African Union

African Commission on Human and Peoples' Rights

THE RIGHT TO NATIONALITY IN AFRICA

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

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1. Introduction

> Now, who has ever seen a nationality, be it directly or indirectly? An individual's nationality can no more be guessed from his face than the political borders of our earthly states can be discerned from space. Wisdom therefore prompts us to put this phenomenon into perspective, since, like law, it is construed and not given[1].

1.1 Background

The starting point for the present document was the adoption in April 2013, by the African Commission on Human and Peoples' Rights (hereinafter the African Commission), of a Resolution[2] entrusting its Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa (hereinafter the Special Rapporteur) with the conduct and drafting of a study on the right to nationality on the continent. However, this decision was actually the final stage in a multifaceted thought process taking place on the continent regarding the right to nationality.

Litigation on nationality and massive expulsions of aliens in Africa[3], and notably the hallmark case of the nationality of the former President of Zambia Kenneth Kaunda[4], comprised the foremost source of information for the African Commission on this phenomenon, which other African Union bodies had already noted to be a problem of concern.

The African Union's Migration Policy Framework adopted in 2006 included among its other recommendations that AU Member States should 'incorporate key guidelines as recommended in the 1954 and 1961 Statelessness Conventions', and 'develop national legislative and policy frameworks to counter statelessness, particularly in cases of long-term residents, by reforming citizenship legislation and/or granting rights similar to those enjoyed by foreigners residing in the country'[5]. Experts meeting within the framework of the African Union Border Programme in June 2007 in Addis Ababa, Ethiopia, urged the States concerned with problems to do with the delimitation and demarcation of their boundaries to 'take the necessary steps to **protect the rights of the affected populations, notably where there is a risk of loss of nationality [statelessness]**, of real property or of forced displacement'[6]. They agreed 'to undertake and pursue bilateral negotiations on all problems relating to the delimitation and demarcation of their borders, including those pertaining to the rights of the affected populations, with a view to finding appropriate solutions to these problems'[7].

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1 Jean Dabin, *Théorie générale du droit*, Bruxelles, Bruylant, 1944, pages 97-132, quoted by Michel Verwilghen, in *Conflits de nationalités, Plurinationalité et apatridie*, 2000, Martinus NIJHOFF, page 466. Unofficial translation.

2 See Resolution No. 234 adopted in Banjul, The Gambia, on 23 April 2013.

3 Cases pertaining to citizenship include: Communication No. 97/93, *John K. Modise v. Botswana;* Communication No. 212, *Amnesty International v. Zambia*; Communication No. 159/96, *Union Interafricaine des Droits de l'Homme and Others v. Angola*; Communications Nos. 27/89, 49/91 and 99/93, *Organisation Mondiale Contre la Torture and Others v. Rwanda*; Communication No.71/92, *Rencontre Africain pour la Défense des Droits de l'Homme v. Zambia*; Communication 211/98, *Legal Resources Foundation v. Zambia;* Communication 292/2004, *Institute for Human Rights and Development in Africa v. Angola;* Communication No. 249/02, *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea;* and Communication No. 246/02, *Mouvement ivoirien des droits humains (MIDH) v. Côte d'Ivoire.*

4 See Communication No. 211/1998, *Legal Resources Foundation v. Zambia.*

5 Migration Policy Framework for Africa, EX.CL/276 (IX), AU Executive Council, Ninth Ordinary Session, 25-29 June 2006, Banjul, The Gambia, paragraph 3.7.

6 See Conference of African Ministers in charge of Border Issues, Report of the Meeting: Preventing Conflicts, Promoting Integration of the Preparatory Meeting of Experts on the African Union Border Programme, 4-5 June 2007, Addis Ababa, Ethiopia, BP/EXP/RPT (II). Our emphasis. [http://www.peaceau.org/uploads/ex-cl-352-xi-e.pdf]

7 See paragraph 5(I) of the Declaration on the African Union Border Programme and its Implementation Modalities, Addis Ababa, 7 June 2007 BP/MIN/Decl.(II), page 4. [http://www.peaceau.org/uploads/border-issues.pdf]

For their part, African national human rights institutions (hereinafter NHRIs), faced with the reality of the 'intractable problems of Refugees, IDPs and Stateless persons in Africa'[8] recommended at their meeting in Kigali, Rwanda, in June 2007, that African States 'evaluate and review existing legislations on citizenship and nationality and ensure that they do not create situations that lead to statelessness'[9] and work with international and regional organisations, including the African Union, in the 'promotion, protection of rights of Refugees, IDPs and Stateless persons in Africa'[10].

In October 2009, the African States, meeting on the situation of refugees, returnees and internally displaced persons in Africa, undertook 'to prioritize the building of capacity of national institutions, including those dealing with the challenge of refugees, [...] with a view to the attainment of self-reliance and empowerment of Africans to address Africa's problems'[11] which include the issue of their naturalisation.

These concerns were then taken up by a group of African and international organisations[12] that first came together in 2007 and held a public debate during the 47th ordinary session of the African Commission in 2010, focusing on the affirmation of the right to a nationality in the regional human rights system.

The African Commission invited the initiators of the debate to pursue more in-depth reflection on the issue during its 9th extraordinary session held in Banjul, The Gambia, from 23 February to 3 March 2011, which afforded the commissioners with an opportunity to hear expert evidence on African experiences relating to the right to a nationality and to understand nationality from the standpoint of comparative international law[13].

At the same time, the first substantive decision of the African Committee of Experts on the Rights and Welfare of the Child (hereinafter the Committee on the Rights of the Child), issued in 2011, concerned the nationality of children of Nubian descent born in Kenya[14]. The Committee on the Rights of the Child found the Kenyan State in violation of its obligations under Article 6 of the African Charter on the Rights and Welfare of the Child, which pertains to the child's right to a name, birth registration and a nationality[15]. The Committee on the Rights of the Child, meeting at its 20th ordinary session held in Addis Ababa, Ethiopia, in November 2012, then organised a general debate[16] on Article 6. At the outcome of the debate, the Committee on the Rights of the Child decided to formulate[17] a General Comment for the States parties in which it could clarify the contents of this important provision of the Charter on the Rights of the Child, taking account of the realities of the continent, by providing explanations on new forms of birth registration using information technologies, clarifying the concept of the 'right to acquire' a nationality and, especially, raising awareness among African leaders on the need to dissociate birth registration

8 Kigali Declaration issued by the Sixth Conference of African National Human Rights Institutions, held on 8-10 October 2007 in Kigali, Rwanda, Preamble, 13th whereas clause.

9 Kigali Declaration issued by the Sixth Conference of African National Human Rights Institutions, held on 8-10 October 2007 in Kigali, Rwanda, paragraph (c).

10 Kigali Declaration issued by the Sixth Conference of African National Human Rights Institutions, held on 8-10 October 2007 in Kigali, Rwanda, paragraph (c)4.

11 See paragraph 24 of the Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa, 23 October 2009.

12 The group was made up of the Citizenship Rights in Africa Initiative (CRAI) created by the PanAfrican Movement, the International Refugee Rights Initiative (IRRI) and Open Society Justice Initiative (OSJI).

13 See the agenda of the citizenship rights discussion day (1 March 2011) organised by the African Commission.

14 Decision No. 002/COM/002/09, *Institute for Human Rights and Development in Africa (IHRDA) and the Open Society Justice Initiative (OSJI) on behalf of children of Nubian descent v. the Republic of Kenya*.

15 Article 6 provides: 'Name and Nationality: (1) Every child shall have the right from his birth to a name. (2) Every child shall be registered immediately after birth. (3) Every child has the right to acquire a nationality. (4) States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.'

16 The debates focused on the relationships between the rights provided under Article 6 and the enjoyment of other rights laid down by the Charter, and States parties' obligations regarding birth registration and archives, and the clarification of the differences between the concepts of the 'right to acquire a nationality' and the 'right to a nationality'.

17 Article 42 of the Charter on the Rights of the Child includes an obligation to 'give its views and make recommendations to Governments' and also to 'formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa'.

from granting nationality so that all children may obtain a birth certificate, whether or not they are nationals of a State party[18].

In October 2012, the African Union Commission organised a symposium in Nairobi, Kenya, on 'Citizenship in Africa: Preventing Statelessness, Preventing Conflicts', during which important recommendations were adopted including those calling on African States to 'develop an African regional instrument on statelessness that reflects African realities and contexts such as nomadic, historical migrations and border dimensions of the phenomenon'[19].

The foregoing facts prompted the African Commission to observe that the right to nationality, described as a 'fundamental human right'[20], is not really protected in Africa, for reasons including the arbitrary denial or deprivation of the nationality of persons on grounds of race, ethnicity, language, religion, gender discrimination, non-compliance with the rules on the prevention of statelessness pursuant to transfers of territory between States, and the failure of many African States to ensure that all children are systematically registered at birth.

The existence of large numbers of stateless persons on the continent, although a phenomenon that has yet to be fully explored and examined due to the lack of reliable statistics in many African States, requires action to clarify and reinforce the right to a nationality within the regional human rights system.

The African Charter on Human and Peoples' Rights (hereinafter known as the African Charter), gives the African Commission the power, on an as-needed basis, to 'undertake studies and researches on African problems in the field of human and peoples' rights' and above all 'formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations'[21]. Accordingly, in 2013 the African Commission decided to address this issue by asking its Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa to carry out an in-depth study on the right to nationality in Africa.

In January 2014, the Committee on the Rights of the Child organised a technical consultation meeting on the draft General Comment prepared in keeping with its decision of November 2012. The meeting was convened in Nairobi, Kenya and the African Commission was invited to attend. After two days of intensive discussions, the Committee agreed, with a view to harmonising its views with those of the African Commission on the contents of the right to nationality and States' obligations in that regard, to wait for the finalisation of the African Commission Study on the right to nationality in Africa before definitively adopting its draft General Comment.

1.2 Methodology

Knowing that the success of such a complex undertaking depends to a great extent on the effective involvement of all of the stakeholders concerned by the issue of the right to a nationality, the African Commission sought to obtain the best possible contribution in order to have the most complete data possible. To this end, it convened a meeting of its principal partners following the adoption of Resolution 234, for a consultation meeting in Addis Ababa under the aegis of the African Union Commission and the UNHCR Representation to the African Union, during which the implementation modalities for the study on the right to nationality and especially the contributions of the various actors were thoroughly reviewed.

A working group on statelessness and the right to nationality (hereinafter the WG) was created to facilitate supervision of the study's implementation and assessment of the work by experts on

18 See Report of the African Committee of Experts on the Rights and Welfare of the Child, 12-16 November 2012, Addis Ababa, Ethiopia, ACERWC/RPT (XX), page 13.

19 See Recommendation 8 of the African Union Symposium on Citizenship in Africa: Preventing Statelessness, Preventing Conflicts, Nairobi, Kenya, 22-24 October 2012.

20 Universal Declaration of Human Rights, article 15.

21 African Charter, article 45.

the right to a nationality prior to its review by the African Commission, and especially to ensure the implementation of the recommendations that would be contained in the approved document.

1.2.1 Documentary research and data gathering

The work of the WG essentially consisted of supporting the Special Rapporteur in her research by facilitating:

- an analysis of all of the literature on the right to nationality, focusing on history and international and comparative law on the right to nationality;
- a review of the constitutional and legislative frameworks in force in the States parties to the African Charter;
- an inventory of cases of statelessness on the continent, through a questionnaire sent out to the States parties, affiliated national human rights institutions and civil society organisations having observer status with the African Commission;
- a status review on the registration of births and naturalisations across the continent.

Some fifteen States[22] and certain national human rights institutions[23] and civil society organisations[24] have provided the African Commission with vital information on the existing legal framework, policies and practices on the continent regarding action against statelessness and protection of the right to nationality.

1.2.2 Review of the preliminary study

In a closed meeting during the 54th ordinary session of the African Commission, held in The Gambia in October/November 2013, the Special Rapporteur presented a draft version of the study to her peers and gathered their comments on the general framework of analysis of the issues and the direction she intended to give the work commissioned. A revised document was subsequently presented, in April 2014, to a group of independent experts, legal professionals, researchers and members of civil society in Midrand, South Africa, to gather their comments and suggestions on the study contents and the recommendations to be presented to the members of the African Commission.

An improved version of the document was finally reviewed and adopted by the African Commission during its 55th ordinary session, which took place in Luanda, Angola in April/May 2014. The study is the product of a fruitful joint effort between the African Commission, the States parties to the African Charter, the African Union, the Committee on the Rights of the Child, the HCR and its civil society partners. The recommendations it contains are aimed at bringing practical and legal solutions to the difficulties encountered by millions of Africans in their quest for a better life in their country of origin or residence.

1.3 Historical context

In the late 1990s, African States, realising the fundamental changes taking place in international relations[25], decided to democratise their societies and consolidate their democratic institutions. Since that time, considerable efforts have been made on the continent in terms of ensuring respect for the law, in general, and protection of human rights, in particular.

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22 The respondents include: Algeria, Benin, Chad, Comoros, Cote d'Ivoire, Gabon, The Gambia, Ghana, Guinea, Mauritius, Rwanda, Senegal, South Africa, Uganda and Togo.

23 Namely, the national human rights commissions of Comoros, Chad and Togo.

24 Specifically, human rights organisations of Cote d'Ivoire, The Gambia, Ghana, Guinea, Kenya, Namibia, Uganda, South Africa, Sudan and Tanzania.

25 See notably the Declaration of the Assembly of Heads of State and Government of the Organization of African Unity on the Political and Socio-economic Situation in Africa and the Fundamental Changes Taking Place in the World, AGH/DECL.1 (XXVI), paragraphs 8-10.

The founding of the African Union in 2000, which replaced the Organisation of African Unity (hereinafter the OAU), was a part of that effort. The new organisation was intended to be a Union of 'democratic States respectful of human rights and keen to build equitable societies which have no room for exclusion, racism and discrimination'[26] and whose philosophy was founded on the idea that '[h]umans – of whom fifty per cent are women – must, in all circumstances, be both the actors in and beneficiaries of the structural changes engendered by development; and development should enable humans to accept their identities and conditions, rather than fall victim to them'[27].

From the time its various bodies were set in place, the African Union has strived to enrich African international human rights law by introducing new standards regarding internally displaced persons, democracy, elections and governance, access to essential public services, etc.

Paradoxically, it was when the implementation of these 'shared values'[28] began to push back the borders of indifference to the suffering of victims of human rights violations, or even those of impunity on the continent, that certain African civil society activist groups shed some light on the urgent situation affecting hundreds of thousands, perhaps millions, of Africans whose legal existence is jeopardised by the fact that they are not recognised as nationals of at least one country or are simply stateless. Having no nationality, and more particularly having no proof of one's nationality, has serious consequences for the people concerned, since it deprives them of:

- access to public services;
- the ability to leave their country, or return to it, as they have no travel documents;
- the right to vote or run for election;
- the ability to transfer their nationality to their children or spouse;
- the possibility of registering their children at birth and enrolling them in school, in university, etc.

The reasons why Africans are left without a nationality are numerous and are very often linked to the colonial history of their respective States, to State borders and population migrations on the continent, to structural discrimination in African societies (notably discrimination based on gender and ethnic, racial or religious origin), to difficulties affecting the movements of cross-border and nomadic populations, etc. The refusal to grant nationality to or the withdrawal of nationality from certain communities or personalities has been the root of conflicts that have engendered some of the most serious human rights violations this continent has experienced over the last decade[29], notably in Côte d'Ivoire[30], the Democratic Republic of Congo, Mauritania, Uganda and Zimbabwe.

This scourge persists in many areas of the continent due to the lack of an appropriate legal framework to satisfy the legitimate demands of the victims and put an end to injustice.

Although the right to a nationality was not included in the list of rights protected under the African Charter[31], the African States alluded to the concept of nationality through the adoption

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26 See Africa, Our Common Destiny, Guideline Document by the Commission of the African Union, May 2004, page 22.

27 See Africa, Our Common Destiny, Guideline Document by the Commission of the African Union, May 2004, page 25.

28 The African Union has defined these shared values as the 'norms, principles and practices that have been developed or acquired, which provide the basis for collective actions and solutions in addressing the political, economic and social challenges that impede Africa's integration and development. These values are embedded at the individual, societal, regional, continental and global levels. They are not mutually exclusive and often complement and reinforce each other as individuals and communities interact.' See on this subject *Towards Greater Unity and Integration through Shared Values*, African Union discussion paper, 2010, paragraph 5.

29 Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, April 2009.

30 In the book *Struggles for Citizenship in Africa*, page 17, op. cit., a fighter for the rebel 'new forces' opposing the central government in Côte d'Ivoire explained the civil war in the following terms: 'We needed a war because we needed our identity cards. Without an identity card you are nothing in this country.'

31 Article XXVIII of the Draft African Charter on Human and Peoples' Rights (CAB/LEG/67/1), prepared by the late Judge Kéba Mbaye, provided that 'Every person has the right to a nationality', that 'Every person has the right to the nationality of the State in whose territory he was born if he does not have the right to any other nationality' and that 'No one shall be arbitrarily deprived of his nationality or of the right to change it'.

of provisions referring to the rights of the 'citizen'[32], compared to those of the 'non-national'[33] or the duty of the individual 'to serve his national community'[34], to protect 'the security of the State whose national [...] he is'[35] and to 'preserve and strengthen social and national solidarity'[36]. Notably, the Charter strictly forbade mass expulsion of non-nationals, i.e. 'that which is aimed at national, racial, ethnic or religious groups'[37].

However, when presented with cases involving the right to nationality, the African Commission has shown creativity by interpreting certain provisions of the African Charter in such a way that they prohibited all forms of discrimination (article 2)[38], stated the equality of all individuals before the law (article 3)[39], called for respect of human dignity (article 5)[40], the right to a fair trial (article 7)[41], the right to freedom of movement (article 12)[42], the right to participate in the government of the country (article 13)[43], and the protection of the family and of the rights of the woman and the child (article 18)[44], with a view to making the right implicit in the continental treaty.

Their awareness of the legal void in the African Charter, coupled with the example of the United Nations Convention on the Rights of the Child adopted in 1989, undoubtedly prompted African leaders to include the right of the child to a nationality in the African Charter on the Rights and Welfare of the Child (hereinafter the Charter on the Rights of the Child)[45] in 1999, and to ask the African States 'to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws'[46]. This marked the first step in the continent's determination to escalate the fight against statelessness.

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32 See the African Charter, article 13, paragraphs 1 (Citizens' right to participate freely in the management of public affairs) and 2 (Citizens' right of access to the public service).

33 See the African Charter, article 12, paragraphs 4 and 5.

34 See the African Charter, article 29, paragraph 2.

35 See the African Charter, article 29, paragraph 3.

36 See the African Charter, article 29, paragraph 4.

37 See the African Charter, article 12, paragraph 5.

38 See Communication No. 71/92, *Rencontre Africaine pour la Défense des Droits de l'homme (RADDHO) v. Zambia;* Communication No. 211/98, *Legal Resources Foundation v. Zambia*; Communication No. 212, *Amnesty International (on behalf of William Steven Banda and John Lyson Chinula) v. Zambia*; Communications No. 233/99, and 234, *INTERIGHTS (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia*; Communication No. 249/02, *Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea and Communication*; No. 262/02, *Mouvement ivoirien des droits de l'homme (MIDH) v. Côte d'Ivoire*.

39 See Communication No. 97/93, *John K. Modise v. Botswana*, and Communications Nos. 233/99 and 234, *INTERIGHTS (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia*.

40 See Communication No. 97/93, *John K. Modise v. Botswana*, Communication Nos. 233/99 and 234, *INTERIGHTS (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia*, and Communication No. 212, *Amnesty International (on behalf of William Steven Banda and John Lyson Chinula) v. Zambia.*

41 Communication No. 159/96, *Union Inter Africaine des Droits de l'Homme, Fédération Internationale des Ligues des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Sénégal and Association Malienne des Droits de l'Homme v. Angola*. See Communication No. 97/93, *John K. Modise v. Botswana*; Communications Nos. 233/99 and 234, *INTERIGHTS (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia*; Communication No. 71/92, *Rencontre Africaine pour la Défense des Droits de l'homme (RADDHO) v. Zambia*; Communication No. 211/98, *Legal Resources Foundation v. Zambia*; Communication No. 212, *Amnesty International (on behalf of William Steven Banda and John Lyson Chinula) v. Zambia*; Communication No. 249/02, *Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea*; and Communication No. 262/02, *Mouvement ivoirien des droits de l'homme (MIDH) v. Côte d'Ivoire.*

42 Communication No. 71/92, *Rencontre Africaine pour la Défense des Droits de l'homme (RADDHO) v. Zambia*; Communication No. 159/96, *Union Inter Africaine des Droits de l'Homme, Fédération Internationale des Ligues des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Sénégal and Association Malienne des Droits de l'Homme v. Angola*; Communications Nos. 233/99 and 234, *INTERIGHTS (on behalf of Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia*; and Communication No. 249/02, *Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea*.

43 Communication No. 211/98, *Legal Resources Foundation v. Zambia*.

44 Communication No. 212, *Amnesty International (on behalf of William Steven Banda and John Lyson Chinula) v. Zambia;* Communication No. 71/92, *Rencontre Africaine pour la Défense des Droits de l'homme (RADDHO) v. Zambia*; and Communication No. 159/96, *Union Inter Africaine des Droits de l'Homme, Fédération Internationale des Ligues des Droits de l'Homme, Rencontre Africaine des Droits de l'Homme, Organisation Nationale des Droits de l'Homme au Sénégal and Association Malienne des Droits de l'Homme v. Angola.*

45 See the Charter on the Rights of the Child, article 6, paragraph 3. In the Decision on the communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v. The Government of Kenya in which the African Committee of Experts on the Rights and Welfare of the Child observed that 'article 6(3) does not explicitly read, unlike the right to a name in article 6(1) that 'every child has the right from his birth to acquire nationality'. It only says that 'every child has the right to acquire a nationality' (paragraph 42).

46 See the Charter on the Rights of the Child, article 6, paragraph 4.

This first step led the way for the confirmation, in the Protocol to the African Charter on the Rights of Women in Africa in 2003[47], of the right of women to acquire a nationality and, on marrying, to acquire their husband's nationality[48]. Although the Protocol fails to address other important aspects, such as the right of women to confer their nationality on their spouse and children, it does stipulate that 'a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests'[49].

