No		Yes	No
Algeria		x	Libya	x*	
Angola	x		Madagascar		x †
Benin	x		Malawi		x
Botswana		x	Mali	x	
Burkina Faso	x		Mauritania		x †
Burundi	x		Mauritius	x ‡	
Cameroon		x	Morocco	x	
Cape Verde	x		Mozambique	x	
Central African Rep.		x †	Namibia	x ‡	
Chad	x		Niger		x †
Comoros	x †‡		Nigeria	x	
Congo Rep.	x		Rwanda	x	
Côte d'Ivoire		x †	Sahrawi Arab Dem. Rep.	n/a	n/a
DRC		x	São Tomé and Príncipe	x ‡	
Djibouti	x		Senegal	x †‡	
Egypt	x *		Seychelles	x	
Equatorial Guinea		x	Sierra Leone	x	
Eritrea	x *		Somalia		x
Ethiopia		x	South Africa	x*	
Gabon	x		Sudan	x	
Gambia	x ‡		Swaziland	x ‡	
Ghana	x		Tanzania		x †
Guinea		x	Togo		x †
Guinea-Bissau	x		Tunisia		x
Kenya	x		Uganda	x ‡	
Lesotho		x †	Zambia		x †
Liberia		x	Zimbabwe		x

**Notes**

n/a not available

\* permission of government required

‡ dual citizenship allowed for citizens from birth only

† dual citizenship permitted if acquired by marriage (of woman) to foreign spouse

Total permitting dual citizenship: 32

Total prohibiting dual citizenship: 21

Where dual citizenship not addressed in law, presumed permitted; in some cases the law is not clear

## Citizenship by naturalisation

Most African countries permit, in principle, the acquisition of citizenship by naturalisation. In many countries there is also the possibility of acquiring citizenship by an easier process known, in Commonwealth countries, as “registration” and, in civil law countries, as “declaration” or “option.”<sup>162</sup> In practice, however, obtaining citizenship by naturalisation or by these other processes can be very difficult.

The criteria on which naturalisation is granted vary, but they usually include long-term residence or marriage to a citizen. In some countries, acquiring citizenship by naturalisation is relatively straightforward, at least in theory. 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 which usually takes five years (except when married to a citizen); a further five years’ residence is required to become a citizen.<sup>163</sup>

Other countries apply much stricter rules, often designed specifically to make it more difficult for those persons who are not “natives” of the country to obtain citizenship. In many countries investigations are required, including interviews and police inquiries. 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; moreover, 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.<sup>164</sup> In Egypt, naturalisation is almost never granted, and categories of people who in many other countries have the right to recognition of citizenship from birth can only be naturalised, including those born in the country of parents also born there or who are born 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.<sup>165</sup>

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<sup>162</sup> In some Commonwealth countries, such as Zambia, the only process is known as registration.

<sup>163</sup> South African Citizenship Act (No. 88 of 1995), Section 5.

<sup>164</sup> Loi No. 04-024 du 12 novembre 2004 relative à la nationalité congolaise, Articles 11–12.

<sup>165</sup> Law No. 26 of 1975 concerning Egyptian nationality, Article 4 (from unofficial translation available on UNHCR website).

Liberia and Sierra Leone, both founded by freed slaves, 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 “non-Negroes” than “Negroes,” while Liberia forbids “non-Negroes” from becoming citizens at all. Ghana and Malawi provide for preferential treatment for naturalisation for those of African descent, in terms of registration for those who are Commonwealth citizens or from “approved countries.”<sup>166</sup> 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 citizenship 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.<sup>167</sup> The 2010 Nationality Law, however, removes this ethno-linguistic bias.

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.”<sup>168</sup> 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.”<sup>169</sup> Sudan’s 1993 Nationality Act also removed a requirement to know Arabic that had been included in the 1957 legislation.<sup>170</sup> However, Egypt requires an applicant for naturalisation to “be knowledgeable in Arabic.”<sup>171</sup> Botswana requires a knowledge of Setswana or another language spoken by a “tribal community” in Botswana;<sup>172</sup> Ghana requires knowledge of an indigenous Ghanaian language;<sup>173</sup> and other countries have similar requirements. 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 citizenship.

Statistics on naturalisation in African countries are often hard to come by. Those statistics that are available, however, reveal that the numbers of naturalised persons vary hugely across countries. For example, more than 24,671 people became naturalised citizens of South Africa during 2006–2007 alone, with others resuming citizenship or registering citizenship by

166 Malawi Citizenship Act, 1966, Sections 12–15; Ghana Citizenship Act (No.591 of 2000), Section 14.

167 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.

168 Proclamation 378/2003 on Ethiopian Nationality, Section 5(3).

169 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.

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

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

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

173 Constitution of the Republic of Ghana, 1992, Article 9(2); Ghana Citizenship Act, 2000, Section 14(e).

descent.<sup>174</sup> In Senegal, 12,000 people have been naturalised since independence in 1960.<sup>175</sup> Of the nearly 20,000 foreigners who have applied for naturalisation in Swaziland since its independence, almost 6,000 have become citizens.<sup>176</sup> Botswana granted 39,000 people citizenship between 1966 and 2004.<sup>177</sup> But in Côte d'Ivoire, around one quarter of the population of 17 million is classified as foreign, though almost half of these were born in the country.<sup>178</sup>

Acquiring citizenship by naturalisation may be very difficult in practice even where the rules are not onerous on paper. In some countries studied for this report, it was not possible to establish that any certificates of naturalisation had been granted. In many countries, only a handful had been awarded—even where naturalisation was the only recourse for those who should have been entitled, under any reasonable system, to citizenship from birth. Given that naturalisation usually requires demonstrating that a residence period has been legal, the lack of effective registration and work permit systems—not to mention corruption and other practical obstacles—means that naturalisation may not be a realistic option.

In Sierra Leone, for example, citizenship by naturalisation for those not “of negro African descent” is in theory possible after a 15-year legal residence period. In practice, it is nearly impossible to obtain. The power to grant citizenship by naturalisation is ultimately vested in the president, though the minister of internal affairs also has broad powers under the citizenship laws; and in particular, the applicant has to make a declaration renouncing any other citizenship that he has, to the satisfaction of the minister.<sup>179</sup> In practice, after filling out the necessary forms, the applicant undergoes a series of interviews at the Immigration Headquarters, the Criminal Investigation Department, and the National Revenue Authority. Final interviews are chaired by the minister of foreign affairs, and the membership of this panel includes 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. Certificates of naturalisation are seldom granted: according to available records, there were only about 115 naturalised citizens in Sierra Leone in 2005, almost all of Lebanese descent.<sup>180</sup> From 1996 to April 2005, the government apparently did not grant any certificates of naturalisation, despite numerous applications.<sup>181</sup> Many members of Sierra Leone’s well-established Lebanese community are eligible for citizenship

174 Department of Home Affairs, *Annual Report 2006–2007*, Government of South Africa, 2008, p. 47.

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

176 “About 6000 foreigners may become Swazi citizens,” *Times of Swaziland*, 17 August 2005.

177 “Over 30,000 granted citizenship,” *Daily News*, Gaborone, 31 March 2005.

178 See statistical tables available on the website of the UN Statistics Division <http://unstats.un.org/>.

179 Sierra Leone Citizenship (Amendment) Act, 1976, Section 9(b).

180 Information obtained by Jamesina King from the Immigration Department in Sierra Leone, 2005.

181 Interview by Jamesina King with Martin Michael, lawyer and a member of the Lebanese Community, July 2005; Francis Gabiddon, Ombudsman of Sierra Leone, presentation on “Citizenship by Naturalization/ Commonwealth and Foreign Citizenship,” Freetown, 10 November 2004.

only by naturalisation, although they would fulfil any reasonable criteria for citizenship from birth. The children of naturalised citizens are issued with Sierra Leonean passports; however, as soon as the children are 18 years old the Immigration Department requires these passports to be returned, leaving them at serious risk of becoming stateless once they reach adulthood (in particular since Lebanese nationality law does not allow female citizens to pass nationality to their children of a non-Lebanese father).<sup>182</sup>

Due process in naturalisation decisions is a broader concern. The laws of several countries—including Comoros, Mali, Niger, Seychelles, and Togo—specify that there is no right to challenge in court the administrative rejection of an application for naturalisation, and those of many others state that the minister responsible need give no reasons for his or her decision, which is regarded as being entirely a matter of executive discretion. In Liberia, on the other hand, exclusive jurisdiction to naturalise is given to the courts, which must give reasons for denial of the application.

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<sup>182</sup> Interview by Jamesina King with Samir Hassaniyeh, President of the Lebanese Community, July 2005.

