Summary and recommendations

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

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

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

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

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

• Dual nationality rules: The majority of African states now permit dual nationality in all circumstances. However, rules on dual nationality are easily misunderstood or misinterpreted, especially for persons who potentially have two nationalities from birth. They have often been used to deny children born to one non-citizen parent the right to nationality in the country of their birth, even when in principle the child is eligible for that nationality.

• Weak rights based on birth in the territory: Although the nationality laws in more than half of the continent’s states provide at least some rights based on birth in the territory for children of non-citizen parents, the remainder have very weak protections against statelessness, in some cases not even providing nationality for infants found in the territory whose parents are not known. Countries where there are very limited rights based on birth in the territory typically have large populations of people who are stateless.

• Lack of access to naturalisation: Another cause of statelessness is the failure by many states to provide effective access to naturalisation procedures. If a parent cannot naturalise, and the state also provides no rights based on birth in that territory, a child born to non-citizen parents is at high risk of statelessness, especially where the state of origin provides no effective consular services and especially if the parents are refugees—a risk that increases with each generation.

• Provisions on state succession: Many countries in Africa face continuing problems related to poor management of attribution and documentation of nationality in the transition from colonial rule to independence. State successions since independence have also failed to provide legal and administrative safeguards for the nationality of those who live in a territory transferred between two states.

• Non-existent systems for the protection of stateless persons: It is very rare for an African state to have a legal framework in place to identify and provide a status for stateless persons and facilitate their acquisition of a nationality.

• Excessive executive discretion: A final critical problem is the widespread lack of due process protections, especially when the government wishes to revoke or refuse the grant or recognition of nationality. The laws in too many countries give almost unfettered discretion to the executive in nationality administration, which in practice may mean that very junior state officials responsible for birth registration and the issue of identity cards are deciding the critical right of a person to nationality.

Many nationality problems are, of course, related to Africa’s history of colonisation and the inheritance of borders that cut through pre-existing
political boundaries, and institutions that had been founded on systematic racial and ethnic discrimination. The nationality laws adopted at independence were based on European models, all of which discriminated on the basis of gender at that time and were ill-adapted for African realities, including the very low rates of civil registration bequeathed by the colonial powers, the substantial numbers of people who follow a nomadic lifestyle, or the effective integration of populations who migrated during the colonial period.

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

These include, most importantly:

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

The right to a nationality in African laws

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

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

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

Even so, the nationality laws of around half of Africa’s countries are quite liberal. The simplest way of ensuring that children born in a country are not at risk of statelessness is to apply an absolute jus soli rule, providing automatic nationality to any child born on national soil. Three countries provided in law for this rule at the end of 2014: Chad, Lesotho and Tanzania (though in Tanzania, at least, the law is not applied in practice). The laws of more than 20 other countries either attribute nationality from birth to children born to parents who were themselves also born there, or give children born in the territory to non-national parents the right to claim nationality of origin if they are still resident in the given country when they reach the age of majority. A handful of other countries (Cape Verde, Namibia, São Tomé and Príncipe
and South Africa) either attribute or permit the acquisition of nationality by children born on their territory to parents who are legally resident on a long-term basis. Several other civil law countries have additional provisions allowing for those persons who have always been treated as citizens to obtain nationality papers without the need for further proof of descent or location of birth. Gabon, unusually, gives rights to children born in the border zones of countries neighbouring Gabon or raised by Gabonese nationals who have lived in Gabon for 10 years. More than half Africa’s countries thus provide—at least in law—for most children born on their soil to have the right to their nationality from birth or to be able to claim it at the age of majority.