However, these new provisions have only had a very limited impact on the continent, notably due to the fact that the treaties are not systematically transposed into the national legal systems of the States parties and are not often invoked in national or regional courts by individuals whose rights to nationality are contested or denied. This is particularly worrisome to the extent that the issue of the right to a nationality is growing increasingly complex, in light of long-standing challenges such as:

- the practice of African pastoralism[50], which has always transcended State borders but must now take account of constraints linked to migrations, terrorism, organised crime, insecurity and, above all, climate change[51];
- the borders inherited from the colonial period, as well as adjustments to those borders following rulings of the International Court of Justice (ICJ) (Cameroon and Nigeria, Burkina Faso and Niger, etc.), and the birth of new States (Eritrea and South Sudan) which run the risk of affecting the nationality of millions of Africans;
- the place of the African diaspora, now defined as the sixth region of the continent[52], in African States whose legislation does not address their national status.

The time has therefore come to clarify the terms of the debate on the right to nationality in Africa and seek long-term solutions to the citizenship issues faced by Africans, by carrying out the most thorough analysis possible of African legislation on nationality with a view to identifying the political, legal and even sociological obstacles that need to be overcome to allow millions of Africans to avoid the hardships of statelessness.

It appears that, to better understand the issue of nationality in Africa and find appropriate solutions, it is necessary to identify the elements making up the legal concept of nationality enshrined by the Universal Declaration of Human Rights and reinforced by recent developments in international law, and conduct a thorough review of national legislation in the light of the principles established by international legal theory since the end of the Second World War, the case law of the ICJ, the practice of States, and understanding the history of the concept.

47 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter the Protocol on the Rights of Women).

48 See the Protocol on the Rights of Women, article 6, paragraph (g).

49 See the Protocol on the Rights of Women, article 6, paragraph (h).

50 This practice involves some 260 million Africans according to the African Union (see Department of Rural Economy and Agriculture, Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities, October 2010, page 11.)

51 On these issues, see: Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities, op. cit.

52 See Strategic Plan of the African Union Commission, Volume 1: Vision and Mission of the African Union, May 2004, page 27.

2. Origins of African laws on nationality

'It is said that, in law, to understand what is, one must undoubtedly know what was'[53]. If we apply this tenet to the concept of nationality, then we are compelled to look to its source and study the unfolding of the notion from the time of its initial appearance as a concept of law towards the end of the 18th century[54] in order to understand its true significance in Africa and above all to better grasp the content of African national legislation on the subject.

The etymological root of 'nationality' is derived from the word 'nation', suggesting that nationality is, above all, a political notion reflecting a person's belonging to a nation. But the real nature or meaning of this bond between the person and the State has evolved throughout history and its contents have been extended to also include a legal bond between an individual and the population of a State that further comprises an 'ideological dimension (effective solidarity of interests, reciprocity of rights and duties), an emotional dimension (feelings of solidarity) and a cultural dimension (social bonds)'[55].

Nationality also overlaps with the notion of citizenship[56], and there are considerable shades of meaning differentiating the terms as they are understood in English, in French and in the other official languages of the continent. In particular, the use of the word citizenship has connotations of participation and the exercise of civil and political rights that are not implied in the word nationality[57]. However, contemporary international law uses both expressions interchangeably to describe the legal relationship between an individual and a State. The dearth of research on the subject of nationality in precolonial Africa is a serious handicap to understanding the relationship between Africans and the State structures of the day. However, authors who have studied the different forms of States (Clan or Lineage, Kingdom and Empire[58]) that existed at the time on the continent and the types of community solidarities that were developed between them[59] have suggested that citizenship was understood in a completely different way.

According to Professor Joseph Ki-Zerbo, one of the authors of UNESCO's *General History of Africa* and a leading authority on these issues, at the time, in the absence of a highly centralised State authority, Africans claimed several types of citizenship, each of which had 'its own framework, territory, and management and self-management groups'[60]. The example of the Mandé is very illustrative of the unique nature of citizenship on the continent to the extent that 'all those who belonged to the Kingdom of Mali possessed a sort of Malian citizenship. When people travelled, they were viewed as nationals of Mali. After the last village belonging to Mali, people from elsewhere were thought of as belonging to other entities. Malian nationals were Mandinka. The

53 See Charles Demangeat, *Histoire de la condition civile des étrangers en France dans l'Ancien et le nouveau droit*, Paris, Joubert, 1844, pages 1-2. Unofficial translation.

54 See Michel Verwilghen, *Conflits de nationalités, pluralité et apatridie, Recueil des Cours de l'Académie de droit international de La Haye*, 1999, Tome 277, Martinus Nijhoff Publishers 2000, pages 48 et seq.

55 See Mr Claude Goasguen, *Rapport d'information No. 3605 sur le droit de la nationalité en France*, Assemblée nationale française, 29 June 2011, page 142. Unofficial translation.

56 See Jean Salmon, *Dictionnaire de droit international*, Éditions Bruylant, Bruxelles, 2001, page 175 where it is stated that the term citizenship is 'synonymous with nationality'.

57 See Pierre François Gonidec, 'La nationalité dans les États de la Communauté et dans les États marginaux', in *Annuaire Français de Droit International* (AFDI), Volume 7, 1961, pages 814-835.

58 See, on this subject, Djibril Tamsir Niane, 'Introduction' in *General History of Africa, IV, Africa from the Twelfth to the Sixteenth Century*, UNESCO/NEA, 1985, page 33.

59 See, on this subject, Joseph Ki-Zerbo, 'La solidarité au sein du monde noir' in *Regards sur la société africaine*, Panafrika, Silex/Nouvelles du Sud, 2008, pages 153-168.

60 On this subject, see Joseph Ki-Zerbo, *À quand l'Afrique : entretien avec René Holenstein*, Éditions de l'Aube, 2003, page 79. Unofficial translation.

term designated both people from Mandinka land and nationals of the Empire of Mali. **Everywhere in Africa, references to extended families, villages, neighbourhoods, and cantons [were] highly significant'**.[61]

Furthermore, it seems that, despite the frictions that may have existed between them, African peoples were most often 'in a state of osmosis and symbiotic exchanges, in terms of social uses, languages, dances, ideologies, religions'. This inter-ethnic solidarity, of which 'joking relationships' represented one of the most highly perfected forms, explains why foreigners were always granted special protection in many precolonial States[62].

Colonisation, with its laws and practices, changed the situation and imposed a new philosophy of nationality whose roots were fundamentally Western.

In the Common Law countries, nationality as a concept of law developed from the concept of allegiance, whose origins can be traced back to feudal[63] England. It consisted of an obligation of loyalty and obedience owed by a vassal to his liege lord in exchange for the protection afforded by the latter. When the king became the feudal lord, all of the population in the kingdom, including aliens, were placed under his protection and became 'subjects' of the crown (**British Subjects**). No one could escape this unique allegiance[64].

However, for the system of allegiance to work as intended, it had to be real, i.e. effective within the boundaries of the kingdom, personal[65], in the sense that allegiance was owed to the person of the king rather than to the crown, and perpetual, because the bond could not be broken or suspended.

This doctrine was subsequently extended to the British territories acquired through colonial conquest. Individuals born in those territories known as 'crown colonies'[66], became British subjects, whatever the status of their parents, because all subjects owed a 'natural' allegiance to His Majesty in return for the protection he granted them. This rule was maintained for the 'colonies' that became independent 'dominions'[67].

However, most British territories in Africa were 'protectorates', i.e. foreign territories under the protection of the British Crown. Here, the system of 'indirect rule' was applied and the people had the status of 'British protected persons', which granted them certain rights in Great Britain, although those rights were inferior to those of British subjects.

During this early period, there were two procedures whereby a non-national by birth could become a British subject:

- naturalisation, which required a decision of Parliament and allowed the beneficiary to enjoy all rights except for political rights;
- 'denization', granted by the crown, allowed the beneficiary to enjoy all of the rights of British subjects, excepting political rights.

In 1870, legislation introduced the concept of renouncing British citizenship and provided, for the first time, for the possibility that a British woman married to a non-national might lose her nationality. However, the rules relating to nationality were based more on Common Law and the principles of Case Law as opposed to any form of legislation.

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61 Joseph Ki-Zerbo, op. cit. Our emphasis.

62 On the protection of non-nationals, see Énoncé 24 of the Charte de Kurukan Fuga, which states: 'in Mandé never do harm to foreigners' in Celhto, *La Charte de Kurukan Fuga, Aux sources d'une pensée politique en Afrique*, L'Harmattan, 2008, page 51.

63 See Clive Parry, *British Nationality*, London, Stevens and Sons, 1951, page 7, quoted by Michel Verwilghen, *Conflits de nationalités, pluralité et apatridie*, op cit. page 50: 'For at Common Law, the basis of nationality was permanent allegiance to the Crown.'

64 *Fransman's British Nationality Law*, Third Edition, Bloomsbury Professional, 2011.

65 This principle allowed for a few exceptions applying to royal princes born abroad, children born abroad to fathers in military service to the king, children born on ships bearing British flags and children born to English subjects having fled the country during an epidemic.

66 Including most of Kenya and Southern Rhodesia, as well as Gambia, Lagos, the Gold Coast and Freetown.

67 In Africa, this applied only to South Africa.

The British Nationality and Status of Aliens Act of 1914 confirmed the principle of the acquisition of nationality by:

- birth[68];
- naturalisation;
- marriage to a British national.

Conversely, nationality could also be lost, in the event of renunciation, acquisition of another nationality, women's marriage to a non-national, or loss of the nationality by one's parents.

In 1948, comprehensive legislation was adopted for the first time following a decision by one of the territories, namely Canada, to establish its own law on nationality. Henceforth, the status of British subject was replaced by the status of 'Citizen of the United Kingdom and Colonies' and the right to nationality was fully codified for the first time. Thus, British nationality was acquired:

- upon birth in the territory of the United Kingdom or one of its colonies;
- through naturalisation;
- through birth, abroad, to a father who was a British citizen;
- through marriage.

One of the consequences of the British Nationality Act of 1948[69] was the creation of a sort of common citizenship, that is, citizenship in the Commonwealth, which could be seen as the sum of British citizenship and citizenship of the former British Crown colonies[70] and whose 'chief benefit was to grant nationals of member States residing in another Commonwealth country a different status from that of aliens'[71].

In civil law countries, such as France, nationality was also used, under the absolute monarchy, to define one's relationship to royalty and the king. During this period, the French were 'régnicole', an old French term meaning that they 'were born and lived in the kingdom and recognised the sovereignty of the king by recognising themselves as his subjects'[72].

Beginning in the 17th century, French nationality could be independently transmitted to an individual through descent, although birth on French soil remained the dominant criterion for the granting of French nationality. Unlike children born on the territory of the kingdom to non-national parents, children of French parents born abroad were obliged to request a *lettre de naturalité* from the king to confirm their nationality on returning to the territory of the kingdom.

The French Revolution of 1789 harmonised the criteria for granting nationality, opened it up to foreigners (Jews and people of colour) and slaves, and created the concept of the 'citizen'. This introduced a new conception of nationality whereby all individuals who agreed to obey the rules set forth by the laws of the country and, above all, its Constitution, were considered citizens and therefore nationals. Under this system, nationality and citizenship were indistinguishable.

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68 See British Nationality and Status of Aliens Acts, 1914 to 1933, 4 and 5 Geo 5, c .17. Part I(1)(a).

69 Notably in article 1, which provided that 'Every person who under this Act is a citizen of the British United Kingdom and Colonies or who under any enactment for nationality the time being in force in any country mentioned in subsection (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject'.

70 The latter remained free to determine to what extent the citizens of the Commonwealth enjoyed the rights and privileges granted their own nationals.

71 See Pierre François Gonidec, 'Note sur la nationalité et les citoyennetés dans la Communauté', in *Annuaire Français de Droit International*, Volume 5, 1959, page 756. Unofficial translation.

72 See Patrick Weil, *Mission d'Étude des législations de la nationalité et de l'immigration : des conditions d'application du principe du droit du sol pour l'attribution de nationalité française*, La Documentation française, 1997, page 3. Unofficial translation.

The Napoleonic Code (French civil code of 1803) distinguished citizenship from the fact of being French: 'The exercise of civil rights is independent of the quality of citizenship, which is only acquired and preserved in conformity with constitutional law. Every Frenchman shall enjoy civil rights'[73]. Descent remained the principle means by which nationality was transmitted.

The distinction between nationality and citizenship was enshrined in colonial law. From 1865[74] to 1946[75], all colonised peoples, with the notable exception of the Senegalese people of the Four Communes, were treated as 'subjects': deprived of fundamental democratic rights and freedoms and subjected to discriminatory and repressive provisions.

'Natives' ('*indigènes*' in French) were French nationals but not citizens unless they acquired citizenship through very exceptional circumstances. They were not subject to the French civil code but rather to local law (either Muslim or customary). They had no political rights but could be subjected to various obligations, notably including military service[76].

The French law of 26 June 1889 introduced significant innovations:

- it established birth on French territory as the fundamental criterion for granting French nationality;
- individuals born in France to non-nationals born in France were French by descent;
- individuals born in France to non-national parents born outside of France became French on condition that they legally resided in France on reaching the age of majority[77].

At the end of the Second World War, when everything seemed to indicate that the country was moving towards the realisation of equal rights for 'natives' and 'citizens', France persisted in its legal particularism according to which it was 'assimilationist and striving for unity'[78] notably through the distinction between the *Départements et Territoires d'outre-mer* (Overseas Departments and Territories). While the Constitution of 1946 provided that 'all inhabitants of the Overseas Territories were granted French citizenship'[79], the Nationality Code of 19 October 1945 was declared applicable only to the inhabitants of the Overseas Departments. This anomaly was only corrected by a decree on 24 February 1953 that made 'the Code of 1945 the Charter of French Nationality in the Overseas Territories'[80].

The French Constitution of 4 October 1958 finally grouped together the Overseas Departments and Territories[81] as defined by the Reform Act (*Loi-cadre*) of 23 June 1956 and its implementing instruments to form a 'Community'[82] within which they enjoyed a degree of autonomy that allowed them to conduct their own administration and freely and democratically manage their own affairs. Article 77 of the Constitution took care to stipulate that 'there is in the Community only one citizenship' namely French citizenship, and that 'all citizens are equal before the law, whatever their origin, race or religion'.

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73 See the Napoleonic Code, title 1, chapter 1, article 7. (English translation: http://www.napoleon-series.org/research/government/c_code.html)

74 Date of enactment of the Sénatus-Consulte on Algeria, which laid down the principle of the existence of French people and natives on Algerian territory.

75 Creation of the French Union.

76 See Christian Bruschi, La nationalité dans le droit colonial, *Cahiers d'analyse politique et juridique*, No. 18, 1987, page 29 et seq.

77 See Christian Bruschi, La citoyenneté et la nationalité dans l'histoire, *Écarts d'Identité*, No. 75, page 2 et seq.

78 See Pierre François Gonidec, 'L'évolution de la notion de citoyenneté dans la Communauté des nations britanniques', in *La Revue juridique et politique de l'Union française*, Tome 1, 1947, LGDJ, page 391. Unofficial translation.

79 Article 80 of the French Constitution of 1946. The overseas territories included the French territories in West Africa, Equatorial Africa and Madagascar, the French Somaliland and the Comoros Islands. Unofficial translation.

80 See Pierre François Gonidec, 'Note sur la nationalité et les citoyens de la Communauté', in *Annuaire Français de Droit International*, Volume 5, page 748. Unofficial translation.

81 With the notable exception of the territory of Guinea which became independent at the outcome of the Referendum of 28 September 1958 on the French Constitution of 1958.

82 See Title 12 of the French Constitution of 1958 on 'The Community'. English translation of quotations taken from the following site: http://en.wikisource.org/wiki/Constitution_of_the_Fifth_French_Republic#Title_XII:_The_Community.

However, Community citizenship was soon abandoned with the decision by the French authorities to authorise the trust territories, placed under French jurisdiction by the League of Nations and subsequently the United Nations, to legislate on nationality[83] before they attained international sovereignty and the will of the other member States to become sovereign States and therefore able to determine the conditions for acquiring their nationality.

This historical background on the concept of nationality can help shed light on the legal problems that arose when African States replaced the colonial authorities in determining the content of national laws on the issue.

83 This was the case in Togo with the Order of 30 December 1958 and in Cameroon with the Order of 29 November 1959.

3. Legal definition of nationality

To this day, there is no universally agreed-upon definition of nationality. However, it is possible, based on a combined analysis of the history of the concept, legal theory, court decisions and the rare conventional instruments that have been adopted on the issue, to bring together the elements required to delineate the legal concept of nationality.

The first obvious fact is that the concept of nationality is consubstantial with the concept of the State. The existence of a nationality presupposes the existence of a sovereign State. On this point, international law and legal theory are unanimous, since the former defines nationality as the 'legal bond between a person and a State'[84], while the latter analyses it either as 'the fact that an individual legally belongs to the population making up a State'[85], 'a political bond whereby an individual is part of a State' or the 'fundamental legal bond between an individual and a State giving rise to reciprocal rights and duties'[86].

International case law defines nationality as a 'legal bond based on a social fact of attachment, a genuine connection of existence, interests and feeling, together with mutual rights and duties' and as 'the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State'[87].

Although this court-issued definition needs to be placed in context, notably in light of the specific question that had been put to the Court by one of the parties[88], it remains that, where nationality is concerned, the relationship between the individual and the State must be effective: the individual must enjoy all the rights and be bound by the obligations which the State's legislation grants to or imposes on its citizens[89]. The State is also bound to create the conditions for free exercise of those rights and above all to guarantee full protection for its nationals, since the legal effects that are indispensable for the exercise of the right of nationality apply within its territory, such as the right to hold public office or to access health or education services.

It has even been said that the nationality was only of 'legal interest due to the existence of differences between nationals and foreigners'[90]; based on that affirmation, a distinction has been made between nationality of origin, which would have 'total effectiveness, as long as this is not contradicted by another nationality' and naturalisation, which may be contested 'on grounds of fraud or abuse of law and may even be subject to extinguishment for various reasons'[91].

In any case, States are bound to protect their nationals in two ways:

- through aid and assistance provided by diplomatic and consular officials for nationals exercising their legitimate rights or activities abroad;

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84 See the European Convention on Nationality, article 2, Strasbourg, 6.XI.1997. Council of Europe, European Treaty Series No. 166.

85 See Henri Batiffol, *Traité élémentaire de Droit international privé*, 2e Édition, No. 60.

86 See James Fox, *Dictionary of international and comparative law*, Oceana Publications, 1992, page 297.

87 See ICJ, *Nottebohm Case (Liechtenstein v. Guatemala)*, Judgment of 6 April 1955, page 20.

88 Guatemala had asked the Court to specify the conditions under which naturalisation granted by a State in application of its own legislation could be internationally binding.

89 See ICJ, *Nottebohm Case (Liechtenstein v. Guatemala)*, Judgment of 6 April 1955, page 20.

90 See Paul Lagarde, 'La nationalité', in Denis Alland and Stéphane Rials, *Dictionnaire de la culture juridique*, Presses Universitaires de France, Paris, 2003, page 1052.

91 See F de Castro, 'La nationalité, la double nationalité et la supra-nationalité,' in *Recueil des Cours de l'Académie du droit international*, 1961, page 583.

- by filing appeals to call for damages and interest from the State, should it fail to uphold its obligations towards these persons, in keeping with international law[92].

In both cases, the State, by intervening, 'upholds its own rights and not those of its national; it does not represent the latter'[93].

There is a broader vision of nationality put forward by the proponents of a purposive approach that calls for a legal recognition of effective social bonds between a State and an individual who could even be a non-national. According to that approach, nationality is only the legal expression or legal translation of a social fact[94].

In international law, the arguments for legal recognition of acquired rights based on connections to a state have been partly recognised by the United Nations Human Rights Committee (hereinafter HRC), which, reviewing the matter of freedom of movement and the right of the individual to return to his or her own country, considered that 'the concept "his own country" is not limited to nationality in a formal sense, that is, nationality acquired on birth or by conferral, it embraces, at the very least, an individual who, because of his special ties to or claims in relation to a given country cannot there be considered to be a mere alien'[95].

These challenges of the contents of the right to nationality, based on human rights, were subsequently confirmed but also modified by international law.

92 See ICJ, *Amadou Sadioi Diallo Case (Republic of Guinea v. Democratic Republic of the Congo*), Judgment of 19 June 2012.

93 Jean Salmon, *La protection diplomatique*, Bruxelles, Bruylant, 1994, page 105, No. 154.

94 See Professeur Basdevant in *Revue de Droit International Privé*, 1909, page 61. Unofficial translation.

95 See General Comment No. 27: Article 12 (Freedom of Movement), U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999).

4. Nationality and the limitations of State sovereignty

Up until the early 20th century, it was generally agreed that determining the rules relating to nationality was the exclusive purview of the State, and international law allowed each national legal order to define its legal arrangements regarding nationality[96]. National law established criteria for granting, losing or recovering nationality, and determined the proof to be provided in cases where nationality was contested, and in nationality disputes.

The discretionary power of the State in determining proceedings and practices relating to nationality was reaffirmed by the International Court of Justice (ICJ) in the *Nottebohm Case* when it stipulated that '[i]t is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation. [...] nationality is within the domestic jurisdiction of the State'[97].

However, it has been deduced from that principle that, while a State could not intervene in proceedings to determine the nationals of another State, its laws on nationality must take the laws of other States into consideration, if only, to take one example, to deal with matters of dual citizenship and statelessness. In practice, this already constitutes a limitation of exclusive jurisdiction over the determination of nationality.

In two advisory opinions[98] handed down in 1923, the Permanent Court of International Justice (hereinafter known as the PCIJ) also laid down the principle that laws on nationality must comply with treaties, stipulating that 'though, generally speaking, it is true that a sovereign State has the right to decide what persons shall be regarded as its nationals, it is no less true that this principle is applicable only subject to the Treaty obligations (of said State)'[99].

The Hague Convention of 1930 adopted this condition and added two others: customary international law and generally recognised principles of law with regard to nationality – which were very rare at that time[100].

Since then, international law has evolved, recognising the individual right to nationality in a two-stage process:

- The first phase, which extended from the end of World War II to the early 1970s, can be regarded as a period of advocacy by the United Nations Organization (hereinafter the UN) for an international right to nationality, which was materialised through the drafting, under its aegis, of a great number of treaties containing principles on nationality.
- The second phase was when the States began to undertake to follow in the footsteps of the UN, and it was marked by the adoption of a large number of binding regional instruments on nationality.