**Table 5: Right to acquire citizenship as an adult by naturalisation or registration/declaration\***

Country	Residence period (years)	Language/cultural requirements	Character	Renounce other nationalities	Other
Algeria	7	Assimilation into Algerian community	Good morality; no convictions		Good mental and physical health; means of subsistence; no conditions if exceptional services
Angola	10	Civic and moral guarantees of integration into Angolan society	-		Means of subsistence
Benin	3 none for husband	"Sufficient knowledge" of Beninois language or French; assimilation into Beninois community	Good conduct and morals; no convictions		Good physical and mental health; no conditions if important services or interest for Benin
Botswana	11 (10+1) 5 for spouse	Sufficient knowledge of Setswana or any language spoken by any "tribal community" in Botswana	Good character		Intention to reside in Botswana; no qualifications needed if "distinguished service" to Botswana
Burkina Faso	10 2 if born in BF	-	Good conduct and morals; no convictions		Good mental health; period reduced to 2 years if born in BF or important services
Burundi	10 5 for husband	Attachment to Burundi and "assimilation with Burundian citizens"	Good conduct and morals; no convictions		Exception to res period can be made in cases of "exceptional service" to Burundi
Cameroon	5 None for husband or if born in Cam.	Cameroon the "centre of his/her principal interests"	Good conduct and morals; no convictions		Good physical and mental health; no residence period if "exceptional services"
Cape Verde	5	-	Produce police report		Show means of subsistence; Immediate if sizable investment
CAR	35	-	-		In addition to 35 yr res, must also have sufficient investments in agriculture or property and have received a national honour; no conditions if "exceptional services"
Chad	15	-	Good conduct and morals; no convictions		Good physical and mental health; time can be reduced if "exceptional services" and the person was born in Chad
Comoros	10 5 for husband	Assimilation with the Comorian community	Good conduct and morals		Good mental and physical health, will not become a charge on the public; period reduced to 5 yrs in case of "important services"
Congo Republic	10	Assimilation with Congolese community	Good conduct and morals; no convictions	Yes	Good mental health; immediate if exceptional circumstances
Côte d'Ivoire	5 2 if born in CI	-	Good conduct and morals		Good physical and mental health; period reduced to 2 yrs if important services; immediate if "exceptional services"

CITIZENSHIP BY NATURALISATION

Country	Residence period (years)	Language/cultural requirements	Character	Renounce other nationalities	Other
DRC	7	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; must never have worked for foreign state; application must be considered by the Council of Ministers and the National Assembly
Djibouti	10	Assimilation, in particular sufficient knowledge of one of the languages used	Good conduct and morals; no convictions		Good health; period reduced to 5 years if important services
Egypt	10	Knowledge of Arabic	Good conduct and reputation, no convictions		“Legal means to earn a living,” citizenship by presidential decree is exempt from qualifications for naturalisation. No residence requirement if born in Egypt of a father also born there and from the majority in a Muslim/Arabic-speaking country
Equatorial Guinea	10	-	-	Yes	Residence requirement can be reduced to 5 yrs if important services or investments
Eritrea	20 or 10 yrs before 1974	Speaks one of the languages of Eritrea	High integrity and no convictions	Yes	Free of mental and physical disabilities, ability to provide for one’s own needs, not committed “anti-people act during the liberation struggle of the Eritrean people”
Ethiopia	4	Able to communicate in any one of the languages spoken by the nations/ nationalities of the country	No convictions, good character	Yes	Sufficient and lawful source of income to maintain himself and his family
Gabon	5	-	Good conduct and morals; no convictions		Good physical and mental health; should have “invested” in the country; decree of head of state required; period can be reduced if the person has provided “exceptional services”
Gambia	15		Good character	Yes	Capable of supporting self and dependants
Ghana	6	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 convictions		“Capable of making a substantial contribution to progress or advancement in any area of national activity.”
Guinea	5 2 for husband or if born in Guinea	-	Good conduct and morals; no convictions		Good physical and mental health; period reduced to 2 years if born in Guinea or “important services” rendered; immediate if exceptional services or interest.

CITIZENSHIP LAW IN AFRICA

Country	Residence period (years)	Language/cultural requirements	Character	Renounce other nationalities	Other
Guinea-Bissau	10	Basic knowledge of and identification with Guinea-Bissau's culture	Good conduct and civic probity	Yes	Immediate if services rendered to the Guinean people before or after the liberation struggle or for Guinea's development
Kenya	7	Adequate knowledge of Swahili (or English if "of African descent")	Good character	Yes	[Conditions to be revised in new legislation to be adopted by parliament under 2010 constitution which extended period from 5 to 7 years]
Lesotho	5	Adequate knowledge of Sesotho or English	Good character	Yes	Financially solvent, no mental incapacity
Liberia	2	"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
Libya	10		Sound conduct and behaviour, no convictions for crime breaching honour or security		Lawful entry; legitimate, steady source of income; free of infectious diseases; not older than 50 years. Palestinians may not be granted nationality, except Palestinian women married to Libyan men
Madagascar	5	Proven assimilation including sufficient knowledge of Malagasy language	Good conduct and morals; no conviction previous year		Good physical and mental health; immediate if having provided important services to the state
Malawi	7	Knowledge of indigenous language or English	Good character	Yes	Financially solvent; residence period 5 years for Commonwealth citizens
Mali	5 2 for husband	Assimilation into the Malian community	Good conduct and morals; no convictions		Period reduced to 2 years for a person who has provided "exceptional services" to the state; renounce other nationalities
Mauritania	5 imm. for husband or if born in M	Must speak fluently Toucouleur, Saracollé, Wolof, Bambara, Hassania, Arabic or French	Good conduct and morals; no convictions		Good mental and physical health; residence period can be reduced if "exceptional services"
Mauritius	6 (1+5)	Knowledge of English or any other language spoken in Mauritius, and of the responsibilities of a citizen of Mauritius	Good character	Yes	Exceptions to the residence period rule can be made if, for instance, the person has made investments in Mauritius
Morocco	5	Sufficient knowledge of Arabic	Good conduct and morals; no convictions		Good mental and physical health; means of existence
Mozambique	10	Knowledge of Portuguese or a Mozambican language	Civic probity		Means of subsistence; period and language can be waived if the person has provided "relevant services" to the state

CITIZENSHIP BY NATURALISATION

Country	Residence period (years)	Language/cultural requirements	Character	Renounce other nationalities	Other
Namibia	10	Adequate knowledge of the responsibilities and privileges of Namibian citizenship	Good character; no convictions in Namibia	Yes	
Niger	10	-	Good conduct and morals; no convictions		Period waived if exceptional services
Nigeria	15	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
Rwanda	5	Respect Rwandan culture and be patriotic	Good behaviour and morals; no convictions		The owner of "sustainable activities in Rwanda"; not implicated in the ideology of genocide; not a burden on the state; conditions can be waived for a person "of interest" to Rwanda
Sahrawi ADR	n/a	n/a	n/a		n/a
São Tomé and Príncipe	5	Knowledge of Portuguese or another national language. Civic and moral guarantees of Integration into STP society	-	Yes	Residence period and renunciation of previous nationality can be waived in case of relevant services or higher state interests/reasons.
Senegal	10 5 for husband	-	Good morality; no convictions	Yes	Good physical and mental health; residence period may be reduced if the person has provided important services to Senegal
Seychelles	-	-	-		Those eligible for naturalisation are only those with a Seychellois grandparent or those married to a citizen, unless distinguished service rendered
Sierra Leone	15	Adequate knowledge of indigenous language	Good character		Residence period 8 yrs for a person "of Negro African descent"
Somalia	7	-	Good civil and moral conduct	Yes	Period can be reduced to 2 yrs for "child of a Somali mother"
South Africa	5	Communicate in one of 11 official languages	Good character, adequate knowledge of the privileges and responsibilities of citizenship		Must first acquire permanent residence, which usually takes 5 years, unless special skills or a spouse
Sudan	5		Good character; no convictions		Sound mental competence
Swaziland	5	Adequate knowledge of siSwati or English	Good character		Adequate means of support; has contributed to the development of Swaziland; immediate if investment
Tanzania	8	Adequate knowledge of Kiswahili or English	Good character	Yes	Would be a suitable citizen

CITIZENSHIP LAW IN AFRICA

Country	Residence period (years)	Language/cultural requirements	Character	Renounce other nationalities	Other
Togo	5 imm. for husband	Assimilation to the Togolese community, including sufficient knowledge of a Togolese language	Good conduct and morals; no convictions	Yes	Good mental and physical health. No residence period if "exceptional services"
Tunisia	5 imm. for husband	Sufficient knowledge of Arabic	Good conduct and morals; no convictions		Good health; no residence period required if a person has provided "exceptional services" to the state
Uganda	20	Adequate knowledge of prescribed vernacular language, Swahili or English	No convictions, may not have served in army against Uganda	Yes	May hold nationality of only one other country that permits dual nationality; must "possess substantial amounts of money lawfully acquired".
Zambia	10	Adequate knowledge of English or any other language commonly used by indigenous inhabitants in Zambia	Good character		
Zimbabwe	10 5 for spouse	-	Good character; "fit and proper person"	Yes	Residence period can be reduced by the president under "special circumstances"

**Notes**

\* Most countries require the person to be habitually resident and to intend to remain so if they wish to naturalise; this provision is not included here.

n/a not available

imm. Immediate

NB. There is simplification of complex provisions, including those relating to residence periods

## Citizenship requirements for public office

Many countries have rules prohibiting people with dual citizenship or those who are naturalised citizens rather than citizens from birth from holding senior public office, on the grounds that such office holders should not have divided loyalties. Only a few, including Ethiopia, provide that all citizens have equal rights, regardless of how nationality was obtained.

Some countries require naturalised citizens to wait before they can enter public life. Citizenship laws in Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Republic of Congo, Côte d'Ivoire, Egypt, Gabon, Guinea, Libya, Madagascar, Mauritania, Niger, Senegal, Togo, Tunisia, and other countries 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.<sup>183</sup> Specific prohibitions on naturalised citizens holding the presidency exist in, among other countries, Botswana, Burundi, Côte d'Ivoire, Equatorial Guinea, Ghana, Liberia, Mali, Mauritania, Niger, and Togo. Kenya's new constitution adopted by referendum in 2010 introduced for the first time the same restriction on naturalised citizens holding the presidency.

In Algeria, the Constitutional Council has at least twice criticised (in 1989 and 1995) a clause introduced into the electoral law forbidding candidates to stand for election as president if they or their spouses do not hold Algerian nationality of origin.<sup>184</sup>

Dual nationality restrictions apply in a smaller number of countries. Ghana has an absolute prohibition on dual citizens holding a set of listed positions, and many Ghanaian politicians have been barred from taking up ministerial positions until they have renounced a foreign nationality.<sup>185</sup> Senegal requires its presidents to hold only Senegalese nationality, though it is alleged that all of the country's presidents have held French passports.<sup>186</sup> In Côte d'Ivoire, the constitution prohibits those who have *ever* held another citizenship from becoming the president of the republic or the president or vice president of parliament.<sup>187</sup> Kenya's new constitution also introduced—at the same time as the general prohibition on dual citizenship was lifted—a ban on dual national

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<sup>183</sup> Constitution of Mozambique, 2004, Article 30.