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

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

**Racial, ethnic and religious discrimination**

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

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

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

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

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

**Gender discrimination**

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

Around a dozen countries (including Benin, Burundi, Guinea, Liberia, Libya, Madagascar, Mauritania, Somalia, Sudan, Swaziland and Togo) still discriminate on the grounds of gender in granting nationality from birth to children born either in their territory or abroad (though the child of a national
mother and non-national father born in some of these countries may be able to acquire nationality on application, or may only be given a right to repudiate on majority). A few countries also still discriminate on the basis of a child’s birth in or out of wedlock, denying mothers the right to transmit nationality if the child is born in wedlock, and fathers if the child is born out of wedlock, or creating additional procedures for children in these cases. In some countries, the law is gender-neutral on its face, but in practice the children of national mothers and non-national fathers have difficulty in getting recognition of their nationality.

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

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

**Naturalisation**

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

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

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

The other conditions applied for naturalisation may also be difficult to fulfil. In many countries, investigations are required, including interviews and police inquiries; in some countries, an applicant must provide proof of good health, excluding, for example, disabled people from acquiring
nationality. Under the 2004 nationality law adopted by the DRC, applications for naturalisation must be considered by the Council of Ministers and submitted to the National Assembly before being awarded by presidential decree; moreover, the individual must have rendered “distinguished service” (d’éminents services) to the country. Some countries add requirements based on cultural assimilation, in particular knowledge of the national language(s). Ethiopia’s 2003 Proclamation on Ethiopian Nationality requires the ability to “communicate in any one of the languages of the nations/nationalities of the Country”. Egypt requires an applicant for naturalisation to “be knowledgeable in Arabic”. Botswana requires a knowledge of Setswana or another language spoken by a “tribal community” in Botswana; Ghana requires knowledge of an indigenous Ghanaian language; and other countries have similar requirements.

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

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

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

There is, however, movement in some other countries towards allowing for the acquisition of nationality by refugees. South Africa’s law does, notably, provide for a transfer of status from refugee to permanent resident to naturalised citizen, though problems are reported in this process in practice. Tanzania has made provision for long-term refugees from Rwanda, Burundi and Somalia to become citizens. The most effective implementation of states’ obligations under international refugee law to facilitate national integration of refugees
is by those states where refugees have access to the general naturalisation law is liberal, with only a short period of permanent residence required for naturalisation and a functioning system to implement this rule. However, too often these procedures are inaccessible in practice even if available on paper.

**Dual nationality**

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

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

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

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

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

**Loss, deprivation and arbitrary non-recognition**

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

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

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

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

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

In practice, African states have far more often decided not to recognise a person’s nationality at all, or to impose administrative conditions that are very difficult to fulfil, rather than to invoke legal provisions for deprivation of nationality. Such methods have been deployed by several different governments for political purposes to silence troublesome critics or political opponents, or to ensure that members of a particular ethnic group find it difficult to vote or fully participate in society. Although there are other means of silencing journalists,
blocking political aspirants or disenfranchising population groups, the usefulness of denationalisation is that those affected then have tenuous legal status that is highly vulnerable to abusive use of discretionary executive power.

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

**International norms**

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

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

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

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

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

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

African states should move towards the international norm, accepting as a basic principle that all those who had the right of nationality before independence and their descendants have equal rights to nationality today. They should recognise the reality of historical and contemporary migration and ensure in law and practice that those who are the descendants of migrants can obtain rights to nationality based on birth in the territory in some circumstances, and that those who have migrated themselves can naturalise
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as citizens on reasonable terms. They should harmonise their laws to adopt in all countries the best practices that already apply in some. The African Union should take concrete steps to realise the ideals and aspirations of a greater African unity by adopting and taking steps to enforce measures that guarantee the right to a nationality on the basis of non-discrimination, due process and respect for human rights—in particular by adopting the proposed protocol to the African Charter on Human and Peoples’ Rights on the right to a nationality.

Recommendations

International treaties and harmonisation of laws

1. African states acting within the framework of the African Union should take steps to prepare and adopt a Protocol on Nationality to the African Charter on Human and Peoples’ Rights, based on the principles of the African Charter, the Constitutive Act of the African Union, the Universal Declaration of Human Rights and other international human rights norms (and the recommendations below).