96 See article one of the Convention on Certain Questions relating to the Conflict of Nationality Laws, which provides that 'It is for each State to determine under its own law who are its nationals'.

97 See ICJ, *Nottebohm Case (Liechtenstein v. Guatemala)*, Judgment of 6 April 1955, page 20.

98 See PCIJ, Advisory opinion of 7 February 1923 on Nationality Decrees Issued in Tunis and Morocco (French Zone), Rec. Series B, No. 4 and Advisory opinion of 15 September 1923 on the Acquisition of Polish Nationality. Series B, No. 7.

99 See PCIJ, Advisory opinion of 15 September 1923 on the Acquisition of Polish Nationality. Series B, No. 7, page 16.

100 See article one of the Convention on Certain Questions relating to the Conflict of Nationality Laws, signed at The Hague, on 12 April 1930.

4.1 The decisive role of the United Nations

At the end of the Second World War, it became obvious that nationality, as a fundamental human right, was important for the quality of life of a person because without it, it was not possible to:

- reside permanently in a country and to return to it from abroad;
- be protected within and outside the State and from it;
- exercise civil, political, social and economic rights[101].

As the 'right to have rights'[102], the right to a nationality was therefore seen as 'an instrument of empowerment as well as of protection and [...] a key determinant of the well-being of an individual'[103]. This explains why the United Nations General Assembly (hereinafter known as UNGA) in adopting the Universal Declaration of Human Rights (hereinafter the Universal Declaration) in December 1948, solemnly proclaimed that 'Everyone has the right to a nationality' and 'No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'[104].

The Universal Declaration established the right to a nationality as an inherent human right and proscribed the idea of perpetual 'allegiance' by an individual to a State by granting individuals the right to change their nationality. It also placed limitations on States' sovereign power to withdraw nationality, by stating that such proceedings should not be 'arbitrary', in the sense that it is not 'founded on any legal or logical criteria and defies foreseeability'[105].

In November 1959, the UNGA adopted a Declaration of the Rights of the Child in which the United Nations member States agreed for the first time on the principle that one's nationality of origin is a basic human right, proclaiming that 'The child shall be entitled from his birth to a name and a nationality'[106].

These proclamations paved the way for the adoption, under the aegis of the United Nations, of a series of legal instruments recognising that nationality, as an element of individual identity, was a fundamental human right that States had an obligation to uphold and protect:

- the 1954 Convention relating to the Status of Stateless Persons, which bound States parties to facilitate the assimilation and naturalisation of stateless persons to the fullest extent possible[107];
- the 1957 Convention on the Nationality of Married Women, according to which 'neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife'[108];
- the 1961 Convention on the Reduction of Statelessness, which provided for measures to be undertaken by States to prevent and reduce statelessness. The Contracting States undertook to grant their nationality to any person born in their territory 'who

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101 See also paragraph 51 of the General Recommendation No. 32 on Gender-related dimensions of refugee status, asylum, nationality and statelessness of women.

102 Hanna Arendt in *The origin of totalitarianism*, Andre Deutsch, 1986, cited by Constantin Sokoloff in 'Denial of citizenship: a challenge to human security' prepared for the Advisory Board on Human Security (February 2005), page 5.

103 Constantin Sokoloff in 'Denial of citizenship: a challenge to human security', prepared for the Advisory Board on Human Security (February 2005), page 5.

104 See the Universal Declaration, article 15. Article 2 of the Declaration stipulates that the rights and freedoms it sets forth are to be enjoyed and exercised 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

105 Based on the definition of the word 'arbitrary' (in French) in the *Dictionnaire de droit international public*, edited by Jean Salmon, Éditions Bruylant, Bruxelles, 2001, page 78. See also paragraph 12 of General Comment No. 35 of the Human Rights Committee (HRC), which states that 'the notion of 'arbitrariness is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law.'

106 See the Declaration of the Rights of the Child, Principle 3, 20 November 1959.

107 See the Convention relating to the Status of Stateless Persons, article 32.

108 See the Convention on the Nationality of Married Women, article 1.

would otherwise be stateless'[109] and not to deprive a person of their nationality if such deprivation would render him stateless (except in a few exceptional circumstances)[110];

- the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, which obliged the States parties to 'prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of [...] the right to nationality'[111];
- the 1966 International Covenant on Civil and Political Rights, in which article 24, paragraph 3 provides that 'Every child has the right to acquire a nationality';
- the 1979 Convention on the Elimination of All Forms of Discrimination against Women, in which the States parties undertook to grant 'women equal rights with men to acquire, change or retain their nationality', 'with respect to the nationality of their children'[112] and to ensure that 'neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband'[113];
- the 1989 Convention on the Rights of the Child, in which the States parties recognise that the child must be registered at birth and has the right from birth 'to acquire a nationality', and undertake to 'preserve his or her identity, including nationality'[114];
- the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which recognises that each child of a migrant worker shall have 'the right to a name, to registration of birth and to a nationality'[115]; and
- the 2006 Convention on the Rights of Persons with Disabilities, which recognised the right of persons with disabilities 'to a nationality'[116], to acquire or change a nationality, and not to be deprived thereof arbitrarily or due to their handicap[117].

Even if only a few African countries are parties to the international treaties on statelessness[118], almost all of them are parties to other key treaties, including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights[119].

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109 See the Convention on the Reduction of Statelessness, article 1.

110 See the Convention on the Reduction of Statelessness, article 8, paragraph 1.

111 See the International Convention on the Elimination of All Forms of Racial Discrimination, article 5, paragraph (d)(ii).

112 See the Convention on the Elimination of All Forms of Discrimination against Women, article 9, paragraph 2.

113 See the Convention on the Elimination of All Forms of Discrimination against Women, article 9, paragraph 1.

114 See the Convention on the Rights of the Child, article 7, paragraph 1.

115 See the International Convention on the Protection of the Rights of All Migrant Workers, article 29.

116 See the Convention on the Rights of Persons with Disabilities, article 18, paragraph 1.

117 See the Convention on the Rights of Persons with Disabilities, article 18, paragraph 1(b).

118 Only 18 States are parties to the 1954 Convention relating to the Status of Stateless Persons (Algeria, Benin, Botswana, Burkina Faso, Chad, Cote d'Ivoire, Guinea, Lesotho, Liberia, Libya, Malawi, Nigeria, Rwanda, Senegal, Swaziland, Tunisia, Zambia and Zimbabwe) and twelve (12) to the 1961 Convention on the Reduction of Statelessness (Benin, Chad, Cote d'Ivoire, Lesotho, Liberia, Libya, Niger, Nigeria, Rwanda, Senegal, Swaziland and Tunisia).

119 Somalia and the Sahrawi Arab Democratic Republic are the only African countries that are not parties to the Convention on the Rights of the Child, while the Comoros, the Sahrawi Arab Democratic Republic and Sao Tomé and Principe are the only States that have not acceded to the International Covenant on Civil and Political Rights. The Sahrawi Arab Democratic Republic, Somalia, Sudan and South Sudan are not parties to CEDAW. On the other hand, only the following countries have acceded to the Convention on the Reduction of Statelessness: Benin, Chad, Lesotho, Liberia, Libya, Niger, Nigeria, Rwanda, Senegal and Tunisia. Furthermore, the Central African Republic, the Democratic Republic of the Congo (DRC), the Sahrawi Arab Democratic Republic, Somalia, Sao Tomé and Principe, South Sudan and Tunisia are not parties to the African Charter on the Rights of the Child, while Algeria, Botswana, Burundi, Central Africa, Egypt, Ethiopia, Eritrea, Madagascar, Mauritius, Niger, the Sahrawi Arab Democratic Republic, Sierra Leone, Somalia, Sao Tomé and Principe, Sudan, South Sudan and Tunisia have not ratified the Protocol on the Rights of Women. Tunisia has formulated reservations on the Convention on the Reduction of Statelessness and CEDAW, stating, in relation to the former, that it did not consider itself bound by 'the provisions of article 11 on the establishment of a body in charge of providing assistance in presenting claims to the appropriate authorities or by article 14 which provides that the International Court of Justice is competent to rule on disputes arising from the interpretation or application of the Convention' and stating, with regard to article 9, paragraph 2 of CEDAW, that it should not contravene the provisions of Chapter 6 of the Tunisian code on nationality.

4.2 Contribution of other regional systems

4.2.1 The Americas[120]

On the American continent, the 1969 American Convention on Human Rights adopted the principles set forth by the Universal Declaration on Nationality[121] and added the principle of the prohibition of statelessness[122].

Based on this legal mechanism, the Inter-American Court of Human Rights was able to state that:

1. the right to a nationality is a fundamental human right and is non-derogable by the States[123];
2. its importance is linked to the fact that 'it allows the individual to acquire and exercise rights and obligations inherent in membership in a political community. As such, nationality is a requirement for the exercise of specific rights';
3. the States are obliged to respect and ensure the implementation of the principle of the right to equal protection and non-discrimination, irrespective of a person's migratory status on their territory or their regular or irregular residence, nationality, race, gender or any other cause[124];
4. contemporary developments indicate that 'international law does impose certain limits on the broad powers enjoyed by the States in (the) area (of nationality), and that the manners in which States regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights'[125];
5. the States are bound to avoid having practices or legislations on the acquisition of nationality whose application could increase the number of stateless persons. The Court even stipulates that 'this condition arises from the lack of a nationality, when an individual doesn't qualify to receive this under the State's laws, owing to arbitrary deprivation of the granting of a nationality that, in actual fact, is not effective'[126].

These interpretations of article 20 of the Inter-American Convention allowed the Court to considerably restrict the powers of the States in the area of naturalisation[127] and withdrawal of nationality[128] and above all to redefine nationality as 'the **political and legal** bond that links a person to a given state'[129], thereby confirming that nationality cannot be examined solely from the vantage point of the interests of the State. It also entails rights and legal protection of individuals that must be upheld by the State.

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120 The African Commission is truly grateful to the Inter-American Commission on Human Rights through the person of its Secretary General, Mr Emilio Alvarez, for the information on its jurisprudence and other legal documents of the regional system pertaining to the right to a nationality.

121 Namely the right of every individual to a nationality and the right of the individual to change his or her nationality and not to be arbitrarily deprived thereof.

122 See the American Convention on Human Rights, article 20.

123 See the Inter-American Court of Human Rights (IACHR), Judgment of 8 September 2005, *The Yean and Bosico Children v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R., (Preliminary objections and possible merits, reparations and costs), Series C, No. 130 paragraph 136.

124 See the Inter-American Court of Human Rights (IACHR), Judgment of 8 September 2005, *The Yean and Bosico Children v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R., (Preliminary objections and possible merits, reparations and costs), Series C, No. 130 paragraph 155.

125 See the Inter-American Court of Human Rights (IACHR), Advisory opinion of 19 January 1984, *Propuesta de Modificacioa la Constitucion Politica de Costa Rica Relacionada con la Naturalizacion*, OC-4/84, Series A, No. 4. [http://www1.umn.edu/humanrts/iachr/b_11_4d.htm]

126 See the Inter-American Court of Human Rights (IACHR), Judgment of 8 September 2005, *The Yean and Bosico Children v. Dominican Republic*, Judgment of September 8, 2005, Inter-Am Ct. H.R., (Preliminary objections and possible merits, reparations and costs), Series C, No. 130 paragraph 142.

127 See IACHR, Advisory opinion of 19 January 1984, *Propuesta de Modificacioa la Constitucion Politica de Costa Rica Relacionada con la Naturalizacion,* OC-4/84, Series A, No 4.

128 See IACHR, Judgment of 6 February 2001, *Ivcher Bronstein v. Peru,* Judgment on the Merits, Series C, No. 74, paragraph 95.

129 See IACHR, Judgment of 30 May 1999, *Castillo Petruzzi v. Peru,* Judgment on the Merits, Series C, No. 52, paragraph 99. Our emphasis.

4.2.2 Europe

The adoption by the Council of Europe[130] of a treaty entirely focusing on the right to nationality – the European Convention on Nationality (1990) – made the continent a role model in this area. The instrument lays down the following essential principles:

- the individual right to a nationality;
- prohibition of statelessness;
- forbidding of arbitrary deprivation of nationality;
- marriage has no 'automatic' effect on the nationality of the other spouse.

In 2006 its Member States adopted the first binding international treaty on nationality in the context of state succession, which provided, inter alia, that 'Everyone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned' and that States 'shall take all appropriate measures to prevent persons who, at the time of the State succession, had the nationality of the predecessor State, from becoming stateless as a result of the succession'[131].

Two years later, the Member States of the European Union (EU) introduced the notion of European Union citizenship[132] in the Maastricht Treaty[133]. While the recognition and grant of nationality remains the prerogative of the Member States, some common political rights are strengthened among countries within the EU[134].

EU citizenship is granted to '[e]very national of a Member State [and …] shall be additional to and not replace national citizenship'[135]. EU citizenship[136] entails a certain number of rights, notably:

- the right to free movement and residence within the territory of the member States[137];
- the right to vote and run in the municipal elections of the State of residence[138];
- the right to vote and run in European Parliament elections[139];
- the right to petition the European Parliament[140];
- the right to refer matters to the European Ombudsman[141];
- the right to diplomatic protection by the all of the Member States of the European Union outside of the Community territory[142].

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130 The Council of Europe is an intergovernmental organisation with 47 member States (not to be confused with the European Union institutions).

131 Council of Europe Convention on the avoidance of statelessness in relation to State succession, 2006, articles 2 and 3.

132 The Treaty on European Union, article 8. See the presentation on Citizenship of the European Union at the EUR-Lex website on European Union law, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1414605186206&uri=URISERV:a12000, accessed 30 October 2014.

133 The Treaty on European Union of 7 February 1992.

134 The Treaty on European Union, article 8B.

135 See the Treaty on European Union, article 9.

136 For a general analysis of European Union citizenship, see Élisa Perez Vera, 'Citoyenneté de l'Union européenne, nationalité et conditions des étrangers,' in *Recueil des Cours de l'Académie du droit international de la Haye*, 1996.

137 See the Treaty on the Functioning of the European Union (Treaty of Lisbon), article 20, paragraph 2(a) and article 21, paragraph 1.

138 See the Treaty on the Functioning of the European Union (Treaty of Lisbon), article 20, paragraph 2(b).

139 See the Treaty on the Functioning of the European Union (Treaty of Lisbon), article 22.

140 See the Treaty on the Functioning of the European Union (Treaty of Lisbon), articles 24 and 227.

141 See the Treaty on the Functioning of the European Union (Treaty of Lisbon), articles 24 and 228.

142 See the Treaty on the Functioning of the European Union (Treaty of Lisbon), article 20, paragraph 2(c).

EU citizens may also bring matters before the European Union Court of Justice whenever they feel that their rights are not respected by the Member States or institutions of the Community[143].

Through the wide range of rights it promotes, European citizenship has gradually modified the perceptions that Europeans have of themselves and their integration 'by forcing them to reinterpret the idea of the community in the light of the principles of openness and equal treatment embodied in European law'[144].

4.2.3 Arab States

In 2008, the Arab countries revised the Arab Charter on Human Rights of 1994 to include the right of every person to a nationality and not to be arbitrarily deprived thereof, as well as the obligation of the States parties to adopt legislation on nationality and enable children to acquire their mother's nationality and to change nationality[145].

4.3 Implications for Africa

Finally, we can recall that all of the instruments mentioned here enshrine the principle of non-discrimination which demands that the States parties respect the right to a nationality and guarantee its enjoyment by all with no distinction, notably of race, sex, language, religion, political or other opinion, national or social origin, fortune, birth or any other status[146].

The international community has made considerable efforts to fill the normative void in the area of nationality, although progress still remains to be achieved to effectively deal with statelessness around the world, and the right to a nationality is now virtually a universal legal given.

It remains that in Africa, as a thorough review of national laws and practices will show, there is still a long way to go for the continent to join the concert of nations that recognise the existence of a universal right to nationality.

143 See, for instance, the Judgment of the Court of Justice (Grand Chamber) of 2 March 2010, *Janko Rottmann vs. Freistaat Bayern*, in which the Court points out that 'citizenship of the Union is intended to be the fundamental status of nationals of the Member States' (paragraph 43) and that, when the withdrawal of naturalisation results in the person concerned losing not only their citizenship in the Member State in which they were naturalised, but also their citizenship in the European Union, 'it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law' (paragraph 55).

144 See Paul Magnette, *Le régime politique de l'Union européenne*, Second edition, Les presses de Science-Po, page 279.

145 See article 29 of the Arab Charter on Human Rights adopted in May 2004 and entered into force on 15 March 2008. Algeria and Libya are parties to the treaty.

146 See notably article 2 of the UDHR, article 2 of the ICCPR, article 5 of the CERD, article 2 of the CRC, etc.

5. Nationality and African States' laws and practices

5.1 Transition to independence

All of the States parties to the African Charter were created from former colonial territories, or had their borders established by neighbouring colonial powers, and faced challenges in determining who would make up the human capital of their States. For those countries that had not previously held international sovereignty, nationality at the time of independence was complicated by the common colonial nationality shared by the residents of what were now separate States as well as the 'lack of [their] own nationality prior to colonial annexation'[147]. Each State was obliged, on achieving international sovereignty, to enact national laws clarifying and determining these rules.

These rules were important because of the large scale migration that had occurred during the colonial period, so that the former colonies, especially those that had been a regional administrative or economic centre, were now made up of very mixed populations, including those 'native' to the place, as well as those who had migrated from what were now separate States, nationals of the former colonial power and people who, although they had ties with the territory, had a nationality distinct from that of the colonising power. In practice, the transitional rules at independence granted nationality automatically to some people, and created rights to opt for others, but omitted to create a right to nationality for some categories of people altogether.

While the United Kingdom and its former colonies agreed on more or less uniform rules in the Constitutions negotiated at 'Lancaster House', France, Belgium and, to a lesser extent, Portugal, preferred not to sign bilateral treaties on nationality with the leaders of their former colonial possessions and therefore completely ignored the problems arising from the conflict of laws on nationality arising from the succession of States.

In the former British protectorates and those colonies that had not become self-governing (i.e. South Africa and Rhodesia), the standard terms included in the independence constitutions were that all those born in the territory of one parent also born there became nationals of the new State automatically, by operation of law. Those born outside the territory of a father who acquired citizenship by the first principle were also nationals. Those born in the territory without a parent born there, but who were habitually resident, could apply to obtain nationality through a non-discretionary process known as registration.

In the francophone countries, however, there was a gap (sometimes substantial) between the end of French sovereignty (and the French nationality of the residents of those territories) and the adoption of new nationality codes[148]. The gap made it difficult to develop new nationalities and explains why many States took time to put in place their first legislation[149] on nationality. Although based on some common legal concepts borrowed from the former colonial power, criteria

147 See Jean de Burlet, *La nationalité des personnes physiques et la colonisation : essai de contribution à la théorie de la succession d'États*, Bruxelles, Éditions Émile Bruylant, 1975, page 168. Unofficial translation.

148 See Stanislas Meloné, 'La nationalité des personnes physiques', in *Encyclopédie juridique africaine*, Tome VI Droits des personnes et de la famille, Chapitre VI, Nouvelles Éditions Africaines, 1982, page 86.

149 For example, Burundi, which became an independent State in 1962, enacted its first law on nationality on 10 August 1971 (Decree-Law No. 1-93 of 10 August 1971), Dahomey (which later became Benin) achieved international sovereignty in 1960 but waited until 23 June 1965 to adopt Law No. 65-17 on nationality and Guinea which became independent on 2 October 1958 did not have its Code on nationality until 1 March 1960 (Order of 1 March 1960). On these matters, see Alexandre Zatzépine, *Le droit de la nationalité des Républiques francophones d'Afrique et de Madagascar*, Paris, LGDJ, 1963 and Roger Decottignies & Marc de Biéville, *Les nationalités africaines*, Paris, Éditions A. Pedone, 1963.

for nationality at independence in the francophone countries varied from one country to another as shown by the following two examples:

- The Senegalese law of 21 February 1961 granted Senegalese nationality by birth to 'any individual born in Senegal to a parent (father or mother) who was born there as well', whether the birth was before or after independence[150]. In recognition of insufficient or absent civil registers, individuals who habitually reside in Senegal and who have always behaved as though they were Senegalese (a status known as being in *possession d'état de national*) are deemed to fulfil the two conditions stipulated in article 1 of the law. In addition, the code provided the temporary right to opt for Senegalese nationality to people originating from any of the States created by the former groups under French West Africa (Afrique occidentale française – AOF) or French Equatorial Africa (Afrique équatoriale française – AEF), Togo, Cameroon or Madagascar as well as people originating from any territory bordering Senegal.
- In Chad, nationality by birth was granted to individuals of either sex, their spouses and their legitimate natural or adopted children born before 11 August 1960 to a parent of Chadian origin who had renounced all other nationalities or who had been assimilated into a community living habitually in Chad. Elected representatives of African origin who hold office in the Republic of Chad and those who can prove that they have Chadian national status also benefitted from nationality by birth in that country[151].

In the former Belgian, Portuguese and Spanish colonies, as well as the territories of North Africa that had fallen within the Ottoman Empire, there were other variations, but often similar complications.

5.2 Determination of nationality for those born after independence

The sources of current national standards on nationality are numerous. According to the legal traditions of the States, they may be contained in the Constitution, in special laws on nationality, and in laws pertaining to civil status or the rights of the child. This wide range of sources is an indication of the sensitivity of the issue of nationality and explains the contradictions commonly observed in instruments on nationality or the selective application of standards witnessed in certain States.

National legislation generally combines the major principles laid down by colonial legislation on nationality[152] with new rules enacted by the States to take account of the realities that they held following their accession to international sovereignty. They essentially include the four main criteria generally used by the law to grant nationality, namely:

1. Place of birth, i.e. being born on the sovereign territory of the State concerned. This type of citizenship is also called the right of the soil or *jus soli*;
2. Descent, i.e. acquiring the nationality of a parent. This type of citizenship is also called the right of blood or *jus sanguinis*;
3. Marital status, i.e. acquiring citizenship from a country after marrying a national of the State in question;
4. Residence, i.e. when a nationality is acquired based on a period of residence on the territory of the State.

150 See article 1 of Law No. 61-10 of 7 March 1961 determining Senegalese nationality.

151 See article 4 of Law No. 31-60 of 27 February 1960 on the Chadian Nationality Code.

152 See Paul Lagarde, 'Nationalité', in *Dictionnaire de la culture juridique*, edited by Denis laand and Stéphane Rials, PUF, 2003, page 1055.