<sup>184</sup> See, 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.

<sup>185</sup> Ghana Citizenship Act, 2000, Section 16(2). For example, in the cases of Ekow Spio-Garbrah, Akwasi Agyemang Prempeh, and Stephen Dee Larbi.

<sup>186</sup> Constitution of Senegal, 2001, Article 28.

<sup>187</sup> Constitution of Côte d'Ivoire, Articles 35 and 65.

holding any state office (except for judges and members of commissions).<sup>188</sup> Similar rules have recently been the subject of challenge in Egypt (see below). Several other countries, including Djibouti, Equatorial Guinea, and Togo, also disallow dual nationals from holding the presidency.

In Nigeria, however, the courts have held that dual citizenship is no disqualification for public office, given that a Nigerian citizen from birth is free, under the constitution, to hold another nationality.<sup>189</sup>

### **Egypt: Dual citizenship and political rights**

Egyptian law on the question of dual citizenship is complicated. The constitution says simply that “Egyptian Nationality is defined by law.”<sup>190</sup> The law in effect is Law No. 26 of 1975 Concerning Egyptian Nationality (as amended in 2004), which forbids an Egyptian citizen from obtaining citizenship of another country without the permission of the minister of the interior.<sup>191</sup> Unless the request for permission includes a request to retain Egyptian citizenship, citizenship of Egypt is then lost.<sup>192</sup> Even if Egyptian citizenship is retained, it can at any time be revoked.

Between 1998 and 2003, 26 individuals lost their citizenship because they obtained foreign nationalities without the consent of the Egyptian government. In addition, between 1986 and 2004, 7,196 individuals lost their Egyptian citizenship 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 citizenship with the Council of State.<sup>193</sup>

The issue of dual citizenship in Egypt has proved contentious in recent years, particularly as it relates to politicians and other prominent public figures. 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 citizenship from being members of parliament. In the first case, the Administrative Court ruled that a business magnate, Rami Lakah, who

188 Constitution of Kenya, 2010, Article 78.

189 *Ogbeide v. Osula* [2004] 12 NWLR, Part 886, p. 86.

190 Constitution of the Arab Republic of Egypt, 1971, Article 6.

191 In addition, Law 45 of 1982 prohibits Egyptians who work for the diplomatic corps from marrying foreigners, and Law 232 of 1959 also prohibits military officers from marrying foreigners.

192 “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 naturalization, he and his family will keep their Egyptian citizenship despite their naturalization.” Egypt Nationality Act (No. 26 of 1975), Section 10 (unofficial translation by UNHCR). See also Consulate General of the Arab Republic of Egypt in San Francisco, “Instructions to apply for the permit from the Egyptian authorities for dual citizenship approval.”

193 A. Khalil, *Halat Isqat wa Zawal Al-Genseya Al-Misriya. (Cases of Revocation and Loss of Egyptian Citizenship)*, 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.

held a French passport in addition to his Egyptian nationality, could not be a parliamentarian. Basing its decision on Article 90 of the Constitution, 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 citizenship 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 businessman Rami Lakah was null and void because he had dual citizenship.<sup>194</sup>

These decisions encouraged other persons to file similar appeals against prominent ruling National Democratic Party (NDP) candidates believed to hold dual citizenship, 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.<sup>195</sup>

Mohamed Moussa, chairman of the Constitutional and Legislative Affairs Committee in the Peoples’ Assembly (the Egyptian parliament), said that the 26-member committee would convene, prepare a report on the ruling, and present it to the plenary assembly. This would take place at the start of the new parliamentary session in November. The assembly would then put the matter to a vote. A two-thirds majority was required for the annulment of Lakah’s membership. Although Zakariya Shalash, head of the Court of Cassation, argued that the ruling should be implemented immediately in accordance with the constitution, the assembly argued that it had sole jurisdiction over its own affairs.<sup>196</sup> In November, the Peoples’ Assembly confirmed the cancellation of the membership of Lakah and Mutawi.<sup>197</sup>

In 2004, the Constitutional and Legislative Affairs Committee 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 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 citizens except nomination for parliament.<sup>198</sup>

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194 Amira Howeid, “Egyptian to the core,” *Al-Ahram Weekly On-line*, 11–17 January 2001, Issue 516.

195 *Ibid.*

196 Omayma Abdel-Latif, “On the edge,” *Al-Ahram Weekly Online*, 30 August–5 September 2001, Issue 549.

197 *Akher Sa’a* (Cairo), 2 November 2001.

198 *Asharq Alawsat* (London), 18 July 2004.

## 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 that when an Ethiopian acquires another nationality, he or she automatically loses his or her Ethiopian nationality.

Hundreds of thousands of people of Ethiopian descent live in foreign countries. While most left for economic reasons, political turbulence during military rule from 1974 to 1991 forced many others to seek refuge abroad, mainly in the United States and Europe. Many of these people have for practical reasons accepted the citizenship of their host countries. But they still have extended families in Ethiopia and are emotionally attached to their land of birth. Most simply cannot believe that they can be treated, at least legally, as foreigners when they come to visit or seek to invest in Ethiopia. A recent law has attempted to temper the effect of the Ethiopian nationality policy on Ethiopians from birth who have taken other nationalities.

According to a government proclamation issued in 2002, “foreign nationals of Ethiopian origin” are to 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.<sup>199</sup>

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.

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<sup>199</sup> “Proclamation No. 270/2002: Providing Ethiopians resident abroad with certain rights to be exercised in their country of origin,” 5 February 2002. For the situation of Eritrean nationals, see Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 98–105.

The law expressly forbids Ethiopians who have taken other nationalities from exercising the right to vote, to be elected to any office at any level of government, or to be employed on a regular basis in the armed forces or diplomatic corps.

## Ghana

Ghana's substantial overseas diaspora has resulted in a change to the previous prohibition on holding two passports. Since 2002, Ghana has accepted dual citizenship.<sup>200</sup> Those who had lost Ghanaian citizenship by acquiring another nationality under the previous rules are entitled to reapply for Ghanaian citizenship. A person of non-Ghanaian origin can also apply for Ghanaian citizenship by registration if she or he is an ordinary resident of Ghana, and by naturalisation if she or he has made a substantial contribution to the progress or advancement of any area of national activity.<sup>201</sup> The acquisition of Ghanaian citizenship by registration and naturalisation is subject to the applicant's ability to speak and understand an indigenous Ghanaian language. 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.<sup>202</sup>

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.<sup>203</sup> A Non-Resident Ghanaians Secretariat (NRGS) was set up in May 2003 to promote further links with Ghanaians abroad and to encourage return.<sup>204</sup>

200 Dual Citizenship Regulation Act (No. 91 of 2002), 1 December 2002, amending the Citizenship Act, 2000 (Act 591).

201 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; AfriMAP and Open Society Initiative for West Africa, *Ghana—Democracy and Political Participation*, Dakar, 2007, pp. 27–28.

202 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).

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

204 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 citizenship

The constitutions of only two countries in Africa, South Africa and (surprisingly) Ethiopia, prohibit the state from removing citizenship, however acquired, against a person's will; and even in those two cases the protection is not as far-reaching as it appears on first sight. The South African constitution states simply that "No citizen may be deprived of citizenship," though voluntary renunciation is possible; and if a person acquires another nationality without permission, he or she will lose South African citizenship.<sup>205</sup> Article 33 of the constitution of Ethiopia provides that "No Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will"; however, acquisition of another citizenship results in the automatic loss of Ethiopian nationality.<sup>206</sup> Only a few countries—including Algeria, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Rwanda, and South Africa—specify in accordance with the UN Convention on the Reduction of Statelessness that nationality cannot be taken away from a person who would thereby become stateless, or require a person to show that they have another nationality before they can give up their existing one. Zimbabwe has such a provision, but the law's next subsection removes the protection by stating that the minister 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."<sup>207</sup>

Most of the Commonwealth states provide that citizens from birth cannot be deprived of citizenship against their will; while the possibility of revoking citizenship from birth (of origin) is more common among the civil law countries, some of them also provide for revocation only of acquired citizenship. The following countries do not allow for deprivation of citizenship from birth: Burkina Faso, Burundi, Cape Verde, Chad, Comoros, Djibouti, Gabon, Gambia, Ghana, Kenya, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, and Uganda. In the case of Comoros, the 2001 constitution states that a citizen by

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205 Constitution of the Republic of South Africa, 1996, Article 20; 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). In 2010, a bill was under discussion that would add an additional ground for loss of citizenship if a person 'engages in a war under the flag of a country that the Government of the Republic does not support.' This proposal was argued to be unconstitutional in a submission by the Citizenship Rights in Africa Initiative, 6 August 2010, available at [http://www.citizenshiprightsinafrica.org/Publications/2010/CRAI\\_Submission\\_SA\\_Citizenship\\_Amendment\\_Bill\\_Aug2010.pdf](http://www.citizenshiprightsinafrica.org/Publications/2010/CRAI_Submission_SA_Citizenship_Amendment_Bill_Aug2010.pdf), accessed 10 August 2010.