2. African states that have not yet done so should take immediate steps to ratify relevant treaties, including the African Charter on the Rights and Welfare of the Child, the UN Convention on the Rights of the Child, the UN Convention relating to the Status of Stateless Persons, and the UN Convention on the Reduction of Statelessness.


4. African states should bring their nationality laws into line with the norms embodied in these treaties (and the recommendations below). The Regional Economic Communities that make up the African Union should lead these efforts.

5. African states should cooperate in making efforts to harmonise nationality laws and to determine the nationality of persons who face difficulties in establishing their nationality.

6. African intergovernmental institutions, including the African Commission on Human and Peoples’ Rights, should monitor and report on African states’ respect in their nationality law and practice for the human rights norms established by African and international treaties.

Right to a nationality

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

9. The law should provide for a child to have nationality from birth (of origin) if he or she is born in the state concerned, or if he or she is born in the state concerned and:
   a. either of his or her parents are nationals; or
   b. either of his or her parents was also born in the country; or
   c. either of his or her parents has his or her habitual residence in the country; or
   d. he or she would otherwise be stateless.

10. The law should provide that a child found in the territory of the state shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that state.

11. The law should provide for a person to have the right to obtain recognition of nationality from birth (of origin) if he or she was born in the state concerned or arrives there as a child, fulfils a minimum residence requirement, and still has his or her habitual residence there at the age of majority.

12. The law should provide at a minimum for a child to have nationality from birth (of origin) if he or she is born outside the state concerned and
   a. either of his or her parents was born in that state and is a national or has the right to acquire the nationality of that state; or
   b. either of his or her parents is a national or has the right to acquire the nationality of that state and the child would otherwise be stateless.

13. Under no circumstances should national laws be amended, adopted, or repealed in circumstances where the changes are, or could be interpreted to be, intended to deny or revoke the nationality of any specific individual or group. No law relating to the denial or revocation of nationality should have retroactive effect. In case of doubt, national courts should apply a presumption in favour of the person or group concerned.

State succession

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

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

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

**Non-discrimination**

16. The law should not refer to membership of any particular racial, ethnic, religious, linguistic or similar category noted in international human rights treaties as the basis for inclusion or exclusion from nationality rights.

17. The law should grant men and women equal rights to acquire, change or retain their nationality and confer nationality on their children.

18. The law should not permit any discrimination with regard to the acquisition of nationality as between legitimate children and children born out of wedlock.

19. African states should take legal and other measures to ensure that persons of any race, ethnicity, religion or linguistic community have a right to nationality on the same terms and, in particular, that members of groups that have historically been excluded from nationality (including children whose mothers but not fathers are nationals), benefit from such measures.

20. African states should take measures to ensure equality of rights among persons possessing their nationality, in particular that the right to nationality is not undermined by discriminatory laws and practices applying to members of sub-national units.

**Proof, documentation and information**

21. The law should provide that a person has a right both to the documents that are necessary to prove nationality, including birth certificates, and to proof of nationality itself.

22. The laws and practices relating to recognition of nationality should provide for alternative systems of proof of identity and other requirements in contexts where documentary evidence is not available or cannot reasonably be obtained.

23. The law should provide for the certification of nationality by the courts where an application for recognition of nationality has not been processed within a reasonable time or where the official documentation necessary to prove nationality does not exist or cannot be obtained, and for the courts to order that any other documents be issued.
24. The law should provide that, in the event that an application for recognition of nationality is denied, the state must provide reasons in writing for the refusal and the decision may be appealed to the courts.

25. African states should take all necessary measures to provide relevant documentation to all those who are entitled to nationality and to ensure that the administrative processes by which persons acquire registration and other documents required to prove a right nationality are accessible on the same basis to anyone who satisfies the criteria established by law.

