

# **Citizenship Law in Africa**

## A Comparative Study

*Summary and Recommendations*

By Bronwen Manby



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

Extract from Second edition October 2010.

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ISBN: 978-1-936133-29-1

Published by  
Open Society Foundations  
400 West 59th Street  
New York, NY 10019 USA  
[www.soros.org](http://www.soros.org)

For more information, contact:  
Afrimap  
P.O. Box 678, Wits 2050  
Johannesburg, South Africa  
[www.afrimap.org](http://www.afrimap.org)

Open Society Justice Initiative  
400 West 59th Street  
New York, NY 10019 USA  
[www.justiceinitiative.org](http://www.justiceinitiative.org)

Cover design by Dennis Ahlgrim/Ahlgrim Design Group  
Text layout and printing by COMPRESS.dsl  
Cover photo by Kambou Sia/AFP/Getty Images

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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, Abdullah 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

(Coordinating Assembly of NGOs (CANGO), Swaziland; Lillian Keene (Mugerwa), Uganda; Patrick Matibini, Zambia; and Arnold Tsunga and Irene Petras (Zimbabwe Lawyers for Human Rights), Zimbabwe.

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.

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

Chidi Odinkalu and Julia Harrington of the Open Society Justice Initiative have provided intellectual leadership and support for this research. Sebastian Köhn provided research assistance as well as painstaking and detailed support to the fact-checking process; Angela Khaminwa managed the Africa citizenship audit during its first two years. Additional research assistance was provided at different times by Lisa Fuchs, Siobhan McKenna, Jonas Pohlmann, Catherine Roden, Kasia Romanska, and Rolake Rosiji. Ari Korpivaara and Chuck Sudetic made valuable editorial comments.

## 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
OAU	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; Jurgen Habermas, “Citizenship and National Identity,” in: Bart van Steenberg (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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<sup>4</sup> 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'éménents 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 Commission on Human and Peoples' Rights, should monitor and report on African states' respect in their nationality law and practice for the human rights norms established by African and international treaties.

### *Right to a nationality*

7. National constitutions and nationality laws should provide for an explicit and unqualified right to a nationality from birth.
8. The law should provide for persons to have a right to nationality (whether from the time of birth or by acquisition at a later stage) on the basis of any appropriate connection to the country, including birth in the territory, having a father or mother (including an adoptive father or mother) who is a 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.

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, racial or ethnic origin, political opinion, religion or membership in a particular social group.

38. 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*

39. 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.
40. 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.
41. The law should grant women equal rights to men with respect to the nationality of their children.
42. 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.
43. 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.
44. 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*

45. 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.
46. 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.
47. 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*

48. The law should not provide for involuntary loss of birth nationality (nationality of origin).
49. 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.
50. The law should prohibit any deprivation of nationality that would have the effect of rendering the person concerned stateless.
51. 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.
52. 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.
53. 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.
54. The law should provide that deprivation of nationality does not affect the spouse of the person concerned.
55. 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*

56. 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.

57. The law should provide for the possibility of recovery of nationality by persons who have previously renounced it.

### *Expulsions*

58. 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.
59. 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.
60. 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.
61. 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.
62. 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*

63. 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.
64. 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.
65. The law should provide that everyone, including a citizen, has the right to leave the country.

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