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

207 Citizenship of Zimbabwe Act, Chapter 4:01 Laws of Zimbabwe, Section 11(3).

birth cannot be deprived of his or her nationality, but the 1979 nationality code is not in compliance with this provision.<sup>208</sup>

Other countries where citizenship from birth can be lost if an individual voluntarily acquires another citizenship but not in other circumstances include Algeria, Botswana, Cameroon, DRC, Ethiopia, Lesotho, Malawi, Mauritania, Senegal, Zambia, and Zimbabwe. The case of Zimbabwe does show, however, how dual-citizenship laws can in certain political circumstances be bent to apply to a very large number of people: from 2000, the government applied ever stricter rules on dual nationality and permanent residence to exclude from Zimbabwean nationality and the right to vote categories of people believed to support the opposition, including white Zimbabweans and those with roots in neighbouring countries.<sup>209</sup>

There is then a whole range of reasons for depriving birth citizenship, with some of the legal provisions giving the executive almost unlimited discretionary power. Many countries include a provision allowing for deprivation of citizenship from birth if an individual has worked for a foreign state, enrolled in a foreign army (sometimes only if that state is an enemy, sometimes only if he or she fails to give up the position on request), or has been convicted of various types of crime against the state or breaches of national security in the country itself. Variations of these rules are found in almost half Africa's states. Some of these provisions are formulated to comply with Article 8(3)(a) of the 1961 Convention on the Reduction of Statelessness, which allows deprivation of nationality under the law if a person

- (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
- (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State.<sup>210</sup>

However, many other provisions related to disloyalty are much broader than the convention allows. In Sierra Leone, naturalised citizens may be deprived of their citizenship if the relevant minister "is satisfied that it would not be conducive to the public good" that the person should remain a citizen.<sup>211</sup>

208 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 citizen works for a foreign state and does not give up his or her position on request (a common provision in civil law countries).

209 See Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 39–50.

210 Article 8(3)(b) also allows deprivation of citizenship if "the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State." That is, in case of acquiring another nationality. This report argues that this provision should no longer be used by African states to justify disallowing dual nationality.

211 Sierra Leone Citizenship (Amendment) Act No. 11 of 2006, Section 6, amending section 16 of the principal Act.

Similarly, Equatorial Guinea allows naturalised citizenship to be taken away “in the interests of public order.”<sup>212</sup>

Until 2010, the Libyan Nationality Law was perhaps the most extreme, allowing for deprivation of citizenship, however acquired, if the person is “described as Zionist” or visits Israel, converts from Islam to another religion, left the country immediately following the “Great El Fateh September Revolution,” obtains refugee status elsewhere, is convicted of smuggling assets out of Libya, or a range of other conditions. In 2010 the law was significantly amended to allow revocation of birth nationality only if based on fraud or false information, and of naturalised citizenship only within ten years of obtaining it and on the basis of fraud or “actions affecting Libya’s security or interests”, or residence outside the country for more than two years without permission. Unusually and problematically, the law provides for children to be deprived of nationality if the father’s is revoked.<sup>213</sup> The Egyptian Nationality Law also gives extensive powers to the government to revoke citizenship, whether by naturalisation or from birth, including on grounds that an individual has acquired another citizenship without the permission of the minister of the interior, 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 citizenship if a person “was described as being a Zionist at any time” and provides additional grounds for the revocation of citizenship from those who obtained it by naturalisation.<sup>214</sup> Although in practice most cases in which Egyptian citizenship has been lost arise because a person has obtained dual citizenship without permission (see above, p. 74), the provisions relating to national security are troubling: between 1986 and 2004 the minister of interior refused to grant Egyptian citizenship to seven women married to Egyptians, all for reasons related to national security; yet no explanation was given.<sup>215</sup> The potential for loss of citizenship on the mere allegation of being a “Zionist” both infringes rights to freedom of expression and allows the deprivation of citizenship rights without any evidence that the person concerned is indeed a “Zionist” or that being a “Zionist” is a threat to the Egyptian state.

In the case of Liberia, while the Aliens and Nationality Law of 1973 provides that naturalised citizenship may generally be taken away only through court proceedings, citizenship of any kind is automatically lost if the person acquires another nationality or serves in the armed forces or votes in an election in another state, without any further government action to cancel the citizenship.<sup>216</sup> A few other countries, including Gambia, Lesotho, and Mauritius, similarly allow revocation of naturalised citizenship if a person exercises in another

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

213 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.

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

215 A Khalil, *Halat Isqat wa Zawal Al-Genseya Al-Misriya. (Cases of Revocation and Loss of Egyptian Citizenship)*, 2005, p. 5. No statistics available for Libya.

216 Aliens and Nationality Law, 1973, Sections 22.1 and 22.2. 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.

country “rights accorded exclusively to that country’s citizens,” which usually include voting in an election.<sup>217</sup>

Almost all African countries provide for deprivation of citizenship by naturalisation 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 citizenship was acquired by fraud. Among the Commonwealth countries, there is a common provision based on Article 7 of the Convention on the Reduction of Statelessness for an individual to lose naturalised citizenship 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. Where citizenship can be taken away, whether from birth or naturalisation, the rules often do not provide for any effective due process, allowing for deprivation on the discretion of a single official without any appeal to a court or other tribunal.

In Malawi, for example, which has provisions that were typical for many Commonwealth countries, someone who has been granted citizenship through registration or naturalization (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 organization 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.<sup>218</sup> Kenya’s 1963 constitution had near-identical provisions;<sup>219</sup> and although the new constitution adopted by referendum in 2010 improved this situation it still provides unnecessarily broad grounds for revocation of nationality, and fails to forbid deprivation of nationality if the person would thereby become stateless.<sup>220</sup>

Indications of “disloyalty” similarly allow for a naturalised citizen to have citizenship taken away in Botswana, Liberia, Malawi, Mauritius, Nigeria, Sierra Leone, and Zimbabwe, among others.<sup>221</sup> Civil law countries, including Algeria, Benin, Burkina Faso, Central African Republic, Chad, Republic of Congo, Côte d’Ivoire, and Senegal have a similarly vague provision relating

217 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).

218 Malawi Citizenship Act, Section 25.

219 Constitution of the Republic of Kenya, 1963, Article 94.

220 Constitution of Kenya, 2010, Article 17; see also submission by Citizenship Rights in Africa Initiative, available at <http://www.citizenshiprightsinafrica.org/Publications/2010/CRAIKenyaSubmission.030510.pdf>, accessed 19 April 2010.

221 For example, Nigerian Constitution, Article 30(2)(a).; Citizenship of Zimbabwe Act, Section 11.

to “acts or behaviour incompatible with being a national” of the country.<sup>222</sup> Benin, Republic of Congo, Guinea, Madagascar, Mali, Morocco, and Tunisia allow for a naturalised citizen to be deprived of nationality if he refuses to do military service.

Several Commonwealth countries explicitly exclude the right to challenge deprivation or denial of citizenship in court, including Botswana, Kenya, Lesotho, Malawi, and Tanzania, even though some of these establish a procedure for submitting a decision for review by a committee appointed by the relevant minister.<sup>223</sup> Gender discrimination can also be problematic for due process: 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).<sup>224</sup> A Burkinabé who acquires another nationality on marriage (almost certainly a woman), automatically loses her Burkinabé nationality.<sup>225</sup> The law of Equatorial Guinea states that a foreign woman who marries an Equatoguinean citizen automatically acquires Equatoguinean nationality and loses her nationality of origin—extraordinarily purporting to dictate to another country the rules for loss of its nationality.<sup>226</sup>

Some countries, however, do provide more effective due process protections. Many civil law countries’ nationality laws contain provisions relating to all litigation on nationality questions, including those of deprivation of citizenship, court jurisdiction, and standards of proof of nationality. In Gambia, Ghana, and Rwanda, the courts must hear an application from the government for a citizen (by naturalisation only) to be denationalised rather than simply reviewing a decision made by the executive. Burundi’s 2005 constitution provides that no one can be “arbitrarily” deprived of his or her nationality. South Africa provides that any decision made by the minister under the Citizenship Act can be reviewed by the High Court.<sup>227</sup> Quite a large number of countries allow nationality by naturalisation to be revoked only during a fixed period after it has been acquired, and not indefinitely.

A large number of (mostly) civil law countries require that citizens obtain permission before they give up its nationality.<sup>228</sup> These provisions are problematic, in some contexts effectively depriving citizens of a right to free

222 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, Article. 21.

223 See for example, Malawi Citizenship Act, Section 29. Kenya’s Citizenship Act, which makes the same provision (section 9), was due to be amended in accordance with the provisions of the 2010 constitution.

224 Ordonnance No. 78-34 du 7 septembre 1978 portant Code de la nationalité togolaise, Article 23.

225 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.

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

227 Gambia Constitution, Article 13; Ghana Constitution 1992, Article 8; Rwanda Organic Law No. 30/2008, Article 20; Burundi Constitution 2005, Article 34; South Africa Citizenship Act, 1995 (as amended), Section 25.

228 In the case of Morocco, this rule led to official protests at the proposal by the Netherlands to end recognition of dual citizenship, since more than 200,000 people hold Dutch and Moroccan citizenship; however, 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.

movement and expression. 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 this persecution, may be unwilling to release the individual from the alleged obligations of citizenship in order to obtain a degree of control over his or her behaviour, especially should he or she wish to visit home.<sup>229</sup>

The wide discretion granted by many of these laws has often been exploited by governments to prevent opposition politicians from running for office and critics from publishing their opinions. Kenneth Kaunda in Zambia and Alassane Ouattara in Côte d'Ivoire are only the best-known cases where rules relating to entitlement to citizenship or possible dual nationality have been changed or suddenly enforced specifically to prevent a high-profile person from contending for the presidency or other public office. In both countries, national courts failed to protect the rights of these high-profile figures. Less well-known cases include the no-man's-land limbo Botswana imposed on John Modise after he attempted to establish an opposition party, and the deportations of William Banda and John Chinula from Zambia.<sup>230</sup> In Nigeria too, in January 1980, the federal government of President Shehu Shagari arrested and expelled to Chad the majority leader of the opposition-controlled state legislature of the northeastern state of Borno, Alhaji Shugaba Abdulrahman Darman, alleging that he was Chadian. However, the Nigerian courts struck down this act as illegal, finding that Shugaba was a Nigerian citizen and that citizens were not liable to be deported from their own countries of nationality.<sup>231</sup>

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229 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.