With respect to acquiring a nationality, a distinction should be made between citizenship acquired automatically at birth, either due to the place of birth or based on the nationality of the parents, which is commonly known as nationality of origin; and nationality acquired voluntarily as an adult, either following a marriage or through a discretionary procedure known as naturalisation. The distinction between these two forms of nationality is very important on the continent because it entails a different legal order between citizens of the same country in the exercise of their rights. As we shall see, many States have made provisions restricting the exercise of political rights by naturalised persons whose citizenship can be more easily withdrawn.

5.3 Recognition of the right to nationality[153]

5.3.1 Constitutional provisions

Only the constitutions of Angola[154], South Africa[155], Ethiopia[156], Rwanda[157], Malawi[158] and Guinea Bissau[159] expressly provide for the right to a nationality either for 'everyone' or for all children. However, in not all cases is this right translated into the nationality codes. For example, the Ethiopian citizenship legislation does not address the way in which stateless children may acquire Ethiopian citizenship nor provide any rights based on birth in the territory.

5.3.2 Specific laws on children

In some countries, different legislation provides for the right of a child to a nationality. These include the following:

- the Kenyan Children's Act explicitly states the right of the child 'to a name and nationality'[160];
- the Tunisian code on the protection of the child, which evokes the right of the child to an identity at birth which is constituted by a nationality[161];
- the Child Rights Act of Sierra Leone which provides that '[n]o person shall deprive a child of [...] the right to acquire a nationality or the right as far as possible to know his natural parents and extended family.'
- the Tanzania Law of the Child Act (2009) provides that a child shall have a right to a name and a nationality and that 'A person shall not deprive a child of the right to a name [and a] nationality'; [162]
- the Botswana Children's Act (2009) provides that 'every child has a right to a nationality from birth'[163].

5.3.3 Nationality laws

Many nationality laws apply the principle of protecting children against statelessness only partially, by only providing for the acquisition of citizenship for children born in the

153 The information in the following sections draws heavily on Bronwen Manby, *Citizenship Laws in Africa: A Comparative Study*, Open Society Foundations, 2nd edition, 2010.

154 The Constitution of Angola of 2010, article 32.

155 The South African Constitution of 1996, article 28, paragraph 1(a).

156 The Constitution of the Federal Democratic Republic of Ethiopia, article 36.

157 The Constitution of the Republic of Rwanda, article 7.

158 The Constitution of Malawi, article 23, paragraph 2.

159 The Constitution of Guinea Bissau of 1984, as revised in 1996, article 44.

160 Kenya's Children Act No. 8 of 2001, article 11.

161 Act No. 95-92 of 9 November 1995 on publication of the code on protection of the child, article 5. Unofficial translation.

162 Law of the Child Act No. 21 of 2009, article 6.

163 Botswana Children's Act No. 2 of 2009, article 12.

country to unknown parents[164] or to stateless parents, disregarding those who were not born there and would otherwise be stateless because their parents cannot pass on their nationality to them. Only a dozen countries have specific provisions on such matters[165].

In effect, as the following sections demonstrate, more than half of the African Charter States parties do not guarantee that a child born on their territory will be protected from statelessness. In addition to weak rights based on birth in a country, the risk of statelessness is exacerbated by discrimination of the basis of race, religion, ethnicity, gender or birth in or out of wedlock.

Finally, there is a surprisingly large number of countries where the nationality law conflicts in at least some respects with other legislation or with the constitution, making the situation very difficult to interpret, including Burundi, Comoros, Congo Republic, Gambia, Liberia, Malawi, Mozambique, Saõ Tomé & Príncipe, Somalia, Sudan, Swaziland, Togo, Zambia and Zimbabwe.

5.4 Nationality of origin

In legal terms, nationality of origin means a nationality granted to a person at the time of his or her birth. The choice of criteria for determining nationality of origin is very important because they allow statelessness to be avoided or created. In general, nationality laws grant priority either to place of birth or descent, or (most often) combine both criteria in proportions that are sometimes inspired by the country's colonial legacy. Indeed, the use of the *jus soli* criterion as the main criterion for nationality was linked to the difficulty of using descent to determine nationality in newly independent countries, since, 'to use the parents' nationality, first one had to know their nationality'[166]. And, in most cases, the parents' nationality of origin was the nationality of the colonists.

In this regard, all of the laws studied provide for nationality of origin to be granted to children born in or outside of the country if one of their parents, and in some cases, a grandparent, is a national of the country. A large number, but not all, also provide criteria based on being born in the country in various circumstances.

5.4.1 Nationality based on place of birth

There are several variations in the application of *jus soli*:

- Four countries grant citizenship to all children born on their territory, excluding children of diplomats and certain categories of people: these are Chad, Lesotho Mozambique and Tanzania.
- Three countries grant citizenship to all children born on their territory, but only if they belong to a specific ethnic group: these are Liberia, Somalia and Uganda.
- Fifteen countries grant nationality of origin to children born in the country to non-national parents at the age of majority following a period of residency (either automatically, or by application): these are Benin, Burkina Faso, Cameroon, the Central African Republic, Comoros, Congo, the DRC, Equatorial Guinea, Gabon, Guinea, Mali, Mozambique, Rwanda, South Africa and Togo;
- Twelve countries provide for citizenship for children born in the country to a parent who was also born in the country. These are: Benin, Burkina Faso, Cameroon, Congo, Gabon, Guinea, Mozambique, Niger, Senegal, South Sudan, Togo (both parents must be born in Togo) and Tunisia. To these can be added Algeria, Mali and Sierra Leone,

164 Algeria, Burundi, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Guinea Bissau, Liberia, Madagascar, Mauritius, Somalia, Sudan and the Kingdom of Swaziland.

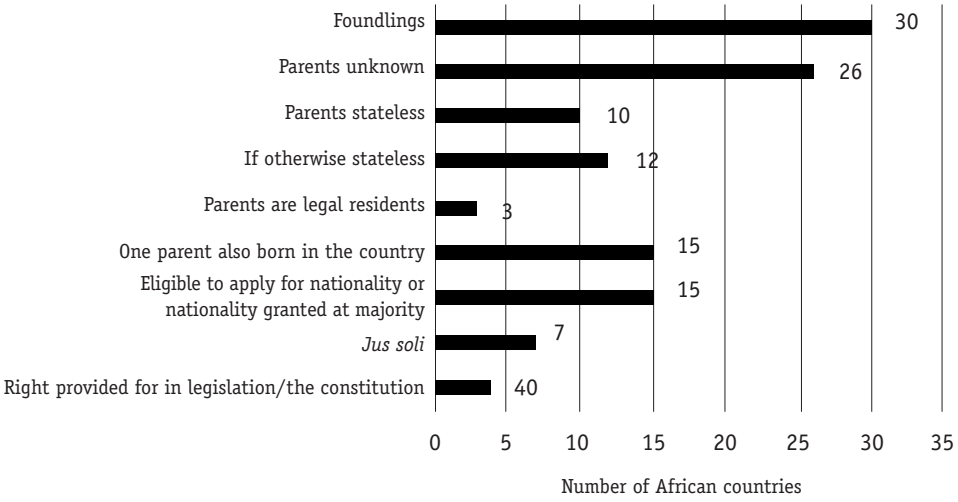
165 Angola, Burkina Faso, Cape Verde, Chad, Democratic Republic of Congo (DRC), Guinea Bissau, Lesotho, Malawi, Namibia, Sao Tomé & Principe, Sierra Leone and South Africa.

166 See Pierre François Gonidec, 'La nationalité dans les États de la Communauté et dans les États marginaux', in *Annuaire Français de Droit International*, Volume 7, 1961, page 820. Unofficial translation.

although discriminatory provisions apply restricting access on the basis of religion and race.

- Three countries grant citizenship at birth to children born in the country to parents who are legal and habitual residents: Cape Verde, Namibia, and Saõ Tomé & Príncipe.
- The following twelve countries grant children born on their territory nationality by origin if they would be otherwise stateless: Angola, Burkina Faso, Cameroon, Cape Verde, Chad, Guinea Bissau, Lesotho, Malawi, Namibia, Saõ Tomé & Príncipe, South Africa and Togo; in addition, eleven countries grant nationality of origin to children born on their territory to stateless parents: Angola, Benin, Cape Verde, the DRC, Gabon, Guinea Bissau, Mozambique, Rwanda, Saõ Tomé & Príncipe and Tunisia.
- Twenty-seven countries provide in their legislation for the granting of nationality by origin to all children born on their territory to unknown parents, these are: Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, the Central African Republic, Chad, Congo, the DRC, Djibouti, Egypt, Eritrea, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Libya, Madagascar, Mali, Mozambique, Niger, Rwanda and Tunisia. Another nine create such a right only for new-borns found on their territory, these are: Comoros, Ethiopia, Mauritania, Senegal, South Sudan, Sudan, Swaziland, Uganda and Zimbabwe.
- Seven countries do not grant any citizenship rights based on birth on their territory, even for foundlings or children of unknown parents. They are: Botswana, Côte d'Ivoire, The Gambia, Mauritius, Nigeria, Seychelles and Zambia.

Figure 5.1 Right to a nationality for children born in the country



5.4.2 Nationality based on descent

In the fight against statelessness, it is important for the principle of nationality by descent to play a role in laws on nationality. All of the laws reviewed in the framework of this study provide that children born in or outside of the country acquire its nationality if one of their parents possesses that nationality:

- Forty-nine countries grant nationality by origin without discrimination to all children born in or outside of their territory when either parent is a national[167]. Ghana and Cape Verde extend the criterion to children with a single grandparent who is a national,

167 Algeria, Angola, Botswana, Burkina Faso, Cape Verde, Cameroon, CAR, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Eq. Guinea, Eritrea, Ethiopia, Gambia, Gabon, Ghana, Guinea, G. Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tomé & Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

whatever the country of birth of the children, and Nigeria does the same, for a child born in the country.

- Fourteen countries, however, grant nationality by origin on a discriminatory basis, giving preferential treatment to fathers, to different degrees; these are Benin, Burundi, Cameroon, Gabon, Guinea, Liberia, Libya, Madagascar, Mali, Mauritania, Somalia, Sudan, Swaziland and Togo.
- In a limited number of countries, nationality of origin is granted depending on whether the child is considered legitimate or natural[168], in most cases, these are the same countries that discriminate on the basis of the sex of the parent who is a national, but in Niger, for example, gender discrimination was formally removed in 1999 but discrimination on the basis of birth in or out of wedlock remains.
- Finally, in a certain number of countries, nationality of origin may only be transmitted to a single generation when a child is born abroad[169]. A number of others require additional administrative procedures to be completed for children born abroad, including registration of the birth at the nearest consular post or a positive declaration on majority that the child wishes to retain nationality.

5.5 Nationality by acquisition

Nationality by acquisition is nationality acquired after a person's birth. Two modes of acquisition emerge from our analysis of African legislations: family ties and decisions by State authorities.

5.5.1 Marriage

Marriage is one of the primary means whereby a nationality can be acquired by adults. Through marriage, a nationality may either be acquired directly or spouses may benefit from favourable conditions for acquiring their partner's nationality. Considerable efforts have been made by African States in this area over the past two decades, thanks, in part, to the role played by justice in the advancement of women's rights[170].

To take one example, from independence to the time of the entry into force of the Protocol on the Rights of Women, many African national laws did not allow women to confer their nationality on a non-national spouse[171]. Since then, substantial reforms have been implemented in national legislation of countries that have ratified it to ensure that men and women have equal rights in relation to the granting of their nationality[172].

This progress should not lead us to overlook those countries where the law remains discriminatory against women. This is notably the case of national legislation providing for automatic acquisition of nationality by women when they marry a national[173], a rule that violates international law which allows women to make a personal choice in such situations, and those providing that only men have the right to confer their nationality by marriage[174].

168 In Madagascar, for instance, nationality is transmitted to a legitimate child by his or her father, although the law allows citizenship to be acquired on the child's majority if it is the mother who is Malagasy (see article 16, paragraph 1 of the Code on Nationality).

169 The Gambia, Lesotho, Malawi, Mauritius and Tanzania.

170 See the Judgment of the High Court of Botswana on *Unity Dow v. Attorney General*, MISCA 124/1990, June 1991. African Human Rights Law Reports 99 (BwCA 1992) 'the time that women were treated as chattels or were there to obey the whims and wishes of males is long past and it would be offensive to modern thinking and the spirit of the Constitution to find that the Constitution was framed deliberately to permit discrimination on the grounds of sex.'

171 Certain laws even require women to obtain the authorisation of their father or husband in order to travel alone or with their children.

172 Substantial legislative reforms were effectively introduced in this area in a number of countries, notably in Algeria, Botswana, Burkina Faso, Burundi, Côte d'Ivoire, Djibouti, Egypt, Ethiopia, The Gambia, Kenya, Lesotho, Mali, Mauritius, Niger, Rwanda, Senegal, Sierra Leone, Tunisia and Uganda.

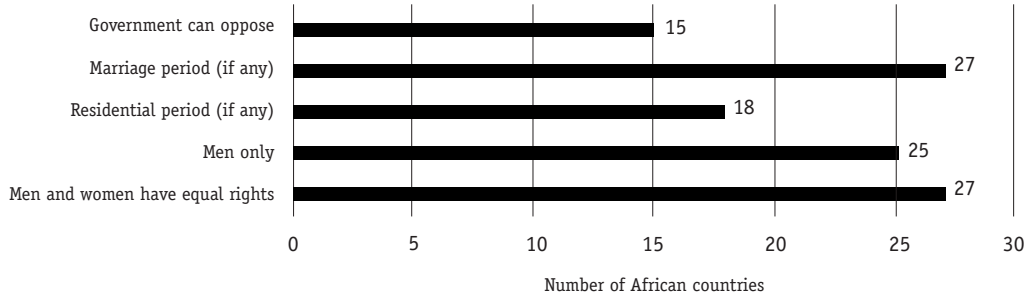
173 Benin, Burkina Faso, Central African Republic, Comoros, Cote d'Ivoire, Equatorial Guinea, Guinea, Mali, Somalia and Togo.

174 Benin, Burundi, Cameroon, Central African Republic, Comoros, Congo, Egypt, Equatorial Guinea, Guinea, Lesotho, Libya, Madagascar, Malawi, Mauritania, Niger, Nigeria, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, Tunisia and Zambia. In Burundi, to take one example, it is stipulated in articles 2, 4 and 5 of Act No. 1-01 of 18 July 2000 on the nationality code of Burundi. This law has not been amended despite the adoption of a new constitution in 2005, affirming the principle of equality between men and women.

Certain countries set up very complex procedures for the acquisition of nationality through marriage. In the DRC, for instance, the law requires applications for nationality through marriage to be approved by a Decree issued by the Council of Ministers and reviewed by the National Assembly[175].

Some 25 countries still do not allow women to confer their nationality on a foreign spouse[176]. Sometimes, the administration has discretionary powers in that area. For example, in many countries, foreign wives are entitled to their husband's nationality, but only on condition that the public authorities are not opposed to the decision[177]. In certain countries, such as Botswana, Egypt, Liberia and Zambia, non-national husbands of wives who are nationals must meet the general conditions stipulated by the law on naturalisation to acquire the nationality[178]; in others, the acquisition of nationality is on easier terms than other foreigners but still discretionary, such as in Malawi and Nigeria.

Figure 5.2 The right to pass citizenship to a spouse



5.5.2 Naturalisation

Most of the legislation reviewed allows nationality to be acquired through naturalisation based on long-term residency. Naturalisation criteria are variable and may sometimes be difficult to meet; in most countries complete discretion rests in the executive in determining whether to grant it.

Required legal residency ranges from five[179] to thirty-five years[180]. South Africa has a two-step process: a person must first become a permanent resident (five years) in order to apply for citizenship, and the latter procedure begins five years after obtaining residency[181].

In Liberia, only persons of black ancestry are eligible for naturalisation[182] whereas in Sierra Leone, naturalisation of persons who are not of black ancestry is theoretically possible after a fifteen-year legal residency period, however, in practice, it is difficult to obtain[183].

Many countries provide for background checks and interviews with the authorities[184], and some national laws provide for discriminatory preferential treatment for persons of African[185] or pan-Arab ancestry[186].

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175 Act No. 4/024 of 12 November 2004 on Congolese nationality, article 19.

176 These countries are: Benin, Burundi, Cameroon, Central African Republic, Comoros, Congo, Egypt, Equatorial Guinea, Guinea, Lesotho, Libya, Madagascar, Malawi, Mali, Mauritania, Niger, Nigeria, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, and Tunisia.

177 See, for example, article 7 of Act No. 154 of 2004 amending certain provisions of Act No. 26 of 1975 relating to Egyptian nationality.

178 See, for example, article 4 of Act No. 154 of 2004 amending certain provisions of Act No. 26 of 1975 relating to Egyptian nationality.

179 Botswana, Burundi, Cameroon, Cape Verde, Cote d'Ivoire, Gabon, Guinea, Lesotho, Madagascar, Mali, Rwanda, Sao Tomé and Principe, South Africa, Swaziland, Togo and Tunisia.

180 In the Central African Republic.

181 Article 5 of the South African Citizenship Act (No. 88 of 1995).

182 See the Liberia Aliens and Nationality Law of 1973, article 21, paragraph 1(1).

183 See the Sierra Leone Citizenship Act of 1973, articles 8 and 9.

184 Act No. 04-024 of 12 November 2004 on Congolese citizenship, articles 11 and 12.

185 In the case of Sierra Leone. See also the Ghana Citizenship Act (Act No. 591 of 2002), article 14.

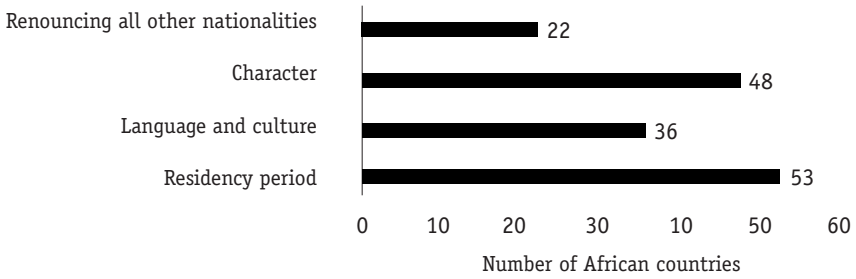
186 According to Libyan law, all persons of Arab descent, with the exception of Palestinians, may become Libyans if they intend to live there and renounce all other nationalities. Non-Arabs may only be naturalised if they are women. See articles 5 and 7 of Act No. 17 of 1954 and Act No. 18 of 1980 on the resolutions of the Act on citizenship. Identical rules exist in articles 4 and 5 of the Egypt Nationality Law of 1975, as amended in 2004.

A cultural assimilation criterion, notably focusing on knowledge of the national language or languages, is also stipulated by some national laws, for example:

- In Ethiopia, applicants for citizenship must be able to 'communicate in any one of the languages of the nations/nationalities of the Country'[187];
- In Rwanda, applicants for citizenship must 'respect Rwandan culture and be patriotic'[188];
- Egypt requires applicants for naturalisation to 'be knowledgeable in Arabic'[189];
- Botswana requires a knowledge of Setswana or another language spoken by a 'tribal community' in Botswana[190]; and
- Ghana requires knowledge of an indigenous Ghanaian language[191].

Finally, naturalisation can also be acquired for economic reasons. Any person who has invested at least US$500,000 and has been a continuous resident of the country for at least two years on the date of application may obtain naturalisation in Mauritius[192].

Figure 5.3 Citizenship through naturalisation or declaration



The discretionary nature of decisions on naturalisation partly explains the sparseness of naturalisation statistics in African countries. It is apparent in the responses to the questionnaire that most of the States lack national statistics on naturalisation granted by the administrative authorities, which undoubtedly would have made it possible to determine the reasons for the rejection of applications for naturalisation and obtain information on legal recourse to protest State decisions deemed to be arbitrary.

Only Cote d'Ivoire stated, in response to the questionnaire distributed to States for this report, that between 1962 and 2010, 32,396 people were naturalised through the signing of 6,941 decrees published in the country's official gazette[193]. These figures are very small in light of the hundreds of thousands of people who have lived legally in the country for decades but continue to be counted as foreigners during population censuses.

Finally, there is the specific case of refugees, of which the African continent seems to be the world's foremost purveyor. Although its focus is on voluntary repatriation of refugees to their home countries as a sustainable solution, the Convention of 28 July 1951 relating to the Status of Refugees[194] urges the States Parties to facilitate naturalisation of those who have already obtained refugee status on

187 Proclamation 378/2003 on Ethiopian Nationality, article 5, paragraph 3.

188 Article 15 of Organic Law No. 29 of 2004, dated 3 December 2004, on the Rwandan Nationality Code, amended by Organic Law No. 30 of 2008.

189 See Act No. 26 of 1975 on Egyptian nationality.

190 See article 5 of the Act of 1995 amending article 12 of the Citizenship Act of 1982.

191 See the Act of 2000 on Citizenship in Ghana, article 14, paragraph (e). See also the Constitution of Ghana, article 9, paragraph 2.

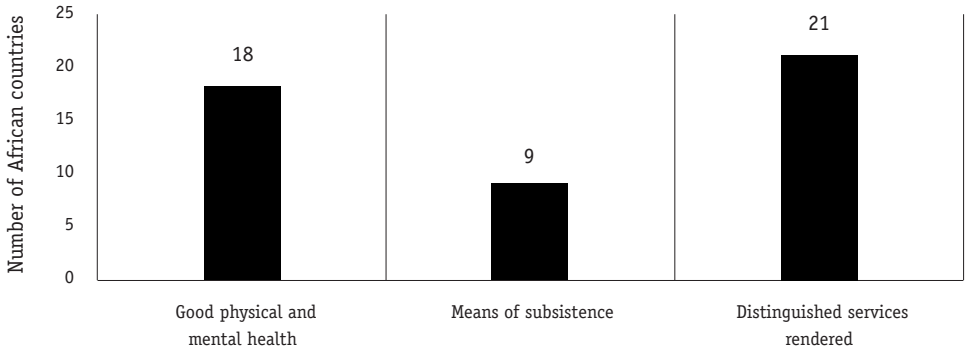
192 See the Mauritius Citizenship Act of 1968, article 9, paragraph 3.