26. African states should take all necessary measures to ensure that all children born in the country are registered immediately after birth, without discrimination, including those children born in remote areas and in disadvantaged communities; and that children not registered at birth can be registered later during childhood or adulthood. These measures should include, for example, the use of mobile birth registration units, registration free of charge and flexible systems of proof where it is not reasonable to meet the standard requirements. Children whose births have not been registered should be allowed to access basic services, such as health care and education, while waiting to be properly registered.

27. African states should take measures to provide for registration of the births of the children of nationals who are born abroad.

28. The law should provide that all nationals have the right to a passport and, where in use, to an identity card.

29. The fees required to apply for recognition, acquisition, retention, loss, recovery or certification of nationality and to obtain necessary documents to support such applications should be reasonable.

30. African states should take steps to inform and educate all those who might be eligible for a particular nationality about that right, especially but not only in the case of succession of states.

Naturalisation

31. The law should provide the right to acquire nationality by naturalisation (or similar process) to anyone who has been habitually resident in the country for five years, or a shorter period in the case of a person married to a national, persons born in the country, former nationals, stateless persons, and refugees.

32. Where there is a right to naturalisation only if a person is lawfully present in the country, any period of unlawful residence preceding the recognition of lawful residence should be included in the calculation of the necessary period for naturalisation.

33. Any other conditions required for naturalisation should be clearly and specifically provided in law and reasonably possible to fulfil. Grounds for exclusion from the right to naturalise should not include ill health or disability or general provisions relating to good character and morals, with the exception of criminal convictions for a serious offence.
34. The law should provide that a minor child of a person who acquires the nationality of a state acquires nationality at the same time as the parent if he or she is living with that parent.

35. The law should provide that the rights of those persons who are nationals from birth and those who have acquired nationality subsequently are equal.

36. The law should provide that a person whose application for naturalisation is rejected has the right to be given reasons in writing for the refusal and to appeal to the courts.

37. The law should provide for the courts to rule on an application for naturalisation in the event that it has not been processed within a reasonable time.

38. African states should fulfil the obligations under the 1951 UN Convention relating to the Status of Refugees and the 1954 Convention Relating to the Status of Stateless Persons and as far as possible facilitate naturalisation, including by making every effort to expedite procedures and to reduce as far as possible the charges and costs of such proceedings. These measures should apply in all cases, with no exceptions made on the basis of national origin or membership of a particular national, racial or ethnic origin, political opinion, religion or membership in a particular social group.

39. Where a refugee acquires the nationality of the state of refuge but is not able to renounce his or her previous nationality, his or her new nationality shall be considered to be predominant for the purposes of diplomatic protection in relation to the state of previous nationality and the state of previous nationality shall be bound to recognise this exercise of diplomatic protection.

Marriage and family relations

40. African states should take legal and other measures to facilitate the acquisition of nationality by foreigners married to nationals and by the children of both parents or the foreign spouse, whatever the sex of the foreign spouse or parent.

41. The law should not include any provisions providing that marriage to a foreigner or change of nationality by the husband during marriage automatically changes the nationality of the wife or forces upon her the nationality of the husband, or that place her at risk of statelessness.

42. The law should grant women equal rights to men with respect to the nationality of their children.

43. The law should provide that those who have acquired nationality on the basis of marriage to a national do not lose that nationality in the event of dissolution of the marriage.

44. The law should provide for spouses to have the right to acquire nationality on the basis of marriage to a national even when they do not have their habitual residence in the country whose nationality is sought.
45. The law relating to the acquisition of nationality by marriage should recognise any marriage conducted according to the laws of the country where it took place; there should be no requirement for it to have been conducted according to the laws of the country whose nationality is sought.

**Dual nationality**

46. The law should provide that existing nationals, whether from birth or by acquisition, may acquire other nationalities without any penalty and that nationals of other countries may be naturalised without any requirement to renounce an existing nationality, so as to avoid the risk of creating statelessness.