230 See Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 127–140; also Beth Elise Whitaker, "Citizens and Foreigners: Democratization and the Politics of Exclusion in Africa," *African Studies Review* Vol. 48, No. 1, April 2005, pp. 109–126.

231 *Shugaba Abdulrahman Darman v. Federal Minister of Internal Affairs and 3 Others* [1981], 2 *Nigerian Constitutional Law Reports* 459.

**Table 6: Criteria for loss of citizenship**

Country	citizenship from birth				citizenship by naturalisation					Right to go to court	Protection vs statelessness
	Dual citizenship	Work foreign state (incl. army)	Crime vs state	Permit required to give up	Fraud	Crime vs state	Ordinary crime	Disloyal/ incompatible behaviour	Res. out of country		
Algeria	x			x	x	x	x	x		x	x
Angola	x	x			x	x				x	
Benin	x	x		x	x	x	x	x		x	
Botswana	x			x	x	x		x	x		
Burkina Faso				x	x	x	x	x		x	
Burundi					x					x	
Cameroon	x				x	x		x			
Cape Verde											
CAR	x	x			x	x	x	x		x	
Chad					x	x		x		x	
Comoros †				x <sup>MS</sup>	x	x				x	
Congo Republic †		x		x <sup>MS</sup>	x	x	x	x		x	
Côte d'Ivoire	x	x		x	x	x	x	x			
DRC	x				x	x	x			x	
Djibouti										x	
Egypt	x	x	x		x	x	x	x	x		
Equatorial Guinea	x	x				x	x	x			
Eritrea	x	x	x		x	x	x	x		x	
Ethiopia	x			x						x	
Gabon					x	x	x			x	
Gambia					x		x		x	x	
Ghana					x			x		x	
Guinea	x	x		x <sup>MS</sup>	x	x	x	x	x	x	
Guinea-Bissau	x	x	x		x	x					
Kenya					x	x	x				
Lesotho	x				x	x	x	x	x		x
Liberia	x	x			x			x	x		
Libya	x				x	x			x		
Madagascar	x	x	x	x	x	x	x	x			
Malawi	x			x	x	x	x	x	x		x
Mali		x		x	x	x	x	x		x	x
Mauritania	x				x	x	x	x		x	
Mauritius					x	x	x	x	x		x
Morocco	x	x		x	x	x	x	x		x	
Mozambique											x
Namibia					x	x	x	x	x	x	x

LOSS AND DEPRIVATION OF CITIZENSHIP

Country	citizenship from birth				citizenship by naturalisation					Right to go to court	Protection vs statelessness
	Dual citizenship	Work foreign state (incl. army)	Crime vs state	Permit required to give up	Fraud	Crime vs state	Ordinary crime	Disloyal/incompatible behaviour	Res. out of country		
Niger	x	x	x			x	x	x		x	
Nigeria						x	x	x			
Rwanda					x	x				x	x
Sahrawi ADR	n/a										
STP		x									
Senegal	<b>x</b>			x <sup>MS</sup>		x	x	x		x	
Seychelles				x <sup>MS</sup>	x					x	
Sierra Leone				x		x	x	x	x	x	
Somalia	x	x			x	x					
South Africa						x	x			x	x
Sudan		x	x	x <sup>MS</sup>	x	x	x	x			
Swaziland					x				x		
Tanzania				x <sup>MS</sup>	x	x	x	x	x		
Togo	x	x			x	x	x	x		x	
Tunisia	x	x		x	x	x	x	x		x	
Uganda				x	x	x					
Zambia†	<b>x</b>			x <sup>MS</sup>	x					x	
Zimbabwe	<b>x</b>			x <sup>MS</sup>	x	x	x	x	x		

**Notes**

n/a not available

shaded citizenship from birth cannot be revoked

bold x in dual citizenship column if the only reason citizenship from birth can be removed is acquisition of another citizenship

† Constitution and law conflict; constitutional provisions noted here

MS permission required to renounce nationality only during period for which may be called for military service or (Seychelles and Sudan) if at war with other country

NB. There is simplification of complex provisions

## Right to identity documents and passports

Many African countries have national identification systems requiring adults resident in the country to register with the authorities, and frequently the national identity cards obtained from this process are critical to the process of applying for or proving citizenship and to the process of obtaining a passport.<sup>232</sup> In civil law countries and in some common law countries, an individual may also apply for a “certificate of nationality” that provides prima facie proof for other purposes—such as registering children in school or obtaining a passport—that the person is a citizen. The administration of these systems is critical to the recognition of citizenship rights, and there are many problems reported in practice.<sup>233</sup>

One of the most common actions of repressive governments seeking to silence their critics is to stop them 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.<sup>234</sup>

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.”<sup>235</sup>

This situation has begun to change, however. In Kenya itself, a groundbreaking 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.”<sup>236</sup> The new Kenyan 2010 constitution provides that “Every citizen is entitled to a Kenyan passport and to any document of registration and identification issued by the State to citizens”.<sup>237</sup> The South African Constitution also provides for citizens

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232 See Klaaren and Rutinwa, pp. 26–38.

233 See Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 115–126.

234 Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2007*, US Department of State, 11 March 2008.

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

236 *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.

237 Constitution of Kenya, 2010, Article 12.

to have a right to a passport,<sup>238</sup> and the Ugandan citizenship law adopted in 1999 similarly gives all citizens the right to a passport.<sup>239</sup> In Nigeria, where seizure of passports from activists attempting to travel was a common practice of previous 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.<sup>240</sup> In Zambia, the courts have also ruled that a citizen is entitled to a Zambian passport, though this is not provided for in legislation.<sup>241</sup>

### **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 of LE100–200 (US\$18–35). 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 revealing their religious affiliations or 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.<sup>242</sup>

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

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

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

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

242 *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.

## Citizenship as a “durable solution” for refugees

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 often 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 local integration into the country of refuge is urgently needed.<sup>243</sup>

Under international law, African states have a duty to promote such local integration. The 1951 UN Convention on 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,<sup>244</sup> and the great majority to the African Refugee Convention.<sup>245</sup>

In practice, as the office of the UN High Commissioner for Refugees (UNHCR) puts it, with restraint: “Progress has been rather modest in terms of local integration throughout the continent.”<sup>246</sup> Even where refugees make progress in terms of economic and social integration, there is often no possibility of converting refugee status into a more permanent legal status, whether that of permanent residence or citizenship. Without citizenship 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.

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243 See Alexandra Fielden, “Local integration: an under-reported solution to protracted refugee situations,” *New Issues in Refugee Research: Research Paper No. 158*, UNHCR, June 2008.

244 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.

245 Excluding Djibouti, Eritrea, Madagascar, Mauritius, Namibia, Somalia, and São Tomé & Príncipe, as well as the SADR.

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

Even countries that have recently adopted refugee laws stop short of drawing on international best practice when it comes to providing for naturalisation of refugee populations. For example, neither the 1963 nor the 2010 constitutions of Kenya (host to about 320,000 refugees and 100,000 stateless persons recognised by UNHCR<sup>247</sup>) does not provide for a right to asylum; local integration has not been regarded as necessary or even desirable by the government, and assistance to those refugees resident in camps is managed by UNHCR. Until recently there was no refugee law in Kenya, and refugees were subject to the same requirements as any other foreigners under the Immigration Act<sup>248</sup> and the Aliens Restriction Act<sup>249</sup> in obtaining entry to the country, work permits and registration of place of abode. A Refugee Act adopted in 2006 largely brought Kenyan law into line with international standards of refugee protection, but the Act does not give refugees the right to work, nor does it contain any explicit right to naturalise as a Kenyan citizen.<sup>250</sup> In practice, Kenya excludes refugees from the naturalisation provisions of its general laws; though a public opinion survey conducted in 2008, in response to discussions about reform to the law, showed that almost half Kenyans felt that children of refugees born in the country should be given citizenship.<sup>251</sup> The adoption of new citizenship legislation required by the 2010 constitution provides an opportunity to ensure that refugees and their children are provided a pathway to citizenship.

In 2007, Sierra Leone adopted a new Refugees Protection Act, similar to but somewhat more generous than the new Kenyan legislation. In particular, the Sierra Leone Act provided explicitly for the “facilitation of lasting solutions” and local integration of refugees; though it stopped short of providing for naturalisation of long-term refugees and speaks, rather, of promoting voluntary repatriation or resettlement in third countries.<sup>252</sup>

Uganda’s Control of Alien Refugees Act, adopted in 1960 though now superseded,<sup>253</sup> was originally an ordinance of the Protectorate government that provided specifically for the refugees (mostly Tutsi)—from Rwanda, Burundi, and what is now DRC—who fled to Uganda during 1959 and 1960. Uganda’s law rapidly became outdated and provided no long-term solutions. In 1995 Uganda adopted a new constitution and in 1999 a new Citizenship and Immigration Control Act.<sup>254</sup> These laws require 20 years’ residence in

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247 “Refugees, asylum-seekers, internally displaced persons (IDPs), returnees (refugees and IDPs), stateless persons, and others of concern to UNHCR by country/territory of asylum, end-2008,” UNHCR, *Statistical Yearbook*, 2008.

248 Kenya Immigration Act, Laws of Kenya, chapter 172, 1968 (amended 1984).

249 Kenya Aliens Restriction Act, Laws of Kenya, chapter 173, 1977 (amended 1985).

250 Refugee Act, No. 13 of 2006.

251 “Kenyans divided on citizenship for refugees,” *Daily Nation* (Nairobi), 27 July 2008.