193 According to the administration, the 6,941 decrees corresponded to the minimum number of adult applicants, aged 21 or above, and the difference (25,455) applies to wives and minor children who were covered under their parents' naturalisation decree.

194 Article 34.

their territory when conditions in refugees' countries of origin do not lend themselves to a permanent return. However, naturalisation has proved very difficult in almost all countries, with only Tanzania standing out for its willingness to provide nationality to long term refugee populations.

Figure 5.4 Other conditions for nationality through naturalisation



5.5.3 Recovery of nationality

Recovery of nationality is an administrative measure allowing an individual to restore a nationality lost due to circumstances beyond his or her control, notably following a marriage with a foreign spouse due to the direct effect of the legislation applicable on the date of said marriage. African national legislation[195] often contains provisions of this kind which generally require that the applicant presents proof that he or she previously had citizenship and proof of residence on the national territory.

Persons who have renounced their nationality[196] or who have been stripped of their nationality are not eligible for such measures. Reinstatement decisions are made by decree following an inquiry by the administrative authorities. A discretionary measure, it applies to the applicant and is not retroactive, but enables the beneficiaries' children to claim their nationality.

5.6 Multiple nationality

The idea that an individual could have several nationalities was opposed by jurists for a long time because, in their view, it always harked back to an image of a 'conflict of States' laws on nationality when (they) fight over the same individuals and impose contradictory duties and obligations on them.'[197] Famous politicians, such as American President Theodore Roosevelt, have denounced the practice, considering it an 'obvious absurdity' redolent of treason, espionage or subversion[198].

This is undoubtedly the reason for the near-total ban on dual nationality imposed by the African States when they achieved international sovereignty[199]. However, because economic, ecological and, above all, political crises have promoted the migration of millions of Africans, a diaspora soon arose and prospered, leading to the development of multiple African and international identities and loyalties. Beginning in the 1980s, the role of the diaspora became particularly important, not only due to the growing volume of remittances flowing into their homelands[200], but also due to

195 Notably Burkina Faso, Cameroon, Central African Republic, Chad, Gabon, Guinea, Mali, Mauritania, Niger, Rwanda and Togo.

196 See the Code of the Person and the Family of Burkina Faso (Zatu An VII of 16 November 1989), article 174, paragraph 2.

197 See Federico De Castro Y Bravo, 'La nationalité, la double nationalité et la supra-nationalité', in *Recueil des Cours de l'Académie du Droit International de La Haye*, 1961, Tome 102, No 1, page 589. Unofficial translation.

198 See Benoît Bréville, 'L'acquisition de la nationalité à travers le monde', in *Le Monde diplomatique*, No. 718, Janvier 2014, page 21. Unofficial translation.

199 Especially persons of European, Asian or Middle Eastern ancestry.

200 According to the World Bank (*Migration and Remittances Factbook 2011*, 2nd Edition), in 2010, the top 10 African countries in terms of receipt of remittances were Nigeria (10 billion dollars), Sudan (3.2 billion dollars), Kenya (1.8 billion dollars), South Africa (1 billion dollars), Uganda (0.8 billion dollars) and Lesotho (0.5 billion dollars).

the quality of the human resource making up the diaspora[201], who could assist their countries of origin on the difficult road to economic, social and cultural development[202].

These sociological changes can also be explained by technical and geostrategic considerations, such as the thaw observed in international relations since the end of the Cold War and the development of transportation and communications which has strengthened ties between migrants and their homelands, *inter alia,*[203] thereby explaining these sociological mutations.

Finally, the AU itself views the diaspora as 'a vital segment (…) in a position to mobilize, for the Continent, the requisite scientific, technological and financial resources and expertise for the successful management of the programmes of the African Union Commission (and…) form the bedrock of support in the partnership which Africa would like to see develop with the industrialized countries'[204].

This new reality has prompted many countries to amend their legislation and introduce legislation permitting dual citizenship. However, in many cases the rules remain highly complex and difficult to interpret:

1. Dual citizenship is allowed with no restriction

This is the case in the majority of countries that provide for dual citizenship in their legislation. The countries are Algeria, Angola, Benin, Burkina Faso, Burundi, Cape Verde, Chad, Comoros, Congo, Djibouti, Gabon, Ghana, Guinea Bissau, Kenya, Mali, Mozambique, Niger, Nigeria, Rwanda, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, South Sudan, Sudan and Tunisia.

2. Dual citizenship is allowed but only with the express permission of the government

This is the case in Egypt, Libya, South Africa and Uganda. The Egyptian law is a prime example of complexity where the issue of dual citizenship is concerned. Act No. 26 of 1975, amended in 2004, prohibits all Egyptians from acquiring another nationality without the permission of the Minister of the Interior. Unless the request for permission includes a request to retain Egyptian citizenship, it is then lost. And, even when Egyptian citizenship is retained, it may be revoked at any time[205]. In practice, it seems that Egyptians can easily obtain dual citizenship, except when the authorities decide to take strong measures against individuals[206].

3. Dual citizenship is allowed only for citizens from birth[207]

Some countries require individuals seeking to naturalise to renounce a previous nationality, but do not provide for those who are have nationality from birth to lose it if they acquire another.

4. Dual nationality is allowed only for naturalised citizens[208]

Conversely, a number of countries provide for individuals acquiring another nationality to lose their birth nationality, but do not require those naturalising to renounce their former nationality. The terms

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201 Regarding qualified emigration, in 2010, the top 10 African countries with the highest rates of emigration of holders of postsecondary diplomas were: Cape Verde (67.5%), The Gambia (63.3%), Mauritius (56.2%), Seychelles (55.9%), Sierra Leone (52.5%), Ghana (46.9%), Mozambique (45.1%), Liberia (45%), Kenya (38.4%) and Uganda (35.6%). In addition, 21,516 doctors, or 18.4% of the doctors trained in sub-Saharan Africa and 53,298 nurses and midwives, or 11% of the nursing staff trained in the region have emigrated. Source: The World Bank *Migration and Remittances Fact Book 2011*, 2nd Edition.

202 On 26 July 2012, the government of Niger explained its decision to propose permitting double nationality in its legislation by its concern for 'allowing a large number of Nigeriens to participate actively in providing both economic and political support for the nation, by enabling them to continue to vote and/or run in elections' (Dispatch by Xinhua News Agency, China, dated 26 July 2012).

203 See Benoît Bréville, 'L'acquisition de la nationalité à travers le monde', in *Le Monde diplomatique*, No. 718, Janvier 2014, page 21. Unofficial translation.

204 See *Africa, Our Common Destiny*, African Union Guideline Document, May 2004, page 25.

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

206 See the arguments tabled before the British Special Immigration Appeals Commission in the case of *Abu Hamza v. Secretary of State for the Home Department*, Appeal No: SC/23/2003, judgment of 5th November 2010.

207 The Gambia, Mauritius, Namibia, Swaziland, Togo and Zimbabwe.

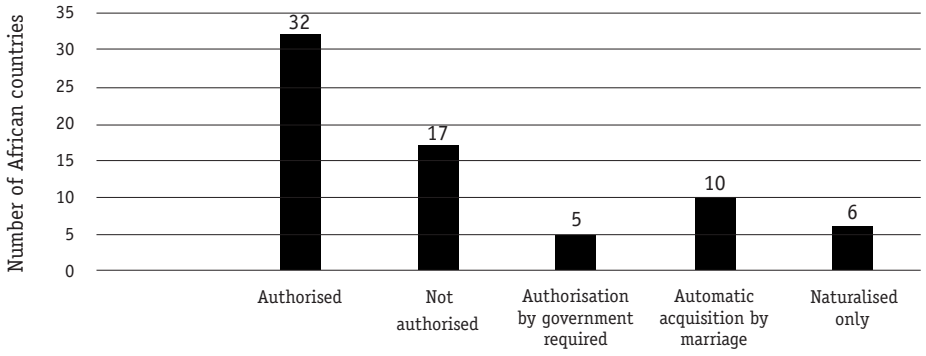
208 Botswana, CAR, Côte d'Ivoire, Guinea, Madagascar, Niger and Senegal.

of these provisions are often hard to interpret, with several countries in North and francophone West Africa providing for the loss of nationality on acquisition of another to be dependent on permission to do so by the government. In some circumstances, the final outcome is that dual nationality is generally tolerated, for example in Senegal, even if a first reading would suggest it is forbidden.

5. Dual citizenship for women who automatically acquire their husband's nationality upon marrying[209]

As a response to the historical situation where a woman was presumed to acquire her husband's nationality on marriage, a number of countries still have specific provisions allowing dual nationality in that circumstance.

Figure 5.5 Multiple nationality



6. Creation of an intermediate status for members of the diaspora, instead of granting them the right to dual nationality

In Ethiopia, a government Proclamation of 2002 created a legal category known as 'foreign nationals of Ethiopian origin', defined as '[a] foreign national, other than a person who forfeited Ethiopian nationality and acquired Eritrean nationality, who had been an Ethiopian national before acquiring a foreign nationality; or at least one of his parents, grandparents or great grandparents was an Ethiopian national'[210].

Holders of this type of card are entitled to rights and privileges not granted to other foreigners. They are exempted from entry visas, have the right to residence and employment, and enjoy the right to own real estate in Ethiopia, as well as the right to access public services. However, they do not have the right to vote in elections or hold public office.

In Ghana, in addition to the introduction of dual citizenship in 2002[211] the authorities also provided for the right of return and indefinite stay for members of the broader African diaspora. Under Section 17(1)(b) of Immigration Act 573 of 2000, the Minister of the Interior may, with the approval of the President of the Republic, grant the 'right of abode' to any person of African ancestry. The law is, in fact, and attempt to resolve the issues arising from the presence of numerous African Americans who have moved to Ghana since it achieved its independence in 1957.

Finally, in countries where granting of dual citizenship is prohibited for adults, there is a common provision to allow children who are entitled to two nationalities to wait until the age of majority to freely choose one[212].

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209 Botswana, Cameroon, CAR, Cote d'Ivoire, Egypt, Lesotho, Madagascar, Niger, Swaziland, Tanzania, Togo and Zambia.

210 See Proclamation No. 270/2002 of 2 February 2002: Providing Ethiopians resident abroad with certain rights to be exercised in their country of origin.

211 See Dual Citizenship Regulation Act No. 91 of 2002.

212 This is provided by European law, notably in articles 14 and 15 of the European Convention on Nationality. A number of African States that currently do not allow dual citizenship do permit it for children, such as Tanzania.

5.7 Discrimination

'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the [...] Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status'[213]. The existence of this important provision, which is reflected in the legal systems of all of the African States has not kept legislators in certain countries from including discriminatory provisions pertaining to the right to citizenship in national laws. This is the case in countries where nationality by descent is expressly restricted to members of ethnic groups originating from the State or the continent. The respective legislations of Liberia and Sierra Leone epitomise such discrimination with regard to the acquisition of their nationality.

Since the adoption of the country's first Constitution in 1847[214], persons who are not of black ancestry have been unable to acquire Liberian nationality by birth, on grounds that the country wishes 'to preserve, foster and maintain the positive Liberian culture, values and character'. Such persons are also excluded from naturalisation and the State has taken care to decree that only citizens may hold real property in Liberia.

A variation on this theme of racial preference exists in Mali, where any child born in the country to a mother or father 'of African origin' receives preferential treatment when applying for citizenship[215].

In the DRC, the 2004 peace deal that ended the civil war in the country also introduced an ethnic criterion into the determination of citizenship by recognising as a Congolese citizen from birth 'every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence' in 1960. This was later included in Act No. 04-024 of 12 November 2004 on Congolese nationality, which was adopted by the Congolese Parliament.

A similar criterion can be found in the Ugandan constitution of 1995, which provided for recognition of citizenship by birth for:

- any person born in Uganda 'one of whose parents or grandparents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February, 1926'; and
- for every person born in or outside Uganda one of whose parents or grandparents was a citizen of Uganda from birth.

This constitutional provision excluded the sizeable Asian communities living there from being able to acquire Ugandan citizenship from birth and continues to make them second-class citizens.

The Nigerian constitution similarly provides for citizenship by birth for those born in Nigeria before the date of independence, 'either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria'[216]. The law does not discriminate, however, amongst those born after the country's independence.

In Somalia, the law provides for any person 'who by origin, language or tradition belongs to the Somali Nation'[217], is living in Somalia, and renounces all other nationalities to obtain Somali nationality.

There are other national laws that, while they do not directly refer to racial criteria, are formulated in such a way that the allusion is unmistakable: the Ivorian constitution of 2000 requires that presidential candidates be of Ivorian origin and born to parents who are 'Ivorian by origin'[218] while the law in Swaziland does not specifically refer to ethnicity but provides for citizenship 'by

213 Article 2 of the African Charter.

214 These principles reiterated in articles 22 and 27 of the Liberian Constitution of 1986.

215 See article 12 of Act No. 95-70 of 25 August 1995 amending Act No. 62-18 of 3 February 1962 on the Malian nationality code.

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

217 Law No. 28 of 22 December 1962 on Somali Citizenship, article 2.

218 Article 35 of the Ivorian Constitution of 2000.

KuKhonta', that is, by customary law, which means that those who are not ethnic Swazis find it very difficult to obtain recognition of citizenship.

In certain countries, people originating from certain regions, particularly border areas, must have their inclusion in the human capital of the nation approved by local organisations in addition to complying with constitutional and legislative provisions. This is notably the case in Kenya, where people originating from regions bordering on Somalia, South Sudan and Ethiopia must be 'vetted' by community leaders before they can apply for national identity papers such as passports[219].

Numerous countries restrict the exercise of certain rights by those who are not citizens by birth; others impose a moratorium on naturalised citizens with respect to the exercise of certain official functions[220]. For instance, naturalised citizens may be prohibited from: running for office or being members of the government, members of parliament, diplomats or members of the armed forces[221].

Other constitutional or legislative provisions prohibit persons with dual citizenship from holding ministerial portfolios[222] or becoming President of the Republic[223].

5.8 Loss and deprivation of nationality

According to the law, loss and deprivation of nationality are two different processes that lead to the same results, namely that the individual concerned is no longer considered a national by the State. While loss of nationality is an automatic procedure that requires no intervention by the State, deprivation of nationality is always an administrative or judicial measure taken in compliance with a national law to withdraw the nationality from an individual. It may also stem from the personal choice of an individual who has reached the age of majority or from a decision by the political authorities for failure to comply with fundamental rules linked to nationality. Many Commonwealth countries provide that citizens by birth cannot lose their nationality against their will, while revocation of an acquired nationality is easier in both common law and civil law countries. However, the reality on the continent is somewhat more complex.

5.8.1 Reasons for loss or revocation of nationality

Firstly, there is a category of States that do not withdraw a person's nationality against his or her will, regardless of the means by which said nationality was acquired. For example, the Constitution of South Africa[224] stipulates that no citizen may be deprived of their nationality and the Constitution of Ethiopia[225] prohibits withdrawal of nationality from any citizen against his or her will. However, in the case of South Africa, a citizen may lose their nationality if he or she acquires another nationality[226] 'without permission'[227] or, in the event that said national is a naturalised citizen, if he or she take part in a war that is not approved by the authorities 'under the flag' of another country[228].

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219 See reports by the Kenya National Commission on Human Rights, *An Identity Crisis? Study on the Issuance of National Identity Cards in Kenya* (2007) and *Out of the Shadows: Towards Ensuring the Rights of Stateless Persons and Persons at Risk of Statelessness in Kenya* (2010).

220 These countries include Benin, Burundi, Cameroon, Central Africa, Chad, Comoros, Congo, Côte d'Ivoire, Egypt, Gabon, Guinea, Libya, Madagascar, Mauritania, Niger, Senegal, Togo and Tunisia. The period involved ranges from 3 to 10 years according to the legislation.

221 For example, in Botswana, Burundi, Côte d'Ivoire, Equatorial Guinea, Ghana, Liberia, Mali, Mauritania, Mozambique, Niger and Togo. Algeria prohibits persons married to non-nationals from running for President.

222 Ghana Citizenship Act of 2000, article 16, paragraph 2.

223 For example, in Côte d'Ivoire, Djibouti, Equatorial Guinea, Senegal and Togo.

224 Section 20 of the Constitution.

225 Constitution of the Federal Democratic Republic of Ethiopia, article 33.

226 Proclamation No. 378/2003, A Proclamation on Ethiopian Nationality, article 17.

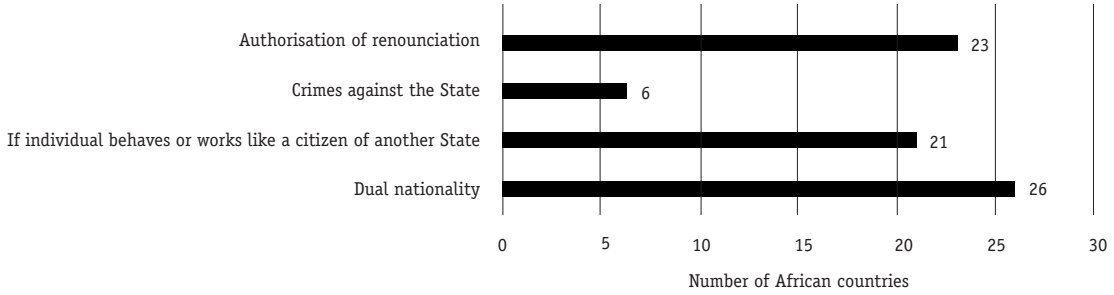
227 Amendment Act to South African Citizenship Act No. 17 of 2004.

228 See the South African Citizenship Amendment Act No. 17 of 2010, Section 6, paragraph 3.

Next, there are States that have adopted the relevant provisions of the Convention on the Reduction of Statelessness, and provide that a nationality cannot be withdrawn from a person if doing so would render him or her stateless[229].

A third category of States prohibits revocation of nationality from birth[230]. In this regard, contradictions may sometimes be observed between different national legislations. For instance, in the Comoros, there is a contradiction between the constitution, which is the highest law in the country, according to which 'No one who is Comorian by birth may be deprived of his nationality'[231] and the nationality law of 1979, which still allows the withdrawal of nationality from Comorians 'who hold a position in the public service of a foreign State or in a foreign army, and keep it notwithstanding an injunction to terminate it, which has been issued to him or her by the Comorian government'[232].

Figure 5.6 Criteria for loss of nationality by birth



In the fourth category of States[233], nationality can be lost if the citizen voluntarily acquires another nationality, as discussed above under multiple nationality.

The fifth category of States makes loss of nationality conditional on the marital status of female citizens, whereas international law[234] states that marriage may not have an effect on the nationality of married women. In Togo, a foreign woman automatically becomes Togolese if she marries a Togolese man but loses her nationality in case of divorce[235]. Conversely, a Burkinabe woman who acquires a foreign nationality, notably through marriage, automatically loses her Burkinabe nationality[236]. The case of Equatorial Guinea is even more complex in legal terms: a foreign woman who marries an Equatorial Guinean automatically acquires the latter nationality and is deemed to have lost her original nationality[237].

Finally, almost all states provide for deprivation of nationality from a naturalised citizen. Sometimes the criteria for deprivation are very broad and very vague, allowing for unacceptable levels of executive discretion. For example, a number of States call on the notions of 'disloyalty'[238],

229 These include Lesotho, Mauritius, Namibia, Rwanda, and Zimbabwe (since 2013). Senegal (since 2013) and South Africa provide partial protections; many other countries only provide protection against statelessness in case of voluntary renunciation.

230 Burkina Faso, Burundi, Cape Verde, Chad, Comoros, Djibouti, Gabon, Gambia, Ghana, Kenya, Mauritius, Mozambique, Namibia, Nigeria, Uganda, Rwanda, Seychelles, Sierra Leone, South Africa, Swaziland and Tanzania.

231 Constitution of 17 May 2009, article 5.

232 Law No. 79-12 of December 12, 1979 setting forth the Comorian Code of Nationality, article 56. This provision is in compliance with the Convention on the Reduction of Statelessness.

233 Botswana, Cameroon, DRC, Ethiopia, Lesotho, Mauritania, Malawi, RDC, Senegal, Zambia and Zimbabwe.

234 Notably the 1957 Convention on the Nationality of Married Women and article 9, paragraph 1 of CEDAW. Article 5 of the 1961 Convention on the Reduction of Statelessness also stipulates that loss of nationality due to a change in marital status should not lead to statelessness.

235 See Order No. 78-34 of 7 September 1978 on the Togolese nationality code, article 23.

236 Zatu No. An VII 0013/FP/PRES of 16 November 1989, on the institution and application of the personal and family code, article 188.

237 Lei No. 8/1990 de fecha 24 de octubre, Reguladora de la Nacionalidad Ecuatoguineana, articulo 5.

238 For example, Botswana, Liberia, Malawi, Mauritius, Nigeria, Sierra Leone and Zimbabwe.

'the interest of the public peace'[239] or 'actions or behaviours incompatible with citizenship'[240] as grounds for revoking nationality.

5.8.2 The effects of loss or revocation of nationality

The primary consequence of loss or deprivation of nationality is that the affected person is obliged to give up his or her rights as a citizen and, in the event that he or she does not have another nationality, the individual will become stateless.

Theoretically, loss or deprivation of nationality is a strictly individual measure, however, certain African national legislations provide for the possibility of extending deprivation to the person's wife and children[241] thereby increasing the likelihood of statelessness in those countries.

Finally, the national who has become an alien through the loss or revocation of his or her nationality may be subject to expulsion by the State of which he or she was formerly a citizen in application of immigration law. To avoid such practices, the International Law Commission, in a draft article on the expulsion of aliens, stipulates that 'A State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her'[242].

5.9 Procedural rules

These pertain to the forms of actions, competent authorities in nationality disputes and above all the means of proving citizenship or the lack thereof.

5.9.1 The forms of acts pertaining to nationality

Nationality is an area in which the interested parties are expected to carry out actions with a view to the application, grant, loss or deprivation of their nationality. The rules contained in African legislations generally draw on colonial inspiration, although some of them have changed directions through repeated reform process.

According to the legal traditions of the different States, applications for certificates of nationality may be addressed to the administrative or judicial authorities and, in the event of a refusal, the author of the application may launch an internal administrative appeal and subsequently a legal appeal to uphold his or her rights. Thus, opposition to the acquisition or withdrawal of someone's nationality takes the form of a reasoned decree that can be challenged in the nation's courts. But many countries provide for no reasons to be given, especially in case of refusal to naturalise a person, and some specifically exclude the right to challenge an administrative decision in the courts (for example, Botswana, Malawi, Seychelles, Tanzania and Zambia).