47. Countries that amend their laws to allow dual nationality when it had previously been forbidden should adopt transitional provisions allowing those who had previously lost their nationality on acquiring another to recover their former nationality.

48. Any provisions under national laws placing restrictions on the holding of public office by persons with dual nationality should be narrowly defined, restricted to the very highest offices of state, and applied only to the nationality of the person concerned and not the nationality of his or her parents or spouse. Where there are restrictions, they should apply only from the time the person takes up office and not while he or she is running for election or applying for appointment.

**Loss and deprivation of nationality**

49. The law should not provide for involuntary loss of birth nationality (nationality of origin).

50. In the case of those persons who are nationals by acquisition, the law should provide for deprivation of nationality only on the grounds of clear, narrowly defined and objectively provable criteria that comply with international human rights law and, in particular, the principle of proportionality. The law should prohibit deprivation of nationality on racial, ethnic, religious, political or similar grounds.

51. The law should prohibit any deprivation of nationality that would have the effect of rendering the person concerned stateless.

52. Where the law provides for the deprivation of nationality on grounds of fraud or false representation, the law should also provide exceptions in favour of retention of nationality where at the time of the fraud or false representation the person involved was a minor or where the fraud or false representation took place more than 10 years earlier.

53. The law should not provide for deprivation of nationality based on refusal to carry out military service or the perpetration of an ordinary crime. The law should not provide for deprivation of nationality on grounds of disloyal or criminal behaviour where such behaviour is not seriously prejudicial to the vital interests of the state. Voluntary service for a foreign military force
can only be considered seriously prejudicial to the vital interests of the
state if the force is engaged in armed conflict against that state.

54. The law should provide that any children of a person whose nationality is
revoked retain nationality, in particular if their other parent retains it or if
they would otherwise become stateless; or if the ground for loss relates to
the personal behaviour of the parent, or occurs or is discovered after they
have attained the age of majority.

55. The law should provide that deprivation of nationality does not affect the
spouse of the person concerned.

56. The law should provide that nationality may be only revoked by court
order following an individual hearing on the merits of the case, and not
by administrative decision. The state should bear the burden of proving
that the person concerned is not entitled to nationality and there should
be a right to appeal through established procedures.

Renunciation of nationality

57. The law should provide that a person may renounce nationality, unless
he or she would otherwise become stateless. Procedures required to
renounce nationality should be purely administrative and should give no
right to the state to refuse permission.

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

Expulsions

59. The law should prohibit expulsion of nationals from the country except
in the context of extradition by due process of law to stand trial or serve a
sentence in another country.

60. The law should prohibit expulsion or return of any person contrary to the
provisions of the 1951 UN Convention relating to the Status of Refugees,
the 1954 Convention relating to the Status of Stateless Persons, the
African Charter on Human and Peoples’ Rights or any other relevant
international law.

61. The law should protect against arbitrary expulsion of non-nationals from
the country, in particular by establishing clear and narrowly defined
grounds for expulsion and providing that in all cases, including those
where expulsion is purportedly on the basis of national security, the
persons affected have the right to have their cases heard on an individual
basis before an independent tribunal with the right to representation and
appeal through established procedures, and that the state bears the burden
of proof of the case for expulsion, including the fact that the person is not
a national.

62. The law should provide that those who are habitually resident in the country
but who for whichever reason have not acquired nationality nonetheless
acquire rights that give them greater protection against expulsion than
non-residents. The courts should apply the law taking into account the proportionality of the harm caused to the person being expelled in relation to the gravity of the reason asserted for his or her expulsion.

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

**Freedom of movement**

64. The law should provide that nationals and those habitually resident in the country, including but not limited to stateless persons, have the right to enter the country.

65. The law should provide that everyone lawfully present in the country has freedom of movement and freedom to choose his or her residence within the country.

66. The law should provide that everyone, including a national, has the right to leave the country.