252 Refugees Protection Act, No. 6 of 2007, Part V. 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.”

253 Uganda Control of Alien Refugees Act, Laws of Uganda, chapter 62, 1960.

254 Uganda Citizenship and Immigration Control Act, 1999; Refugees Act, 2006.

the country before a person can naturalise,<sup>255</sup> an extremely long period for a refugee unable to claim the protection of any other country. Moreover, although children born in Uganda to noncitizens can apply for registration as citizens, children of refugees, perhaps the most likely category to need this right, are explicitly excluded.<sup>256</sup> Uganda's constitution also allows for the naturalisation of anyone married to a national for at least three years, as well as the children of such unions. In 2006 a new Refugees Act was passed. It incorporates the definitions of the UN and African treaties, and also establishes in law the domestic policies, practices, and procedures already used to determine refugee status and provide assistance, including an individual decision and appeal process, which are largely in conformity with international law.<sup>257</sup> In relation to naturalisation, however, the act states that "the Constitution and any other law in force in Uganda shall apply to the naturalisation of a recognised refugee," leaving the country's position in this regard unchanged.<sup>258</sup> In addition, administration of the immigration directorate has been poor, and the Citizenship and Immigration Board to be established under the Citizenship and Immigration Control Act, which ought to have been deciding on issues of citizenship, was only finally established in 2007, leading to vast backlogs of citizenship applications for refugees and others.<sup>259</sup>

Egypt, host to at least 160,000 refugees and asylum seekers in 2008, fails to make any serious provisions for refugee integration, condemning many to statelessness. Refugees and their children do not qualify for Egyptian citizenship, regardless of the length of their residence in the country. The majority of refugees in Egypt come from Palestine, with Sudan and Somalia also providing large numbers. There are also several million Sudanese migrants to Egypt. Unlike other refugees, Palestinians are to some extent integrated in Egyptian society. In general, however, the Egyptian government treats the status of refugees as temporary, allowing only two solutions: repatriation or resettlement in a third country. Egypt does not offer refugees permanent residence or citizenship rights, and refugees in Egypt and their children face a near impossibility of obtaining Egyptian nationality, unless they are married to or have a parent who is an Egyptian citizen. Moreover, the 2004 reforms allowing men married to Egyptian women and their children also to obtain nationality do not apply to those born of Palestinian fathers and Egyptian mothers, thanks to a 1959 decision of the Arab League that Palestinians should

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255 Constitution of Uganda, 1995, Article 12(2)(b) and (c); Uganda Citizenship and Immigration Control Act, 1999, Sections 14(2)(b) and 15(5)(a).

256 Constitution of Uganda, Article 12(1)(a)(ii); Uganda Citizenship and Immigration Control Act, 1999, section 14(1)(a)(ii).

257 Refugees Act, 2006; see also *Critique of the Refugees Act (2006)*, Refugee Law Project of Makerere University, for detailed analysis of the Act with recommendations for its improvement, available with other commentary at <http://www.refugeelawproject.org/resources/legalres>, accessed 14 December 2007.

258 Refugees Act, 2006, Section 45.

259 "Let sanity begin at immigration," *The Monitor*, Kampala, 12 November 2007.

not be given citizenship in other Arab countries, as a way of preserving their identity (see also above, Gender discrimination).<sup>260</sup>

Perhaps the saddest case is that of the 150,000 Western Saharan refugees in Algeria, who constitute one of the largest and longest standing populations of unintegrated long-term refugees in Africa. Like the Palestinian refugees in Egypt, they are trapped in a citizenship black hole, thanks to a political failure to resolve the fundamental questions of state existence that first led to their flight, though unlike the Palestinians they do at least have the possibility of returning to Morocco. They live in isolated refugee camps in Algeria, with no possibility of naturalisation. Those who remained in their homes face significant restrictions on their civil liberties, often including the right to identity papers and travel documents.<sup>261</sup>

There is, however, movement in some other countries toward more generous approaches.

Tanzania is one of the few African countries with a good record of granting citizenship to refugees, especially refugees it has received from Rwanda and Burundi over the years. Despite problems in implementation, Tanzania's policy has been in marked contrast to that of DRC, and it has reaped the benefits in civic peace. In 1980, refugees who came 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.<sup>262</sup> Once the naturalisation process was nearly complete, former refugee camps became normal Tanzanian villages, integrated into state structures in every way. 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. The Rwandan border remained closed until 1998, though Tanzania still accepted refugees from DRC and Burundi.<sup>263</sup> In late 1997, the government ordered the army to round up all foreigners living outside refugee camps; this time the bulk of those affected were Burundian. Tanzania has in recent years resumed its more generous historical tradition. 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. The government also announced in June 2003 that it would look favourably upon the request

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260 Abdullah Khalil, *Al-Tashri' at al-Misriya zat al-'Elaqa Bellage'een (Egyptian Legislation Related to Refugees)*, paper presented at the Judges Conference on "Refugees and the Law in Egypt," 4–5 May 2004, Judges Club, Cairo; Mulki Al-Sharmani, "Livelihood and identity constructions of Somali refugees in Cairo," *Forced Migration and Refugee Studies Working Paper No. 2*, American University in Cairo, July 2003.

261 For details on the Western Sahara case, see Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 152–156.

262 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.

263 *In the Name of Security: Forced Round-ups of Refugees in Tanzania*, Human Rights Watch, July 1999.

for Tanzanian citizenship from Somali refugees in Chogo settlement in the northeastern part of Tanzania, and in May 2005 granted citizenship to the first 182 of around 3,000 Somalis.<sup>264</sup> In 2007, Tanzania offered naturalisation to Burundian refugees resident in the country since 1972 and their descendants; of those eligible, 80 percent, or 172,000 people, expressed their desire to remain in Tanzania, and the remaining 20 percent were to receive assistance with repatriation from March 2008. The European Commission, announcing support for the processing of the applications in August 2008, described the decision as “a unique and unprecedented act of generosity and humanity.”<sup>265</sup> Nonetheless, the process was not without its own issues: among them the exclusion of more recent refugees from Burundi, disagreements over the status of those born in Tanzania (some of whom according to the principles of Tanzania’s *jus soli* law should automatically have citizenship) or married to Tanzanians, and problems with paperwork; because Tanzania does not recognise dual nationality, those wishing to naturalise had to renounce their Burundian citizenship, with no possibility of retaining refugee status without naturalising.<sup>266</sup>

In Zambia, a new refugee law was under discussion in 2002 to make it possible for long-staying refugees—including many Angolans—to apply for citizenship<sup>267</sup>; however, the bill was withdrawn from parliament after strong opposition to the measure arose, and the legislation still in force as of the end of 2008 was the 1970 Refugees Control Act, which does not conform to the provisions of the 1951 or 1984 conventions and provides for no citizenship rights. Botswana has also made some moves toward granting citizenship to long-standing refugee populations. Under its national legislation, the 1967 Refugee (Recognition and Control) Act,<sup>268</sup> the Government of Botswana adopted the basic definition of a refugee set forth in the 1951 UN Convention (the expanded definition of a refugee in the OAU Convention was not incorporated). The act specifically provides that a refugee recognised by Botswana is not regarded as being ordinarily resident in Botswana for the purposes of any written law other than a taxation law, and thus excludes refugees in Botswana from normal naturalisation procedures.<sup>269</sup> Nevertheless, in the tripartite agreement signed between UNHCR and the governments of Botswana and Angola to facilitate the return of Angolan refugees, it was agreed that those refugees not wishing to return to Angola would be processed for residency and citizenship

264 UN High Commissioner for Refugees, “United Republic of Tanzania,” *UNHCR Global Appeal*, 2005; “Somalia–Tanzania: Somali Bantus to get citizenship,” IRIN, 26 June 2003; “Somalia–Tanzania: Government grants Somali refugees citizenship,” IRIN, 22 June 2005, and other IRIN reports.

265 “EU funds naturalisation of Burundians,” *Daily News* (Dar es Salaam), 19 August 2008; UNHCR, *Global Report 2007*.

266 “Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania,” *Citizenship and Forced Migration in the Great Lakes Region Working Paper No. 1*, Centre for the Study of Forced Migration, International Refugee Rights Initiative and Social Science Research Council, November 2008.

267 UN High Commissioner for Refugees, “Zambia Initiative Launched,” *Briefing Notes*, 27 August 2002.

268 Botswana Refugees (Recognition and Control) Act, Laws of Botswana, chapter 25: 01.

269 See 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.

in Botswana.<sup>270</sup> In November 2006 it was reported that, after many delays, Botswana President Festus Mogae had approved the grant of citizenship to 183 long-term Angolan refugees resident in Botswana since the 1970s who had not repatriated to Angola at the end of the civil war there.<sup>271</sup>

Other longer-standing laws that do 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.<sup>272</sup> In many other countries, the normal rules of naturalisation apply either explicitly or implicitly.<sup>273</sup> Ghana allows for refugees to naturalise according to the usual provisions of the law,<sup>274</sup> though studies of long-term Liberian refugees in Ghana showed many difficulties in practice.<sup>275</sup> In 2008, following the return to peace in Liberia, UNHCR began assisted repatriation of the remaining refugee camp residents.<sup>276</sup>

Since its transition to democratic government in 1994, South Africa has adopted both a new Refugees Act and a new Immigration Act.<sup>277</sup> These new 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, notably, provide for a transfer of status from refugee to permanent residence and then to naturalised citizenship. 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.<sup>278</sup> As of early 2008, no

270 See information on Botswana country page of the UNHCR website at <http://www.unhcr.org>.

271 "183 Angolan refugees get citizenship," *Government of Botswana Daily News Online*, 2 November 2006.

272 See 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.

273 For the Afro-Arab countries, Morocco and Djibouti: see Khadija Elmadmad, *Asile et Réfugiés dans les pays afro-arabes*, Editions EDDIF, Casablanca, 2002.