Finally, African legislations provide for the publication of the acts of the administrative authorities, particularly in the countries' respective official gazettes.

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239 Lei No. 8/1990 de fecha 24 de octubre, Reguladora de la Nacionalidad Ecuatoguineana, articulo 18.

240 For example, Benin, Congo, Guinea, Madagascar, Mali and Tanzania.

241 See article 56 of Law 61-415 amended 14 December 1961 on the Ivorian nationality code, and article 29, paragraph 3 of Act No. 37-98 of 20 July 1999 on the Gabonese nationality code.

242 See draft article 8 in A/CN.4/L.797.

5.9.2 The competent authorities in matters of nationality

Most African legislations provide for matters to be submitted to the national courts whenever an administrative measure pertaining to an individual's citizenship is disputed. In certain countries, legal proceedings are even mandatory to revoke citizenship acquired through naturalisation[243].

Other countries provide more general guarantees, such as Burundi, where the constitution of 2005 prohibits 'arbitrary' deprivation of nationality, and South Africa, where decisions on nationality taken by the Minister of Home Affairs may be reviewed by the High Court of Justice.

On the other hand, a number of national laws[244] explicitly exclude court appeals against decisions to revoke or deny nationality. In Botswana, and Tanzania, which are countries with an Anglo-Saxon tradition, the law provides that ministerial decisions may not be challenged in court. This situation is a cause for concern since the ability to exercise many rights is linked to possession of the right to a nationality. The African Commission has repeatedly stressed the importance of judicial reviews of the legality of measures of revocation of individuals' citizenship, particularly when they are accompanied by expulsion measures on grounds that the person concerned is not a national of the country[245].

5.9.3 Proof of nationality

Proof of nationality is necessary for any person who claims a nationality whose authenticity may be challenged at any time by the public authorities. Thus, the question is raised as to who, under African national laws, has the burden of proof of citizenship and what are the means of proof at our disposal.

The burden of proof

Reiterating an old principle contained in colonial laws, particularly French laws[246], some African legal systems[247] lay down the principle that the burden of proof of citizenship is incumbent upon the individual who claims citizenship in a country. The rule goes without saying when the claimant is the national in person, but it becomes more complicated when citizenship is contested by the State. Indeed, if a person who wishes to apply for a national identity card must provide proof of citizenship, we can only wonder whether he or she must bear the burden of proof if the State, during that same procedure, contests his or her citizenship.

There is one notable exception to the principle mentioned above, which is when the applicant benefits from a legal presumption, i.e. holds a title granting citizenship. For example, in Burkina Faso, where 'the burden of proof is incumbent upon whosoever shall [...] contest the Burkinabe citizenship of a holder of a certificate of Burkinabe nationality delivered in compliance with articles 228 et seq'[248].

5.9.4 Means of proof

Proof of nationality

The most conclusive form of proof of nationality remains the citizenship or nationality certificate, especially in the francophone countries, even though certain legal systems may use various elements that may be specific to them and may or may not pertain to citizenship rights. Other documents that may in practice be used as evidence that a person is a citizen generally include identity cards, passports, declarations granting citizenship and, especially, decrees of naturalisation or recovery

243 The Gambia, Ghana, Liberia and Rwanda.

244 In Botswana, Lesotho, Malawi and Tanzania.

245 See footnote 6.

246 See the French nationality code of 1945, article 138, paragraph 1.

247 Burkina Faso, Cameroon, the Central African Republic, Chad, Congo, Cote d'Ivoire, Gabon, Niger and Togo.

248 See the Code of the Person and the Family of Burkina Faso, article 220, paragraph 2.

of nationality, which are often published in the official gazette. A handful of countries, such as Angola and Botswana, provide that a birth certificate is proof of nationality[249].

Because a certificate of nationality is the principal means of proving legal citizenship in a State, delivery of certificates of citizenship or nationality is 'strictly'[250] regulated.

In the national legislations of most French-speaking countries[251], certificates of nationality are delivered by the courts. However, due to the 'purely administrative and non-judicial nature'[252] of this mission, the judge acts under the supervision of the Ministry of Justice. This is why, in francophone countries, a refusal to deliver the certificate gives rise to an internal administrative appeal before legal proceedings are undertaken.

Even in some francophone countries (such as Togo), and in all common law countries that provide for nationality certificates, the task is the responsibility of the administrative authorities, particularly the Minister of Justice, mayors or consular authorities.

The document itself must state that its holder fulfils all of the conditions laid down by the law to have citizenship in the country and shall be deemed to constitute proof until proven otherwise.

Proof of the elements entitling a person to nationality

Birth registration is usually the single most important document proving that a child has the right to recognition of nationality of origin. Its importance has been highlighted by the Charter on the Rights of the Child as a fundamental right of the child, which enshrines birth registration as a fundamental right of the child[253].

Registration is, indeed, the basis for the legal recognition of the child, since not only does registration provide evidence of a child's right to a nationality (whether of his or her parents or of the country of birth), it may also, in certain cases, be the prerequisite for allowing a child to enrol in school, access healthcare and, later on, obtain identity papers that will allow him or her to vote on reaching majority.

Registration, which includes declaration of birth, is mandatory in many States[254].

Theoretically, birth registrations are free of charge, although certain States impose lateness penalties[255]. Many countries today show considerable ingenuity in enabling parents to do their duty, particularly in rural areas[256] and help nomadic populations register births more easily in their communities[257].

Despite all these initiatives, it should not be forgotten that birth registration continues to pose a major challenge on a continent where 50% of annual births are not systematically registered[258]. In reality, performances vary according to region, with North Africa achieving the highest registration

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249 See Lei No. 1/05 da nacionalidade, de 1 de julho 2005 of Angola, article 24 and the Botswana Children's Act of 2009, article 12, paragraph 2.

250 See Stanislas Meloné, 'La nationalité des personnes physiques' in *Encyclopédie juridique de l'Afrique*, Tome VI Droit des Personnes et de la Famille, Chapitre VI, Nouvelles Éditions Africaines, 1982, page 118.

251 Burkina Faso, Cote d'Ivoire, Congo, Guinea, among others.

252 See Stanislas Meloné, 'La nationalité des personnes physiques' in *Encyclopédie juridique de l'Afrique*, Tome VI Droit des Personnes et de la Famille, Chapitre VI, Nouvelles Éditions Africaines, 1982, page 118.

253 See the African Charter on the Rights of the Child, article 6, paragraph 2 and the CRC, article 7, paragraph 1.

254 See for example, Benin (articles 60-68 of Law 2002-07 on the code of the person and the family), Namibia [Births and Deaths Registration Act 1987, Section 19(1)] and Chad (Order No. 003 INT of 02 June 1961). Malawi and Tanzania, registration was, for a time, mandatory only if one of the parents of the child was of European, American or Asian origin. See Jonathan and Bonaventure Rutima, 'Towards the harmonization of immigration and refugee law in SADC' in *Migration dialogue for Southern Africa* (MIDSA) Report No. 1, 2004, pages 40-41. Malawi has recently adopted a new law, the National Registration Law, 2009, introducing a free and universal registration system.

255 See Ghana's Births and Deaths Act of 1965 (Act 1301). The amount varies according to whether the application is made before or after the child's fifth birthday. Penalties also exist in Kenya.

256 In Kenya, for instance, cell phones are used to register births and, in Comoros, the midwife who delivers the baby is legally bound to ensure that it is registered.

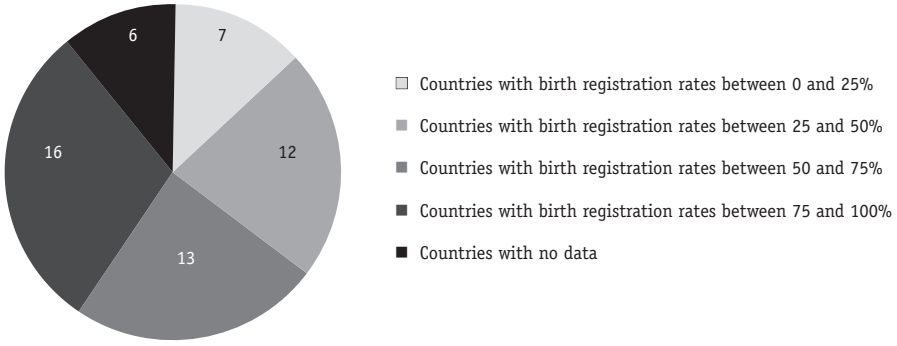
257 See Order No. 003 INT of 2 June 1961 of Chad.

258 See UNICEF, Every Child's Birth Right: Inequities and trends in birth registration, December 2013.

rates on the continent[259], West and Central Africa[260] performing well and Southern and East Africa[261] showing figures below the continental average. One of the characteristics of African reality is the fact that birth registration rates are particularly low in rural areas, where up to 90% of children are not registered[262].

The recent adoption of a General Comment on birth registration by the Committee on the Rights of the Child, clarifying the States' obligations in that regard, may serve as a trigger for the emergence of good practices on a continent that is still unaware of the extent of its human capital.

Figure 5.7 Birth registrations in Africa



In order to ensure that all children have the right to an identity and nationality, it is important that, in addition to registration of birth, other means of proof are also permitted to show that a child satisfies the criteria for nationality, such as:

- oral and written testimonies by the parties concerned (if they are adults), by their parents or local dignitaries;
- recognition of the concept known in French as *possession d'état*; that is, that if a person has always behaved under all circumstances like a national, and publicly enjoyed such status and shouldered the related obligations, he or she should be given legal recognition of nationality[263];
- residence (proof of payment of local taxes, property deeds, etc.).

5.10 Nationality and succession of States

Many of the problems related to statelessness and nationality in the African continent can, as noted above, be traced to the provisions adopted in the 1960s when African States achieved their independence and international sovereignty. The question of the impact of changes in sovereignty on the nationality of the people living there has created new interest among African jurists since Eritrea, despite the enshrinement of the principle of the inviolability of borders inherited from colonisation in the Constitutive Act of the AU[264], separated from Ethiopia to form the 53rd member

259 87% (See UNICEF, Every Child's Birth Right: Inequities and trends in birth registration, December 2013, page 43).

260 47% (See UNICEF, Every Child's Birth Right: Inequities and trends in birth registration, December 2013, page 43).

261 38% (See UNICEF, Every Child's Birth Right: Inequities and trends in birth registration, December 2013, page 43).

262 See Somalia (2%), Liberia (3%), Ethiopia (5%), Chad (9%) and Zambia (9%) in UNICEF, Every Child's Birth Right: Inequities and trends in birth registration, December 2013, pages 40-44.

263 See P. Aymond, 'Preuve de la nationalité', *Jurisclasseur de droit international*, Fascicule No. 502, 2e cahier, No. 6 & 7 quoted by Stanislas Meloné, 'La nationalité des personnes physiques' in *Encyclopédie juridique de l'Afrique*, Tome VI Droit des Personnes et de la Famille, Chapitre VI, Nouvelles Éditions Africaines, 1982, page 120.

264 See the Constitutive Act of the African Union, article 4, paragraph (b).

State of the continental organisation; and, more recently, South Sudan separated from Sudan to become the 54th State.

With the multiplication of cases of State succession on the continent, the debate on the right to a nationality has taken on a new perspective. Nationality change due to State succession is indeed a legal issue of considerable importance to the extent that 'it occurs on a collective basis and has numerous serious consequences for the persons involved [...] [since] the loss of the nationality of the predecessor State and the difficulties connected to the acquisition of the nationality of the successor State may lead to many human tragedies'[265],

Although the decisions of the International Court of Justice (hereinafter the ICJ) relating to border or territorial disputes on the African continent[266] generally ignore the question of the nationality of those who live in the affected zones, a more recent decision did request the two African States to have due regard for 'the needs of the populations concerned, in particular those of the nomadic or semi-nomadic populations, and to the necessity to overcome difficulties that may arise for them because of the frontier'[267].

The complexity of the issue of nationality in cases of State succession is linked to the diversity of recent experiences in Africa, which range from separation to transfer of part of a State territory to another. The issue has even been the focus of an in-depth review by the International Law Commission, whose proposed solutions could be very useful for the continent.

5.10.1 Separation of a part or parts of a territory

Ethiopia and Eritrea

In 1993, after nearly three decades of armed struggle, Eritrea achieved international sovereignty through a referendum, separating peacefully from Ethiopia, although this succession has not brought a satisfactory solution to the status of persons of Eritrean origin living in Ethiopia[268].

Thousands of people of Eritrean origin were able to participate in the vote that led to the country's independence because they had received registration cards showing that they had Eritrean citizenship[269] whereas, theoretically, the country did not yet exist, since Eritrea was an Ethiopian province.

As dual citizenship was prohibited under Ethiopian law, the countries agreed that 'until the issue of citizenship is settled in both countries, the traditional right of citizens of one side to live in the other's territory shall be respected'.

In 1995, Ethiopia adopted a new constitution that provided that no Ethiopian national would be deprived of his or her Ethiopian nationality against his or her will. The following year, Ethiopia and the new Eritrean State agreed that 'Eritreans who have so far been enjoying Ethiopian citizenship should be made to choose and abide by their choice'. Implementation of the agreement was nonetheless postponed pending resolution of a number of economic and other issues that embittered relations between the two countries, notably currency exchange, border disputes and Ethiopia's access to Eritrean ports.

The latent crisis erupted into armed conflict in May 1998, costing the lives of millions of people and causing massive population displacements. During the course of the war, the Ethiopian government

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265 See Vaclav Mikulka, State succession and its impact on the nationality of natural and legal persons: Nationality in relation to the Succession of States, *Yearbook of the International Law Commission*, 1995, Vol. II (I) A/CN/.4/467, page 176.

266 Border Dispute between Burkina Faso and Mali (Decision of 22 December 1986); Territorial Dispute between the Libyan Arab Jamahiriya and Chad (Decision of 3 February 1994); Case concerning Kasikili/Sedudu Island (Botswana/Namibia) (Decision of 13 December 1999); Case of the land and sea border between Cameroon and Nigeria (Decision of 10 October 2002); Border Dispute between Benin and Niger (Decision of 12 July 2005).

267 See paragraph 112 of the judgment handed down on 16 April 2013 by the ICJ in the case of the Frontier Dispute (Burkina Faso/Niger).

268 See Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009.

269 Eritrean nationality law provides that any person who fulfils the requisite conditions to obtain citizenship, through birth or naturalisation, and who wishes to be recognised as an Eritrean citizen must apply for a certificate of nationality.

undertook the 'denationalisation' of hundreds of thousands of Ethiopians of Eritrean origin, on grounds that by taking part in the referendum, they had forfeited their Ethiopian nationality.

Some 70,000 people were expelled from Ethiopia during this period, including prominent businessmen and UN officials, sometimes on the pretext that they constituted threats to internal security. In August 1999, all those who had voted in the referendum and remained in Ethiopia were ordered to register for alien residence permits, which had to be renewed every six months.

For its part, Eritrea also deported around 70,000 people during the same period, although their Ethiopian nationality status was never challenged. Most of them were resident aliens, who suffered from discrimination, violence and harsh conditions during deportation.

The Ethiopian government introduced a new nationality proclamation in 2003, which enabled many Eritreans living in Ethiopia to re-acquire Ethiopian citizenship.

In 2004, the Eritrea-Ethiopia Claims Commission (EECC), which was established by the UN to decide, through binding arbitration, claims brought by the two governments and their nationals, determined that those who had qualified to participate in the referendum had acquired dual citizenship because both States continued to treat them as nationals.

Since then, the status quo has prevailed and there is no indication that an imminent revision of the national legislations of both countries could resolve the legal situation of the hundreds of thousands of people affected by the amendments to the laws on nationality.

This situation is partly due to the lack of preparation of the administrations of both countries to deal with the consequences of the Referendum that led to Eritrean independence. They failed to inform the people who registered to vote in the Referendum about the potential legal consequences of their actions.

Sudan and South Sudan[270]

On 9 July 2011, the Republic of South Sudan acceded to international sovereignty six months after the referendum held from 9 to 15 January 2011, at the outcome of which nearly 99% of the population came out in favour of independence for the former autonomous region of South Sudan. This proclamation of independence put an end to more than 20 years of conflict between the Sudanese government and the Sudan People's Liberation Army (SPLA), which had been formed by southerners in response to the ruling party's programmes of Arabisation and Islamisation.

In January 2005, the Sudanese government and the SPLA signed a Comprehensive Peace Agreement in Nairobi, Kenya, in which they agreed on the autonomy of the South Sudan region and the organisation of a referendum on self-determination. The long and fraught negotiations on independence had been held up over vital issues such as boundary delimitation[271], oil revenue management and sharing and the people's rights, as well as the question of citizenship, and the parties agreed to settle the issues progressively.

The slow pace of negotiations – and doubtless the difficulties encountered during their course – prompted both parties to establish their own legislation which, however, did not protect the countries' populations from concerns involving nationality, and even statelessness, after the separation of the two States. South Sudan adopted a law on nationality[272] just days before its independence was proclaimed, and this was immediately followed by an update of Sudan's 1994 law on nationality[273].

In South Sudan, article 45 of the Fundamental Law laid down the principle of the 'inalienable'[274] right of any person born to a South Sudanese mother or father to enjoy South Sudanese citizenship and

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270 See Bronwen Manby, *The Right to Nationality and the Succession of South Sudan: A Commentary on the Impact of the New Laws*, Open Society Foundations, June 2012.

271 Although the border of Eritrea had been established in 1900 by the Italians, the boundaries of South Sudan had never been set, despite the fact that, as early as 1919, English colonists managed the six provinces of the North differently from the two provinces of South Sudan.

272 See the Nationality Act of 7 July 2011.

273 See the Sudan Nationality Act (Amendments) of 19 July 2011.

274 Transitional Constitution of the Republic of South Sudan, 2011, article 45, paragraph 1.

nationality, allowed dual citizenship[275] and granted non-nationals the right to naturalisation[276] whose contents and implementing procedures would be reiterated and further clarified by the Act of 7 July 2011. It defined the South Sudanese national by birth[277] as follows:

- a person, one of whose parents, grandparents or great-grandparents were born on the territory of South Sudan or such person belongs to one of the indigenous ethnic communities of South Sudan;
- a person who has (or whose parents have) been domiciled permanently on the territory of South Sudan since 1 January 1956;
- a child born after 7 July 2011 if his or her father or mother was a South Sudanese National by birth or naturalisation;
- a child of unknown parents found on the territory of South Sudan.

The law also allowed aliens to be naturalised on condition that they could prove ten years of continuous residence[278] or, in the case of spouses of South Sudanese nationals, after five years of residence in the country[279].

The Act's implementing decrees, adopted in December 2011, organised procedures for contesting the decisions of the authorities relating to nationality before the administrative or judicial bodies of the country.

As for Sudan, the amendments made by the Sudanese Parliament on 19 July 2011, which entered into force on 10 August 2011, introduced two new paragraphs in article 10 of the Nationality Act. The first stipulated that Sudanese nationality would automatically be revoked if a person acquired, de jure or de facto, the nationality of South Sudan [280] and the second extended the legal consequences of the loss of nationality by a father to his children[281].

In addition, dual citizenship, which had been authorised since 1994, could not apply to South Sudanese nationals and the period of residence required to be eligible for naturalisation was increased from five to ten years and additional conditions were added[282].

The law did not provide for any procedures for dealing with appeals that may be brought by persons having been deprived of their nationality, other than the right reserved by the President of the Republic to restore citizenship to any person who had been deprived thereof.

A comparative analysis of the two internal laws gives rise to the following comments:

- Neither law complies with the principles of international law applying in situations where a part or parts of the territory have separated from a State, which stipulate that the nationality of the populations living in the affected territories is to be based on their habitual residence in one of the two States and that they should also have the possibility of opting for either nationality[283].
- While the law of South Sudan reduced the likelihood of statelessness for persons residing on the territory of the new State[284], the law of Sudan had the immediate consequence of excluding from its nationality nearly 700,000 people who had lived

275 Transitional Constitution of the Republic of South Sudan, 2011, article 45, paragraph 4.

276 Transitional Constitution of the Republic of South Sudan, 2011, article 45, paragraph 5.

277 See the Nationality Act of 7 July 2011, article 8.

278 Nationality Act of 7 July 2011, article 10, paragraph 1(c).

279 Nationality Act of 7 July 2011, article 13, paragraph 1.

280 Sudanese Nationality Act 1994 and Sudanese Nationality Act (Amendment) 2011, article 10, paragraph 2.

281 Sudanese Nationality Act 1994 and Sudanese Nationality Act (Amendment) 2011, article 10, paragraph 3.

282 See Sudanese Nationality Act 1994 and Sudanese Nationality Act (Amendment) 2011, article 7. According to the law, such residence must be 'lawful and continuous'.

283 See the United Nations International Law Commission, *Draft articles on the nationality of natural persons in relation to the succession of States*, 1999.

284 Although the reference to ethnic groups makes it virtually impossible to grant nationality by birth to a person originating from the North of Sudan.

there for decades if not for generations. Following these measures, many people lost their jobs and were no longer able to enrol their children in school or even maintain their rights to their own property.

The situation of both countries' population is particularly complex, as some people who cannot obtain Sudanese nationality may not meet or be able to prove they meet the criteria laid down by the law of South Sudan[285]. The groups most affected by the potential conflicts of law include:

- people whose parents have ties to both countries;
- members of cross-border ethnic groups;
- members of pastoralist communities;
- residents of the Abyei Area;
- members of historical migrant communities;
- residents of third countries; and
- people separated from their families by the civil war.

5.10.2 Transfer of part of a territory

Two cases examined in recent years by the ICJ illustrate the difficulty of resolving the problem of the right to nationality in cases where territories are transferred.

Cameroon and Nigeria

The Bakassi Peninsula, which is the focus of the dispute between Cameroon and Nigeria that was brought before the ICJ, is located in the south-western area of Cameroon, east of the famous region of Biafra. Bakassi is the main gateway for entering and leaving south-eastern Nigeria and it controls navigation in the Gulf of Guinea. It is also a region rich in energy, mining and fishing resources reflected by a population estimated to 150,000 people, whose nationality is now in doubt.

The origins of the border conflict date back to the Berlin Conference of 1884, which divided up the continent according to two major principles: effective occupation and the hinterland rule that stated that a colonial power exercised sovereignty from the coast inland until it reached the zone of influence of another European power.