274 "Subject to the relevant laws and regulations relating to naturalization, 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).

275 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.

276 US Committee for Refugees and Immigrants, *World Refugee Survey 2008*. In early 2008, there was a protest at the main Buduburam camp by some of the remaining 27,000 registered Liberian refugees in Ghana (ironically) demanding that they not be integrated into Ghanaian society but either resettled in a third country or given increased assistance from UNHCR if they were to be repatriated. The protest led to a reportedly heavy-handed response from Ghanaian police, and allegations of forcible and arbitrary repatriation of some of the protesters to Liberia. Ghana invoked the principle in refugee law that refugee status should cease when conditions in the home country were suitable for safe return. A Ghanaian court prevented the repatriation of more Liberians pending further hearings of their status as refugees. Repatriations resumed in April after negotiations to establish a tripartite committee between Ghana, Liberia, and UNHCR; and by the end of September more than 7,000 refugees had returned home. See reporting by IRIN, also press releases from the Liberia Refugee Repatriation and Resettlement Commission (Monrovia) available on [allAfrica.com](http://allAfrica.com).

277 Refugees Act (No. 130 of 1998), Immigration Act (No. 13 of 2002).

278 Immigration Act (No. 13 of 2002), Section 27(d), read with the Refugees Act (No. 130 of 1998), Section 27(c).

refugee had been granted citizenship by this process—given the minimum 10-year time delay and the fact that the two relevant laws were in place only from 2000 and 2003—though many refugees had obtained the certificate allowing them to proceed with an application for permanent residence.<sup>279</sup> The Immigration Act allows the minister for home affairs discretion to grant persons permanent residence; while these discretionary powers have not yet been used, there has been some litigation in this area. In March 2008, the Pretoria-based Lawyers for Human Rights obtained a court order awarding permanent residence to a foreigner.<sup>280</sup> Of course, the violence against foreigners that erupted in 2008, leaving at least 60 dead and displacing tens of thousands, indicates the limits of such legal remedies in themselves: South Africa still has some way to go in ensuring that the rights enshrined in its laws are respected in practice.

In some cases, to be able to function effectively, refugees may simply need documentation proving their existing citizenship, even if they remain in the country of refuge. With such documentation, travel will be easier than with a refugee card and access to other rights may also be facilitated. For example, in 2007, a tripartite agreement between UNHCR, the Economic Community of West African States (ECOWAS), and the governments of Nigeria, Liberia, and Sierra Leone provided for more than 7,000 refugees from Sierra Leone and Liberia resident in Nigeria to be issued passports by their home governments, while the host government undertook to ensure that these refugees would enjoy the entitlements of ECOWAS citizenship, including the right to work and access to education and health care on the same terms as Nigerians.<sup>281</sup>

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 well. Senegal, for example, provides that anyone from a neighbouring country (from which refugees are most likely to come) who has lived in Senegal for five years can simply opt for Senegalese nationality without further conditions.<sup>282</sup> Although many of the more than 60,000 Mauritians who were expelled from their country

279 Information from University of Cape Town Legal Aid Clinic, 2005; University of the Witwatersrand, Forced Migration Studies Programme, May 2008; Lawyers for Human Rights, Pretoria, May 2008. The Department of Home Affairs does not publish statistics on the number of applications for permanent residence or citizenship by refugees.

280 On 7 March 2008 the High Court handed down judgment in the Transvaal Provincial Division in the matter of *Kamelia Tcherveniakova v. The Minister of Home Affairs and Others* granting the applicant along with her husband and minor child an exemption for permanent residence in terms of section 31(2)(b) of the Immigration Act, based on their individual circumstances to remain in South Africa. The applicant came to South Africa from Bulgaria in 1996, prior to there being a legislative framework to deal with asylum seekers and refugees. In 2003, after the refugee status of the applicant and her family was denied, they brought an application for exemption to the minister, which was only finalised in November 2006. In awarding permanent residence, the court took into account the length of time taken for the process to be finalised in accordance with just administrative action. Communication from Lawyers for Human Rights, 14 May 2008.

281 "Liberian, Sierra Leonean refugees to settle in Nigeria," Reuters, 7 August 2007.

282 Loi No. 61-70 du 7 mars 1961 déterminant la nationalité sénégalaise, Article 29. Naturalisation for people from other countries takes 10 years and has other conditions attached.

in 1989–1990 and became refugees in Senegal resisted taking Senegalese citizenship because they feared losing their claim to Mauritanian citizenship, many others did so to facilitate travel and work, even if they preferred not to admit this publicly.<sup>283</sup> In 2007, a new government in Mauritania offered repatriation to these refugees, and many registered to return with the assistance of UNHCR (though this process was interrupted by another coup d'état in 2008). Senegal promised that it would guarantee citizenship to any Mauritians who chose not to take up this offer.

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<sup>283</sup> See Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp. 105–108.

## Appendix: Legal sources

The list below includes all the nationality laws from African countries that have been collected during the research for this report, including those that are now repealed or superseded. The reference used is to the original date of the law, which in many cases has been amended; the amending laws are listed separately, where available. All these laws have been made available to the Refworld database maintained by the UN Refugee Agency at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>.

In addition to the texts of these laws, this report has relied on the state reports to and the concluding observations of the UN Committee on the Rights of the Child, available at <http://www.unhchr.ch/tbs/doc.nsf> as well as UN documentation on statelessness and on human rights and arbitrary deprivation of nationality. A (somewhat out-of-date) summary of the legal provisions is also available in the report on *Citizenship Laws of the World*, prepared by the United States Office of Personnel Management Investigations Service, March 2001, available at <http://www.opm.gov/extra/investigate/IS-01.pdf>. Other useful information can be obtained from the Responses to Information Requests of the Canadian Immigration and Refugee Board, available at [http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/index\\_e.aspx](http://www.irb-cisr.gc.ca:8080/RIR_RDI/index_e.aspx).

Algeria	<ul style="list-style-type: none"> <li>• Ordonnance No. 05-01 du 27 février 2005 modifiant et complétant Code de la nationalité algérienne</li> <li>• Ordonnance No. 70-86 du 15 décembre 1970 portant code de la nationalité algérienne.</li> </ul>
Angola	<ul style="list-style-type: none"> <li>• Lei No.13/91 da nacionalidade, de 11 de maio</li> <li>• Lei No.1/05 da nacionalidade, de 1 de julho</li> <li>• Decreto No.31/07 dos registos de nascimentos, de 14 de maio</li> </ul>
Benin	<ul style="list-style-type: none"> <li>• Loi No. 65-17 du 23/06/65 portant Code de la nationalité dahoméenne</li> </ul>
Botswana	<ul style="list-style-type: none"> <li>• Constitution 1966</li> <li>• Citizenship Act No. 25 of 1982</li> <li>• Citizenship Amendment Act No. 14 of 1995</li> <li>• Citizenship Act Cap 01:01, Act No. 8 of 1998</li> </ul>
Burkina Faso	<ul style="list-style-type: none"> <li>• Zatu No. An VII 0013/FP/PRES du 16 novembre 1989, portant institution et application du Code des personnes et de la famille</li> </ul>
Burundi	<ul style="list-style-type: none"> <li>• Loi No. 1-013 du 18 juillet 2000 portant reforme du Code de la nationalité</li> </ul>
Cameroon	<ul style="list-style-type: none"> <li>• Loi No. 1968-LF-3 du 11 juin 1968 portant Code de la nationalité camerounaise</li> </ul>
Cape Verde	<ul style="list-style-type: none"> <li>• Constitution 1999</li> <li>• Decreto-Lei No. 53/93 de 30 de Agosto de 1993</li> </ul>

## APPENDIX: LEGAL SOURCES

CAR	<ul style="list-style-type: none"> <li>Loi No. 1961.212 du 20 avril 1961 portant Code de la nationalité centrafricaine</li> </ul>
Chad	<ul style="list-style-type: none"> <li>Ordonnance No. 33 du 14 août 1962 portant Code de la nationalité tchadienne</li> <li>Décret No. 211-PG.-INT. du 6 novembre 1963 portant application du Code de la nationalité</li> </ul>
Comoros	<ul style="list-style-type: none"> <li>Loi No. 79-12 du 12 décembre 1979 portant Code de la nationalité comorienne</li> </ul>
Congo Republic	<ul style="list-style-type: none"> <li>Loi No. 35 du 20 juin 1961 portant Code de la nationalité congolaise</li> <li>Décret No. 61-178 du 29 juillet 1961 fixant les modalités d'application du Code de la nationalité</li> <li>Loi No. 2-93 du 30 septembre 1993 modifiant l'article 30 de la loi No. 35-61 du 20 juin 1961</li> </ul>
Côte d'Ivoire	<ul style="list-style-type: none"> <li>Constitution de la République de Côte d'Ivoire du 23 juillet 2000</li> <li>Loi No. 61-415 du 14 Décembre 1961 portant Code de la nationalité ivoirienne, telle que modifiée par la loi n° 72-852 du 21 Décembre 1972</li> <li>Décret No. 61-425 du 29 décembre 1961 portant modalités d'application du Code de nationalité ivoirienne</li> <li>Loi No. 2002-03 du 3 janvier 2002 relative a l'identification des personnes et au séjour des étrangers en cote d'ivoire, et portant abrogation de la loi n° 98-448 du 4 aout 1998</li> <li>Loi No. 2004-662 du 17 Decembre 2004 modifiant et complétant la Loi 61-415 du 14 décembre 1961 portant Code de la nationalité, telle que modifiée par la Loi No. 72-852 de 21 décembre 1972</li> <li>Loi No. 2004-663 du 17 Decembre 2004 portant dispositions spéciales en matière de naturalisation</li> <li>Décision No. 2005-04/PR du 15 juillet 2005, portant dispositions spéciales en matière de naturalisation</li> <li>Décision No. 2007-14/PR du 21 septembre 2007 portant dispositions spéciales en matière d'audiences foraines</li> </ul>
DRC	<ul style="list-style-type: none"> <li>Constitution 2005</li> <li>Loi No. 1972-002 du 5 janvier 1972 relative à la nationalité zaïroise</li> <li>Loi No. 1981-002 du 29 juin 1981 relative à la nationalité zaïroise</li> <li>Loi No. 04-024 du 12 novembre 2004 relative a la nationalité congolaise</li> </ul>
Djibouti	<ul style="list-style-type: none"> <li>Loi No. 200/AN/81 portant Code de la nationalité djiboutienne.</li> <li>Loi No. 79/AN/04/5eme L du 24 octobre 2004 portant Code de la nationalité djiboutienne</li> </ul>
Egypt	<ul style="list-style-type: none"> <li>Law No. 26 of 1975 concerning Egyptian nationality</li> <li>Law No. 154 of 14 July 2004 amending Law No. 26 of 1975</li> <li>Decree No. 12025 of 26 July 2004 concerning certain provisions enforcing Law No. 154</li> </ul>
Equatorial Guinea	<ul style="list-style-type: none"> <li>Ley Fundamental 1982</li> <li>Ley Fundamental 1991, as amended 1995</li> <li>Ley No. 8/1990, de fecha 24 de octubre, reguladora de la nacionalidad ecuato-guineana</li> </ul>
Eritrea	<ul style="list-style-type: none"> <li>Constitution 1997</li> <li>Eritrean Nationality Proclamation No. 21/1992</li> </ul>
Ethiopia	<ul style="list-style-type: none"> <li>Constitution 1995</li> <li>Nationality Law 1930</li> <li>Proclamation No. 270/2002 concerning the rights of foreign nationals of Ethiopian origin</li> <li>Proclamation No. 378/2003 on Ethiopian Nationality</li> </ul>
Gabon	<ul style="list-style-type: none"> <li>Loi No. 37-1998 portant Code de la nationalité</li> </ul>
Gambia	<ul style="list-style-type: none"> <li>Constitution 1970</li> <li>Constitution 1997 as amended 2001</li> <li>Gambia Nationality and Citizenship Act No. 1 of 1965</li> </ul>
Ghana	<ul style="list-style-type: none"> <li>Constitution 1992</li> <li>Citizenship Act No. 591 of 2000</li> </ul>

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Guinea	<ul style="list-style-type: none"> <li>Code Civil, Loi No. 004/APN/83 du 16 février 1983, promulguée par le décret No. 149 PRG/22/83 du 29 mars 1983.</li> </ul>
Guinea Bissau	<ul style="list-style-type: none"> <li>Constitution 1996</li> <li>Lei da cidadania No. 2/92 de 6 de abril</li> </ul>
Kenya	<ul style="list-style-type: none"> <li>Constitution 1963</li> <li>Citizenship Act Cap170, 1963</li> <li>Children's Act 2001</li> <li>Refugee Act 2006</li> <li>Constitution 2010</li> </ul>
Lesotho	<ul style="list-style-type: none"> <li>Constitution 1993</li> <li>Lesotho Citizenship Order No. 16 of 1971</li> <li>Passports and Travel Documents Act No. 15 of 1998</li> </ul>
Liberia	<ul style="list-style-type: none"> <li>Constitution 1986</li> <li>Aliens and Nationality Law 1973</li> </ul>
Libya	<ul style="list-style-type: none"> <li>Nationality Law No. 17 of 1954</li> <li>Law No. 18 of 1980 pertaining to the resolutions of the Nationality Act</li> <li>Regulatory Code for Law No. 18 of 1980 pertaining to the resolutions of the Nationality Act</li> <li>Law No. 24 of 2010 on the Provisions of Libyan Nationality</li> </ul>
Madagascar	<ul style="list-style-type: none"> <li>Ordonnance No. 1960-064 portant Code de la nationalité malgache</li> <li>Loi No. 1961-052 portant modification de l'article 93 du Code de la nationalité malgache, modifiant les articles 24, 58, 82 et 93 du Code de la nationalité</li> </ul>
Malawi	<ul style="list-style-type: none"> <li>Constitution 1994</li> <li>Citizenship Act 1966</li> </ul>
Mali	<ul style="list-style-type: none"> <li>Loi No. 6218 AN-RM du 3 février 1962 portant Code de la nationalité malienne</li> <li>Loi No. 95-70 du 25 août 1995 portant modification du Code de la nationalité malienne</li> </ul>
Mauritania	<ul style="list-style-type: none"> <li>Constitution 1991</li> <li>Loi No. 1961-112 portant Code de la nationalité mauritanienne</li> </ul>
Mauritius	<ul style="list-style-type: none"> <li>Constitution 1968</li> <li>Mauritius Citizenship Act 1968</li> <li>Mauritius Passport Act 1969</li> </ul>
Morocco	<ul style="list-style-type: none"> <li>Loi No. 62-06 portant Code de la nationalité marocaine, promulguée par le dahir No. 1-07-80 du 23 mars 2007 - 3 rabii I 1428</li> </ul>
Mozambique	<ul style="list-style-type: none"> <li>Constitution 2004</li> <li>Lei da Nacionalidade de 20 de Junho de 1975 as amended by Lei No. 16/87 de 21 de Dezembro</li> </ul>
Namibia	<ul style="list-style-type: none"> <li>Constitution 1990</li> <li>Namibian Citizenship Act No. 14 of 1990</li> <li>Namibia Refugees (Recognition and Control) Act No. 2 of 1999</li> <li>Namibian Constitution Second Amendment Act No. 7 of 2010</li> </ul>
Niger	<ul style="list-style-type: none"> <li>Constitution 1999</li> <li>Ordonnance No.84-33 du 23 août 1984 portant Code de la nationalité</li> <li>Ordonnance No.99-17 due 4 juin 1999 portant modification de l'ordonnance No. 84-33 du 23 août 1984 portant Code de la nationalité</li> </ul>
Nigeria	<ul style="list-style-type: none"> <li>Constitution 1999</li> <li>Passport (Miscellaneous Provisions) Act 1985</li> </ul>
Rwanda	<ul style="list-style-type: none"> <li>Loi organique No. 29/2004 du 03/12/2004 portant code de la nationalité rwandaise</li> <li>Loi organique No. 30/2008 du 25/07/2008 portant code de la nationalité rwandaise</li> </ul>

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SADR	<ul style="list-style-type: none"> <li>No information</li> </ul>
São Tomé and Príncipe	<ul style="list-style-type: none"> <li>Constitution 1999</li> <li>Lei da nacionalidade No. 6/90</li> </ul>
Senegal	<ul style="list-style-type: none"> <li>Loi No. 61-70 du 7 mars 1961 déterminant la nationalité sénégalaise</li> </ul>
Seychelles	<ul style="list-style-type: none"> <li>Constitution 1993</li> <li>Citizenship Ordinance No. 9 of 1976</li> <li>Citizenship (Amendment) Regulations 1983</li> <li>Citizenship Act No. 18 of 1994</li> </ul>
Sierra Leone	<ul style="list-style-type: none"> <li>Constitution 1991</li> <li>Sierra Leone Citizenship Act, 1973, as amended 1976</li> <li>Sierra Leone Citizenship Amendment Act No. 11 of 2006</li> <li>Refugees Protection Act No. 6 of 2007</li> <li>Child Rights Act No. 7 of 2007</li> </ul>
Somalia	<ul style="list-style-type: none"> <li>Law No. 28 of 22 December 1962 on Somali Citizenship</li> </ul>
South Africa	<ul style="list-style-type: none"> <li>Constitution 1996</li> <li>South Africa Citizenship Act No. 88 of 1995</li> <li>South Africa Citizenship Amendment Act No. 19 of 1997</li> <li>South Africa Citizenship Amendment Act No. 17 of 2004</li> <li>South Africa Citizenship Amendment Bill No. 17 of 2010</li> </ul>
Sudan	<ul style="list-style-type: none"> <li>Constitution 1998</li> <li>Interim National Constitution of the Republic of Sudan 2005</li> <li>Sudanese Nationality Act 1957</li> <li>Sudan Nationality Law No. 19 of 1993</li> <li>Sudanese Nationality Law 1994, amended 2005</li> </ul>
Swaziland	<ul style="list-style-type: none"> <li>Constitution 2005</li> <li>Swaziland Citizenship Act No. 14 of 1992</li> </ul>
Tanzania	<ul style="list-style-type: none"> <li>Constitution 1977</li> <li>Tanzania Citizenship Act No. 6 of 1995</li> </ul>
Togo	<ul style="list-style-type: none"> <li>Constitution 1992</li> <li>Ordonnance 78-34 du 7 septembre 1978 portant Code de la nationalité togolaise</li> </ul>
Tunisia	<ul style="list-style-type: none"> <li>Constitution 1959</li> <li>Loi No. 63-7 du 22 avril 1963 portant refonte du Code de la Nationalité Tunisienne</li> </ul>
Uganda	<ul style="list-style-type: none"> <li>Constitution 1995</li> <li>Constitution (Amendment) Act 2005</li> <li>Citizenship Act 1962 (Chapter 65)</li> <li>Passports Act 1982 (Chapter 64)</li> <li>Uganda Citizenship and Immigration Control Act 1999 (Chapter 66)</li> <li>Refugees Act 2006</li> </ul>
Zambia	<ul style="list-style-type: none"> <li>Constitution 1991 as amended 1996</li> <li>Citizenship Act 1977 (Chapter 124)</li> </ul>
Zimbabwe	<ul style="list-style-type: none"> <li>Constitution 1980, as amended to 2009</li> <li>Citizenship of Zimbabwe Act 1984 (Cap 4:01), as amended to 2003</li> </ul>

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