The agreements of 11 March 1913, signed without the consent of the local people, complemented and clarified by the Franco-British Declaration of 10 July 1919, determined the border between Nigeria and Cameroon, whose tutelary powers were originally Britain and Germany, and, after the German territories were mandated to other powers by the League of Nations, later Britain and France. From 1900 until shortly before the conflict, population movements were observed between Nigeria and Bakassi territory.

On 27 August 1991, on signing the minutes of a bilateral meeting with Cameroon, Nigeria challenged the colonial agreements establishing the borders between the two countries and demanded the definition of borders in the Lake Chad area and the revision of the Germano-British agreements of 1885 and the Anglo-German agreements of 1913.

Although Cameroon reaffirmed its position on these different accords and the OAU principle of the inviolability of the borders inherited from colonisation, on December 1991, its powerful neighbour occupied the Bakassi Peninsula militarily, particularly the towns of Jabane and Diamond, and attacked others, such as Idabato, in early 1994 under the pretext that Cameroonian gendarmes had threatened Nigerian nationals.

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285 On all of these questions, see Bronwen Manby, *The right to a nationality and the succession of South Sudan: a commentary on the impact of the new laws*, OSIEA, 2012, pages 7-9.

The Cameroonian authorities opposed this violation of their territorial integrity by repelling the attacks and asking the OAU to act as a mediator in the dispute with Nigeria.

Having noted that the OAU mediation was stalled, on 29 March 1994, Cameroon brought a petition before the ICJ against Nigeria in which it asked the international court to recognise its sovereignty over the Bakassi Peninsula and, noting that 'the delimitation of the maritime boundary between the two States has remained a partial one and [that], despite many attempts to complete it, the two parties have been unable to do so' called upon the Court, '[in order to avoid further incidents between the two countries, [...] to determine the course of the maritime boundary between the two States beyond the line fixed in 1975'.

After eight years of proceedings, the IJC handed down a decision on the merits of the case on 10 October 2002, in which it recognised that the Bakassi Peninsula and the contested area of Lake Chad were partly under Cameroonian sovereignty. It then decided on a new land and maritime boundary line between the two countries, asked Nigeria 'expeditiously and without condition to withdraw its administration and its military and police forces from the territories which fall within the sovereignty of the Republic of Cameroon'[286] and asked the latter 'expeditiously and without condition to withdraw any administration or military or police forces which may be present in the territories which fall within the sovereignty of the Federal Republic of Nigeria'[287].

The Court also took note of 'the commitment undertaken by the Republic of Cameroon [to] continue to afford protection to Nigerians living in the [Bakassi] Peninsula and in the Lake Chad area'[288].

The Secretary-General of the United Nations, Mr Kofi Annan, perhaps feeling that there were difficulties with the implementation of the ICJ judgment, organised a meeting between the Heads of State of the two countries on 5 September 2002, in Saint-Cloud, near Paris, France, at the outcome of which they agreed, inter alia:

- to uphold and implement the decision of the ICJ;
- to create an implementation mechanism with support from the United Nations[289].

However, as soon as the judgment was handed down, the President of Nigeria called a meeting of the Federal Executive Council, which decided, after hearing the Commission formed by the President of the Republic to study the consequences of the ICJ decision for Nigeria, to reject that decision on 23 October 2002 on grounds that 'a lot of fundamental factors were not taken into consideration [by the Judges] in arriving at their declaration'[290] and that 'for Nigeria, it is not a matter of oil or natural resource on land or in coastal waters; **it is a matter of the welfare and well-being of her people and their land**'[291].

This strong reaction from the Nigerian authorities convinced Cameroon that the effective implementation of the judgment of 10 October 2002 could only be achieved through long and difficult negotiations whose outlines had already been drawn up at Saint-Cloud. Thus:

- on 15 November 2002, a tripartite Summit between the UN Secretary General and the Presidents of Cameroon and Nigeria was held in Geneva, Switzerland, culminating in the creation of the Cameroon–Nigeria Joint Commission chaired by the United Nations, which immediately began its activities;

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286 See Judgment of 10 October 2002, Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon v. Nigeria: Equatorial Guinea Intervening*), paragraph 325 (V)(A).

287 See Judgment of 10 October 2002, Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon v. Nigeria: Equatorial Guinea Intervening*), paragraph 325 (V)(B).

288 See Judgment of 10 October 2002, Land and Maritime Boundary between Cameroon and Nigeria (*Cameroon v. Nigeria: Equatorial Guinea Intervening*), paragraph 325 (V)(C).

289 See Press Statement SG/SM/8368 of 5 September 2002 containing the joint communiqué published following the meeting between the two Presidents.

290 See Dépêche de l'Agence France Presse du 23 octobre 2002, quoted by Maurice Kamto in *La volonté de l'État en droit international*, Académie du droit international de la Haye, 2007, page 415.

291 See Dépêche de l'Agence France Presse du 23 octobre 2002, quoted by Maurice Kamto in *La volonté de l'État en droit international*, Académie du droit international de la Haye, 2007, page 416. Our translation and emphasis.

- on 4 and 5 February 2003, the Joint Commission held its second meeting in Abuja, Nigeria, during which it approved its working schedule for the demarcation of the land borders and raised the issue of the rights of the populations living in the zones affected by the ICJ decision.

A few months later, in December 2003, work began on the demarcation of the 1700km border and a schedule for the withdrawal of the administration and security forces from parts of the Cameroonian territory followed by a transfer of authority was established by joint agreement.

Finally, on 12 June 2006, the two States signed an accord on the implementation of the ICJ judgment of 10 October 2002 in Greentree, near New York, USA. In application thereof, the withdrawal of Nigerian armed forces followed by the transfer of authority over the Bakassi Peninsula to Cameroon became effective on 14 August 2006.

On closer examination, Nigeria's refusal to execute the ICJ judgment in October 2002 was partly linked to its wish for Cameroon to take account of the fundamental interests of the Nigerian population estimated at 150,000, which the Court had only very partially taken into account, focusing its attention on physical geography[292]. However, 'deciding on the matter of the attribution of territorial sovereignty over the geographic space had inevitable consequences for the fate of the population groups, their future political allegiance, their citizenship, their identity, and their destiny'[293].

Knowing that in the case of State succession, in the exercise of territorial jurisdiction 'the successor State is not bound by the acquired rights recognised by the predecessor State and may only be bound by these rights if it freely accepts them or if its jurisdiction is bound by a convention'[294], the Nigerian authorities used those tactics to obtain the granting by the Cameroonian party of special rights for Nigerian nationals from the Bakassi Peninsula, in the framework of the Greentree Agreement.

Thus, once its authority is effective, Cameroon undertakes to guarantee to the Nigerians living in the Bakassi Peninsula 'the exercise of the fundamental rights and freedoms enshrined in international human rights law and in other relevant provisions of international law'[295] and recognises a certain number of acquired rights, namely[296]:

- not to be forced to leave the peninsula or to change their nationality;
- respect for their culture, language and beliefs;
- freedom to pursue their economic activities;
- protection of their property and their customary land rights;
- equal fiscal rights with the Cameroonians living in the zone; and
- to be protected from any harassment or harm that may be caused by the new Cameroonian authorities.

The Agreement does not address the issue of dual citizenship for what has become the Nigerian minority in Cameroon, despite the fact that this could have resolved the problem of the enjoyment and exercise of other fundamental rights such as the rights to education and healthcare.

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292 The Court urged the parties (paragraph 316) to cooperate during the implementation of its decision, 'in the interest of the populations concerned so that, notably, they may continue to benefit from school and health services comparable to the ones they currently enjoy'.

293 See Alain Didier Olinga, *L'Accord de Greentree du 12 octobre 2006 relatif à la presqu'île de Bakassi*, Éditions l'Harmattan, 2009, page 75.

294 Mohamed Bedjaoui, *Annuaire de la Commission du Droit International*, II, 1969, pages 101-102, quoted by Alain Didier Olinga, *L'Accord de Greentree du 12 octobre 2006 relatif à la presqu'île de Bakassi*, Éditions l'Harmattan, 2009, page 81.

295 See the Agreement Between the Republic of Cameroon and the Federal Republic of Nigeria Concerning the Modalities of Withdrawal and Transfer of Withdrawal and Transfer of Authority in the Bakassi Peninsula of 12 June 2006, article 3, paragraph 1.

296 See the Agreement Between the Republic of Cameroon and the Federal Republic of Nigeria Concerning the Modalities of Withdrawal and Transfer of Withdrawal and Transfer of Authority in the Bakassi Peninsula of 12 June 2006, article 3, paragraph 2.

Finally, despite all the efforts made to seek a positive solution for the situation of the inhabitants of the Bakassi Peninsula, the two States were unable to resolve essential problems relating to the normal exercise of the right to nationality.

Burkina Faso and Niger

On their accession to independence in 1960, former French West African territories Burkina Faso (formerly known as Upper Volta) and Niger inherited the 'chronic' indeterminacy of the administrative boundaries of the French colonies comprising the former Afrique Occidentale Française (AOF)[297]. The colonial territories concerned were carved up repeatedly between 1904 and 1927.

On 31 August 1927, on the basis of a Presidential Decree of 28 December 1928, the interim Governor General of French West Africa issued an order establishing the boundaries of the two colonies. An erratum was issued on this order on 5 October 1927, correcting and retroactively adding to article 1, the very provision determining the boundary.

After achieving independence, the two countries, faced with recurring problems of confusion regarding tax levies and the circulation of law enforcement patrols, undertook negotiations with a view to determining the limits of their common boundary which runs for 590km. The area concerned is desert and semi-desert land in the north with a population predominantly made up of nomadic and semi-nomadic herders and, in the south, a sedentary population of farmers.

On 28 March 1987, an agreement was reached between the two countries according to which 'the frontier between the two States shall run [...] as described in the *Arrêté* [order] of 31 August 1927, as clarified by the Erratum' and 'should the *Arrêté* and Erratum not suffice, the course shall be that shown on the [...] map of the *Institut géographique national de France*, [...] and/or any other relevant document accepted by joint agreement of the Parties'[298].

On 16 May 1991, a joint communiqué issued by the Nigerian Minister of the Interior and the Burkinabè Minister of Territorial Administration once again determined the border, but it was challenged by Niger on grounds that it did not comply with articles 1 and 2 of the Protocol of Agreement of 1987.

Finally, on 15 May 2010, the two States turned to the ICJ to:

- determine the boundary line between the two countries in the area from the astronomic marker of Tong-Tong to the beginning of the bend;
- officially notify the parties of their agreement on the findings of the Joint Technical Commission on Demarcation regarding the disputed areas;
- appoint three (3) experts to assist them as necessary for the purposes of demarcation.

The interest this case presents for the present study resides in the request made by the Court to the parties, after the determination of the boundary line, to have due regard, in exercising their authority over the territories now under their jurisdiction, 'to the needs of the populations concerned, in particular those of the nomadic or semi-nomadic populations, and to the necessity to overcome difficulties that may arise for them because of the frontier'. In this regard, the Court referred to 'the co-operation that has already been established on a regional and bilateral basis between the Parties [...] and encourage[d] them to develop it further'[299].

The reality is that this territory which has been demarcated was already occupied by human beings pursuing economic, social and cultural activities thereon. Thus, 'when, in 2013, it decides on the frontier between two independent African countries [...] such an operation cannot be purely mechanical and nor can it consist of a formal transposition. The human – and even the

297 The ICJ had already been called on to establish the boundary limits of these two countries in other cases (ICJ, 22 December 1986, Frontier Dispute (Burkina Faso/Mali) and ICJ, 12 July 2005, Frontier Dispute (Benin/Niger).

298 See paragraph 24 of the Judgment of the ICJ referring to articles 1 and 2 of the Protocol of Agreement quoted by Albane Geslin and Guillaume Le Floch, Chronique de jurisprudence de la Cour internationale de justice (2013-2013), *Journal du Droit International* (Clunet) No 4, October 2013, Chron. 9, page 35.

299 See ICJ Judgment of 16 April 2013, Frontier Dispute (Burkina Faso/Niger), paragraph 112.

geographical – realities have evolved, and the Court, which dispenses justice almost a century later, cannot disregard them'[300] .

The populations concerned are nomads who live in homes that can be easily dismantled so that they can move according to the pastoral calendar. During the debates, both States mentioned the efforts they had made to take account, in their relations, of nomadic activities and transhumance in border areas, particularly in the agreements signed in the ECOWAS framework[301].

By looking beyond the purely inter-States dimension of the territorial dispute and focusing on the impact of the ICJ decision on the local people[302], one judge of the Court who seems to have influenced the position of the UN Court, came to the conclusion that 'people and territory go together; the latter cannot make abstraction of the former, in particular in cases of such a cultural density as the present one'[303].

This new approach by the Court demonstrates the importance of regional conventions such as those of ECOWAS in ensuring the effective exercise of the right to a nationality in Africa.

5.10.3 Solutions proposed by the International Law Commission

With a view to seeking lasting solutions to the human issues raised by State succession, African States could draw inspiration from the work of the United Nations International Law Commission (hereinafter known as the ILC) which, based on an in-depth study it conducted on 'Nationality in relation to the Succession of States'[304] upon request by the United Nations General Assembly[305], has outlined solutions in **Draft Articles on Nationality in relation to the Succession of States**[306] attempting to settle the various legal issues arising from situations of succession, unification, dissolution and transfer or separation of State territories.

According to the ILC Special Rapporteur, in case of State succession, 'in order to give effect to the right to a nationality, it is necessary [...] to identify the State which can be requested to grant its nationality to the person concerned. Such person may either have the right to acquire the nationality of the successor State or one of the successor States when there are several successor States, or maintain the nationality of the predecessor State if the State continues to exist after the territorial change'[307].

In such cases, the nature of the bond that the person concerned may have with said States will depend on the type of succession involved.

In case of State unification[308]

The ILC proposes that the nationality of the new State be granted to all persons who, on the date of the succession of the States, held the nationality of either of the predecessor States, subject to the requirement that the nationality shall not be conferred against his or her will on a person who holds another nationality than that of the predecessor States or who resides outside of the successor State.

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300 See Declaration of Judge Bennouna, Frontier Dispute (Burkina Faso/Niger), page 2.

301 We can cite, among others, Protocol A/P.1/5/79 of 29 May 1979 on Free Movement of Persons, Residence, and Establishment in ECOWAS, and Protocol A/P.3/5/82 of 29 May 1982 Relating to the Definition of Community Citizen.

302 For instance, in paragraph 101 of the judgment, the Court, examining the matter of the attribution of the River Sirba to one or the other of the parties, 'notes that the requirement concerning access to water resources of all the people living in the riparian villages is better met by a frontier situated in the river than on one bank or the other'.

303 See Separate Opinion of Judge Cançado Trindade, Frontier Dispute (Burkina Faso/Niger), page 26.

304 See *Yearbook of the International Law Commission*, 1996, vol. II, Part Two.

305 See Resolution 48/31 of the United Nations General Assembly of 9 December 1993, paragraph 7; Resolution 49/51 of 9 December 1994, paragraph 6; and Resolution 50/45 of 11 December 1995, paragraph 4.

306 Draft Articles on Nationality of Natural Persons in relation to the Succession of States, 1999, annexed to Resolution 55/153 of the United Nations General Assembly, 12 December 2000. See also Third Report on Nationality in Relation to the Succession of States: State succession and its impact on the nationality of natural and legal persons, by Vaclav Mikulka, in *Yearbook of the International Law Commission*, 1997, Vol. II(I), pages 15-17.

307 See Third Report on Nationality in Relation to the Succession of States: State succession and its impact on the nationality of natural and legal persons, by Vaclav Mikulka, in *Yearbook of the International Law Commission*, 1997, Vol. II(I), pages 24-25.

308 Draft Articles on Nationality of Natural Persons in relation to the Succession of States, article 21.

In case of transfer of part of a territory to another State[309]

In this case, the successor State grants its nationality to those who have their habitual residence on the territory transferred to it, while the predecessor State withdraws its nationality, except where the parties concerned decide otherwise in keeping with a right of option which should be granted them.

In case of separation of part or parts of a territory[310]

The successor State grants its nationality to all persons who have their habitual residence on its territory.

In any case, in situations of succession, the States are obliged to uphold the rights of all persons concerned. The change in an individual's status, especially when he becomes an alien in the place of his habitual residence, 'must not adversely affect his human rights and fundamental freedoms'[311].

The solution ultimately proposed by the Rapporteur and endorsed by the Draft Articles is to grant the persons concerned a right of option such that they would 'be entitled to have the nationality of both the predecessor and successor States or of two or more successor States'[312].

5.11 Regional citizenship

Although East Africa was the first to experiment with regional integration as of 1967, as a means to 'promote co-operation (between African States) in all fields of human endeavour in order to raise the standard of living of African peoples, and maintain and enhance economic stability, foster close and peaceful relations among Member States and contribute to the progress, development and the economic integration of the Continent'[313], it is in West Africa that this form of cooperation has truly taken shape with the adoption of a certain number of measures by the ECOWAS Member States, intended not only to bring about a rapprochement between the people of the region, but also and above all to establish the legitimacy of the idea of the emergence of an African citizenship. As the AU said so well, 'the choice before the peoples of Africa is not so much to unite or not to unite, but to forge ahead in the journey towards African integration'[314].

Indeed, with its aim to 'promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, [...] foster relations among Member States and contribute to the progress and development of the African Continent'[315], ECOWAS introduced, in its constitutive treaty, the concept of 'Community citizens'[316] whose purpose was to abolish 'all obstacles to freedom of movement and residence [of West African nationals] within the Community'[317], and to allow them to 'work and undertake commercial and industrial activities'[318] throughout the territory of the Community. For a region in which mass

309 Draft Articles on Nationality of Natural Persons in relation to the Succession of States, Article 20.

310 Draft Articles on Nationality of Natural Persons in relation to the Succession of States, Articles 24-26.

311 See Third Report on Nationality in Relation to the Succession of States: State succession and its impact on the nationality of natural and legal persons/Nationality in relation to the Succession of States, by Vaclav Mikulka, in *Yearbook of the International Law Commission*, 1997, Vol. II (I), page 43.

312 See Third Report on Nationality in Relation to the Succession of States: State succession and its impact on the nationality of natural and legal persons/Nationality in relation to the Succession of States, by Vaclav Mikulka, in *Yearbook of the International Law Commission*, 1997, Vol. II (I), page 69. Draft Article 26 provides that 'Predecessor and successor States shall grant a right of option to all persons concerned [...] who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.'

313 See the 1991 Treaty Establishing the African Economic Community, article 4, paragraph (1)(c).

314 See African Union, Report on the Audit of the African Union and Comments by the African Commission, January 2008, page 182.

315 See the Treaty of the Economic Community of West African States, signed in Lagos, Nigeria on 28 May 1975, article 2, paragraph 1 and the Revised Treaty of the Economic Community of West African States, article 3, paragraph 1.

316 See the Treaty of the Economic Community of West African States, signed in Lagos, Nigeria on 28 May 1975, article 27.

317 See the Treaty of the Economic Community of West African States, signed in Lagos, Nigeria on 28 May 1975, article 27, paragraph 1. This provision was complemented by the Revised Treaty of the Economic Community of West African States, article 59, paragraph 1.

318 See the Treaty of the Economic Community of West African States, signed in Lagos, Nigeria on 28 May 1975, article 27, paragraph 2.

population expulsions and the accompanying human trauma[319] were a familiar sight in the 1970s, this marks tremendous progress indeed.

In 1982, ECOWAS States adopted a Protocol to the Treaty on the Definition of a Community Citizen. The Protocol states that a Citizen of the Community must fulfil the following conditions:

- be a national by birth, descent or naturalisation of any of the Member States;
- not be a national of any State that is not a member of the Community;
- naturalised citizens must have resided permanently in a Member State of the Community for a continuous period of at least fifteen years;
- not jeopardise the fundamental interests of any Member States[320].

In addition, provisions are made for adopted children and children of unknown nationality on the territory of the Community who acquire citizenship in one of the Member States[321] also to thereby become Community citizens.

Conversely, ECOWAS Community Citizenship may be lost:

- By citizens from birth[322], in case of:
  - loss of nationality of country of origin;
  - permanent settlement in a State outside the Community;
  - voluntary acquisition of the nationality of State outside the Community.
- By naturalised citizens[323], in case of:
  - involvement in activities incompatible with the status of Community citizen, and/or prejudicial to the fundamental interests of one or more Member States of the Community;
  - sentencing for a crime;
  - Community citizenship obtained by fraud.

The rights attached to Community citizenship include general rules of non-discrimination contained in Community law and other rights established in the original Community law and secondary legislation.

Non-discrimination rules include the elimination of all discriminating measures and practices against Community citizens in the area of tourist and hotel services[324] and avoiding double taxation of Community citizens[325].

The other rights of Community citizens include all of the rights exercised in the Member States, starting with those contained in the Revised Treaty[326], the other conventions adopted by ECOWAS

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319 On this issue, see Aderanti Adepoju, Alistair Boulton and Mariah Levin, *Promoting integration through mobility: Free movement under ECOWAS*, UNHCR, 2005 and 'Immigration and expulsion of ECOWAS Aliens in Nigeria' in *International Migration Review* Vol. 22, No 1, 1988, pages 4-27.

320 See Protocol A/P.3/5/82 Relating to the Definition of Community Citizen, article 1, in *ECOWAS Official Gazette* No. 4 June 1982, page 22.

321 See in particular, Protocol A/P.3/5/82 Relating to the Definition of Community Citizen, article 1, paragraphs (3), (5)(a) and (6) in *ECOWAS Official Gazette* No. 4 June 1982, pages 21-22.

322 See Protocol A/P.3/5/82 Relating to the Definition of Community Citizen, article 2, paragraph 1, page 22.

323 See Protocol A/P.3/5/82 Relating to the Definition of Community Citizen, article 2, paragraph 2, page 22.

324 See the Revised Treaty of ECOWAS, article 34, paragraph 1(c).

325 See the Revised Treaty of ECOWAS, article 40, paragraph 5.

326 Notably the African Charter on Human and Peoples' Rights [Preamble, article 4(g) and article 56(2)].

and particularly those regarding the right to freedom of movement and residence in the Member States[327] as well as the decisions of its deliberating bodies.

The ability to exercise these rights is guaranteed by national courts and by the ECOWAS Court of Justice[328], which Community citizens may access directly to enforce their rights in the event of a violation[329]. It is not possible to be a Community citizen without first obtaining recognition of nationality of one of the Member States of the Community.

Thus, Community citizenship is not really granted automatically, nor directly by the ECOWAS institutions. It is intended as a complement to the rights of Community nationals and as a means of ensuring that they are easily enforced. It is, so to speak, part of a movement of 'reciprocal openness of national citizenships towards each other and transformations of national identities and reciprocal perceptions'[330] whose purpose is to 'erode' the borders of traditional citizenship and ultimately ensure the triumph of African continental integration through the African Union.

Thirty years after the adoption of the first measures on Community citizenship, ECOWAS seems, with the influence of civil society[331], to be ready to overhaul its legal framework relating to Community citizens' freedom of movement[332], which could also entail a revision of the eligibility criteria for regional citizenship. For example, the prohibition of citizenship in a State that is not a member of ECOWAS has fallen by the wayside given that dual citizenship is fully permitted by the legislation of some nine ECOWAS Member States[333] allowed in some circumstances in five more[334], and only completely forbidden in Liberia.

The progress achieved by ECOWAS has prompted a reaction among the other regional economic communities such as the East African Community (EAC)[335] and the Southern African Development Community (SADC), however, the initiatives fall far short of what we now view as the gold standard of regional citizenship, namely, European Union citizenship[336].

Africans should draw on the useful lessons provided by the ECOWAS and European Union experiences in order to include more unifying content in the notion of nationality in an African environment still weakened by porous borders that promote the growing trend towards transnational crime and bolster terrorist movements which have been operating on a regional basis for some time.

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327 We can cite Protocol A/P.1/5/79 on Free Movement of Persons, Residence, and Establishment, Convention A/P.5/5/82 for Mutual Administrative Assistance in Customs Matters, Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment, Supplementary Protocol l A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment, Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment, Decision A/DEC.2/7/85 Relating to the Establishment of ECOWAS Travel Certificate for Member States, Decision A/DEC.2/5/90 Establishing a Residence Card in ECOWAS Member States and Decision C/DEC.3/12/92 on the Introduction of a Harmonised Immigration and Emigration Form in ECOWAS Member States.

328 See Supplementary Protocol A/SP.1/01/05 Amending Protocol A/P.1/7/91 Relating to the Community Court of Justice.

329 See Supplementary Protocol A/SP.1/01/05 Amending Protocol A/P.1/7/91 Relating to the Community Court of Justice, article 10, paragraph (d). Complainants are not obliged to exhaust all domestic remedies before seeking remedy from the Court of Justice.

330 See Paul Magnette, *Le régime politique de l'Union européenne*, 2e édition revue et augmentée, Les presses de Science-Po, page 277.

331 See, for example, Communiqué No. 130/2014 of 5 July 2014 by the Forum citoyen de Ouagadougou (citizens' forum of Ouagadougou) on obstacles to freedom of movement within the ECOWAS space, which recommended, inter alia, 'the adoption and implementation of the ECOWAS 2014-2015 minimum action programme on free movement of persons, the introduction of a biometric ECOWAS identity card and the abolition of the requirement of residence permits for citizens of the Community in all member States'. Unofficial translation.

332 See the Press Statement of the Conference of ECOWAS Heads of State and Government of 10 July 2014, paragraph 11, in which the regional organisation approved 'the abolition of the residence permit and the introduction of the Biometric Identity Card for the Community citizens'.

333 Namely Benin, Burkina Faso, Cape Verde, Ghana, Guinea Bissau, Mali, Niger, Nigeria and Sierra Leone.

334 Côte d'Ivoire, Gambia, Guinea, Senegal and Togo.

335 With the introduction of a regional flag, anthem and travel documents.

336 See section 4.2 on page 18.

6. Conclusion and recommendations

'Not having a nationality is to be marginalised, not to belong' to a State[337]. This painful observation made by former Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, sounds like a call for international mobilisation to recognise a real right to nationality because, visibly, both national and continental legal frameworks do not allow this right to be truly exercised, where it exists.

At the outcome of this 'journey' to the heart of the right to nationality, the Special Rapporteur would like to formulate the following two conclusions:

1. Despite the existence of the African Charter on Human and Peoples' Rights, the Additional Protocol on the Rights of Women in Africa, and the African Charter on the Rights and Welfare of the Child, the right to a nationality is still not fully recognised as a fundamental human right on the African continent, as the current legal framework does not allow individuals to effectively protect themselves in the exercise of their right to a nationality.
2. The existence of national regulations on the right to a nationality has not filled the legal void that has been identified in regional law and therefore does not equip the African Commission with the legal tools it needs to promote and uphold the rights guaranteed under the African Charter.

Consequently, the following recommendations can be made with a view to resolving the problems highlighted by the study.

Adoption of a Protocol to the African Charter on Human and Peoples' Rights on the Right to a Nationality

African States should support the African Commission in its efforts to draft a Protocol to the African Charter on Human and Peoples' Rights on the Right to a Nationality in Africa. The Protocol should create the framework for the national implementation of the principles set out in the following paragraphs.

I. Fundamental principles pertaining to the right to a nationality

1. African States should include a provision in their national legislation stating that all men, women and children have the right to a nationality, as it is a fundamental prerequisite for the enjoyment and exercise of the human rights recognised by the African Charter and the other African human rights treaties that they have ratified.
2. African States are bound to ensure that everyone enjoys the right to a nationality without discrimination of any kind, particularly on grounds of gender, race, religion, ethnic group, disability, social status or any other basis, and that no one may be arbitrarily deprived of his or her nationality or be refused recognition or grant of such nationality on the basis of discriminatory reasons.

337 See Thomas Hammarberg, *Droits de l'homme en Europe : la complaisance n'a pas sa place*. Éditions du Conseil de l'Europe, Strasbourg, Octobre 2011, page 212.

3. National laws and constitutions should and introduce guarantees to prevent and reduce statelessness and provide protection to stateless persons.

4. The discretionary power of each State in determining who are its nationals is restricted by its human rights obligations, particularly where granting and loss of citizenship are concerned.

5. Stateless persons shall be entitled to international protection.

6. African States should comply with minimum procedural standards to guarantee that decisions relating to acquisition, deprivation or change of nationality contain no element of arbitrariness. The States should, in particular, make efforts to ensure that controls may be conducted by a competent administrative or judicial body in compliance with their domestic law, and with the relevant standards established by the African Charter and international human rights law.

7. African States should ensure that persons whose right to nationality has been violated have an effective remedy. In the context of deprivation of nationality, the individual must continue to be considered a national during remedy proceedings.

8. The principles relating to the right to a nationality and the rules prohibiting arbitrary deprivation of nationality, the principle of non-discrimination, the prevention of statelessness and the obligation of setting up effective procedural and remedy guarantees apply fully to situations of State succession.

9. The States should ensure that there is a consistent set of laws, strategies and regulations on nationality.

II. Nationality of origin

1. African States should ensure that their legislation complies with the guidance offered by the General Comment of the Committee on the Rights of the Child on Article 6 of the Charter on the Rights of the Child and in particular offers guarantees that the right of children to acquire a nationality will be respected, notably through access to nationality for all children born on their territory who would otherwise be stateless and for all children born abroad to a parent who is a national of said State and who would otherwise be Stateless. The States should ensure that these guarantees enable children who would otherwise be stateless to acquire the nationality as quickly as possible.

2. National laws should be drafted in such a way as to prevent statelessness at birth by making it possible to claim a right to nationality by descent or by birth in the country.

   a) Every person has the right to the nationality of the country or countries of origin of either or both of his or her parents;

   b) Every person has the right to the nationality of the country in which he or she is born, either at birth or after living in the country for a predetermined length of time and, at the latest, on reaching majority (taking account of the exceptions provided under international law for children of diplomats or people in similar positions).

3. African States should provide mechanisms to enable a person who has no nationality or whose nationality is unclear to acquire the nationality of the country with which he or she has the closest ties, as determined by a set of criteria such as place of birth, ancestry, habitual residence, place of birth of his or her spouse or children, principal place of business, etc.

4. African States should make sure that women can transfer their nationality to their children under the same conditions that apply to men. African States should make sure that their laws establish no distinction between children born in wedlock and children born out of wedlock.

III. Nationality by acquisition

1. Citizenship laws should facilitate the acquisition of nationality by the spouse of a national, on equal terms between men and women.
2. Citizenship laws should allow women whose marriage has been dissolved to recover their former nationality by simple declaration if, through marriage, they automatically lost their nationality or were required to renounce it.
3. Residents who have lived in their country of residence for a reasonable amount of time should have the option of being naturalised and the procedures for naturalisation should be made accessible and respect due process.
4. Differences in treatment between persons who hold nationality of origin and who acquire nationality at a later date may be justified in certain situations, such as the exercise of political rights, but they should be strictly limited to the minimum necessary to achieve the expected results and, in all cases, be proportionate and reasonable.

IV. Dual citizenship

1. The Special Rapporteur urges African States to recognise multiple nationality in their legislation.
2. In all cases:
    a) They should recognise dual citizenship for children with parents of different nationalities as well as for spouses of non-nationals who, residing in their spouse's State, express the wish to acquire that nationality without losing their nationality of origin.
    b) If their national legislation does not recognise dual citizenship, in the event that they discover that a national holds two citizenships, they should give said national the opportunity to renounce the disputed nationality or declare that he or she has never claimed such nationality before depriving him or her of citizenship.

V. Succession of States

In case of State succession, persons having the nationality of the predecessor State should have the option of choosing citizenship in the successor State to which they have the strongest attachment, and where this option is not available, they should be granted citizenship in their country of habitual residence. In any case, they should, at the very least, have the right to citizenship in one of the successor States.

VI. Loss or deprivation of nationality

1. Grounds for loss or deprivation of nationality should be reasonable and proportionate:
    a) Revocation of nationality should be grounded on a legitimate reason in compliance with international law.
    b) The State must provide proof that the conditions for revocation are fulfilled.
    c) The decision to revoke a person's nationality should not be disproportionate in relation to the alleged misconduct or be in violation of the obligations of said State under international human rights law, humanitarian law or refugee law.
2. Before depriving a person of his or her nationality, the State must prove that he or she holds another nationality that is effective and undisputed:
    a) A State should not deport any person to another country without first ensuring that the person is a national of that country.

b) A State should not deport any person to another country in violation of its obligations under international human rights law, humanitarian law or refugee law.

VII. Birth registration

1. African States are bound to register the birth of all children, whether or not their parents are nationals or stateless. Birth registration notably enables children to prove their connections with one or more States and acquire nationality by descent and/or birth on the territory.
2. African States should take all necessary steps to ensure that children are immediately registered at birth without distinction based on sex, race, handicap, social status or other factors. Marriages should also be registered in a timely fashion.

VIII. Proof of evidence and due process

1. African States should ensure equal access to documents used to prove nationality, particularly passports, identity documents and birth and marriage certificates and provide for different systems to prove identity when these forms of proof are not available or cannot be reasonably obtained.
2. If there are reasons to think that a person has the nationality of a country, including the one in which he or she has always lived, and he or she has always lived and been treated as a national, the onus is on the State or any person contesting it to prove that the person does not possess its nationality.
3. Decisions on matters of nationality should contain the reasons why the person has been deprived of his or her nationality or has been refused recognition of nationality of origin or naturalisation and should be subject to judicial appeal by the usual processes of law.

IX. Treatment of foreigners

Limitations on individual rights founded on non-national status should be reduced to a minimum:

a) Limitations on the rights of non-nationals should be in compliance with existing human rights standards.

b) Distinctions among non-nationals of different nationalities should be established by bilateral or multilateral treaties and should not violate international human rights standards.

c) Nationality in a given country other than the country of residence may not serve as the sole criterion for restriction of individual rights.

d) The State must prove that any specific difference in treatment based on nationality is rationally linked to the achievement of a legitimate public policy goal, is proportionate to the importance of said goal and does not adversely affect any other recognised human rights.

e) All policies entailing differential treatment based on possession of a specific nationality shall be subject to individual court decisions, justifying the difference in treatment.

Appendices

I. Questionnaire for States Parties to the African Charter on the right to a nationality and prevention of statelessness

The present questionnaire was prepared for States Parties to the African Charter on Human and Peoples' Rights by the ACHPR Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa pursuant to Resolution 234 adopted by the ACHPR during its 53rd Ordinary Session. The objective of this questionnaire is to collect information from African States on national laws relating to citizenship and statistics on birth registration, naturalisation, loss or forfeiture of nationality and statelessness that will enable the African Commission to conduct an in-depth study on issues relating to nationality in Africa.

The Special Rapporteur is counting on the excellent cooperation of the relevant ministries of States Parties to be able to receive the filled questionnaire by 28 February 2014. Questionnaires should be returned to the following addresses:

Postal address:

African Union Commission
Department of Political Affairs
Humanitarian Affairs Division
P.O. Box 3243 Addis Ababa, Ethiopia
Emails: may136@gmx.fr, charles.nguena@gmail.com and Nshimbam@africa-union.org

COUNTRY:

Part 1. Citizenship legislation

Please supply copies of or, where they are available online, weblinks to relevant documents.

Constitution

Year of Constitution:
Constitutional provisions relevant to citizenship, if any:
Date of latest amendment affecting citizenship provisions, if any:

Citizenship law

Name of citizenship legislation:
Year of promulgation:
Date of latest amendment, if any:

Subsidiary legislation

Name of any subsidiary legislation (regulations / décrets, etc.):
Year of promulgation:
Dates of any amendments:

Administrative directives

Name of internal administrative directives in force:
Year of adoption:

Reform proposals

Are there any plans for replacement of the law or amendments to the legal provisions relating to citizenship?

Part 2. International and regional instruments

Please indicate whether your country of operation has ratified or acceded to relevant international and regional instruments. If YES, please note whether reservations have been entered to the articles specified and what obstacles exist to lifting these reservations. If NO, please note any obstacles to ratification/accession of the instrument.

International instrument	Ratified/Acceded (Yes/No & date)	If yes, list any reservations to specific articles	If no, note obstacles to ratification/ accession	Other comments
1954 Convention relating to the Status of Stateless Persons				
1961 Convention on the Reduction of Statelessness				
International Covenant on Civil and Political Rights (articles 23 and 24)				
International Convention on the Elimination of All Forms of Racial Discrimination (articles 1 and 5)				
Convention on the Elimination of All Forms of Discrimination Against Women (article 9)				
Convention on the Rights of the Child (articles 7 and 8)				
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 29)				
Convention on the Rights of Persons with Disabilities (article 18)				
1957 Convention on the Citizenship of Married Women				
African Charter on the Rights and Welfare of the Child (article 6)				
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (article 6 (g)/(h))				
The AU Convention on specific aspects related to refugees and other relevant regional treaty (including Regional Economic Communities of the AU, International Conference on the Great Lakes Region, etc.)				

Part 3. Identifying gaps in national legislation in relation to the prevention and reduction of statelessness

A useful tool for the analysis of the domestic legal framework on citizenship is 'Statelessness: An Analytical Framework for Prevention, Reduction and Protection' published by the Office of the UN High Commissioner for Refugees.

See: http://www.unhcr.org/refworld/topic,45a5fb512,45a5fbae2,49a28afb2,0.html.

A. Acquisition of citizenship at birth

1. Does the Constitution or other law provide for all children to have the right to a name and to acquire a nationality?

   Relevant article(s) in constitution, citizenship or other law (e.g. Children's Act):

2. Under what circumstances is a child born in the country a citizen (indicate all that apply and elaborate on conditions where they apply):

   a) Based solely on the fact of birth in the country, with exceptions only for children of diplomats etc.?

   Relevant article(s) in citizenship law:

   b) If one parent was also born there?

   Relevant article(s) in citizenship law:

   c) If still resident there after a period of time, for example until majority (specify the period)?

   Relevant article(s) in citizenship law:

   d) If either of his or her parents is a citizen?

   Relevant article(s) in citizenship law:

   e) If the answer to d) is no, how is citizenship transmitted by descent (e.g. from the father if child born in wedlock; from the mother if not)

Relevant article(s) in citizenship law:

   f) if he or she would otherwise be stateless, in accordance with article 6 of the ACRWC (including if both the parents are stateless, or if the parents cannot transmit their own citizenship to the child)

   Relevant article(s) in citizenship law:

   g) Is citizenship obtained automatically in all or any of these circumstances or only on application, and what conditions, if any, apply? For example, does the law require birth registration in all or any cases?

3. Is a safeguard in place to grant citizenship to foundlings and/or children of unknown parents?

   Relevant article(s) in citizenship law:

4. Does a child adopted by a citizen become a citizen? On what terms?

   Relevant article(s) in citizenship law:

5. Under what circumstances does a child of a citizen born outside the country become a citizen? (indicate all that apply)

   a) If either parent is a citizen of any type?

   Relevant article(s) in citizenship law:

   b) If the answer to a) is no, what restrictions apply (e.g. only father can transmit nationality outside the country, parent must also have been born in the country or cannot be a citizen

by naturalisation/registration, different rules apply to children born in or out of wedlock etc.)?

Relevant article(s) in citizenship law:

c) Even if the principal conditions are not fulfilled, if the child would otherwise be stateless?

Relevant article(s) in citizenship law:

d) For a child born abroad is citizenship granted automatically at birth or only subsequently upon application (or both)? If granted upon application, what conditions are applied?

Relevant article(s) in citizenship law:

6. Are children born on ships or planes registered in the State included in provisions governing the acquisition of citizenship by birth on the territory?

   Relevant article(s) in citizenship law:

7. Can a person obtain a certificate of citizenship by application to a tribunal or administrative body, in cases where his or her citizenship is in doubt? If so, what conditions apply?

   Relevant article(s) in citizenship law:

B. Acquisition of citizenship by naturalisation, registration, marriage, etc.

1. On what basis can a person acquire citizenship as an adult based on residence in the country? Please list all conditions that apply.

   Relevant article(s) in citizenship law:

2. Is the naturalisation of stateless persons and refugees facilitated in citizenship law? On what terms can they apply to be naturalised as citizens? Are these terms more (or less) generous than those applied to other foreigners in relation to duration of residence, procedures, costs, etc.?

   Relevant article(s) in citizenship law:

3. On what terms does a person married to a citizen obtain citizenship? Are these rights equal between men and women? Is the right to citizenship automatic or discretionary – can the state refuse to grant citizenship to a spouse and on what terms? Is citizenship obtainable more easily by a spouse who is stateless?

   Relevant article(s) in citizenship law:

C. Renunciation of citizenship

1. Does the law allow for the voluntary renunciation of citizenship? If so, is renunciation conditioned on acquisition of another citizenship or a formal assurance from another State that citizenship will be granted?

   Relevant article(s) in citizenship law:

2. What occurs if renunciation of citizenship is permitted based on the expectation that another citizenship will be acquired but the second citizenship is never actually acquired in practice?

   Relevant article(s) in citizenship law:

D. Loss and deprivation of citizenship

1. On what grounds may a citizen from birth lose his or her citizenship?

   Relevant article(s) in citizenship law:

2. On what grounds may a citizen by registration/naturalisation lose his or her citizenship?

   Relevant article(s) in citizenship law:

3. Are there protections in law to ensure that a person cannot lose or be deprived of citizenship if he or she would not acquire the citizenship of another country? If so, what proof is required that the person has another citizenship?

   Relevant article(s) in citizenship law:

4. Do women who are citizens automatically lose their citizenship if they marry a foreign national?

   Relevant article(s) in citizenship law:

5. Do foreign women married to nationals automatically lose the citizenship of their husband's State in the case of divorce, death of the husband or a change in his citizenship?

   Relevant article(s) in citizenship law:

6. If national law allows for the deprivation of citizenship on the basis of misrepresentation or fraud, or if the person commits a crime, is there a time limit beyond which revocation of citizenship is no longer allowed and/ or is the gravity of the misrepresentation, fraud or crime taken into account? Are other relevant circumstances taken into account including the nature of links with the country concerned (e.g. length of residence, birth there)?

   Relevant article(s) in citizenship law:

7. Does loss or deprivation of citizenship of a parent lead to deprivation of the same citizenship of his or her children? If so, is there a safeguard against statelessness of the children?

   Relevant article(s) in citizenship law:

E. Discrimination and conflict of laws

1. Are the provisions relating to acquisition of citizenship at birth or as an adult, or for deprivation or loss of citizenship discriminatory on any grounds, prohibited by the African Charter on Human and Peoples' Rights, including 'race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.'

   Relevant article(s) in citizenship law:

2. Do provisions of the citizenship law or constitution conflict with each other or with other relevant legislation?

   Relevant article(s) in constitution and citizenship or other laws:

Part 4. Birth registration

1. What law applies to birth registration?

   Year of adoption:
   Most recent amendment:

2. Is registration of the birth of all children born in the country compulsory? If not, which groups are excluded?

   Relevant article(s) in birth registration law:

3. What percentage of children under five have had their births registered?

   Source of information and year for which information is valid:

4. What measures is the State taking to increase birth registration, especially of those most difficult to reach?

5. Are birth certificates used to indicate citizenship?

   a. If so, what protections are there to ensure that children are not incorrectly given a certificate that indicates that they are not citizens?

   b. If not, which authority is responsible for issuing citizenship documents?

Part 5. Statistics on grant and deprivation of citizenship

Please provide statistics, where available, for the numbers of people in the following categories and the period/year for which the information is valid:

1. naturalised/ registered as an adult
2. naturalised/ registered as citizens on the grounds that they were stateless
3. naturalised/ registered after first obtaining refugee status
4. obtained citizenship by marriage
5. deprived or lost citizenship (and on what grounds, if known)

Part 6. Administrative procedures and due process

1. Are procedures relating to acquisition, loss, deprivation and change of citizenship and confirmation and proof of citizenship: set out in writing and well publicised? How can an ordinary person obtain access to such information?
2. What documents must be provided by the parents or guardian to obtain proof of citizenship for a child? Are these documents the same for all children, or are additional documents required in some circumstances? Which populations are affected by additional requirements if there are varied rules?
3. What are the relevant fees applicable to procedures for recognition or grant of nationality and birth registration? Can fees be waived and under what circumstances?
4. What steps does the State take to ensure that populations resident in remote or border regions have access to the administrative procedures relating to birth registration and recognition of citizenship?
5. What steps does the State take to ensure that discriminatory practices which may lead to statelessness are eradicated?
6. Is there a process of administrative appeal in relation to any decision relating to citizenship?
7. Is the relevant government department obliged to provide reasons for any decision relating to citizenship?
8. Can a decision relating to citizenship be reviewed by the courts?
9. Is legal or paralegal assistance available to those people who need it?

Part 7. Populations at risk and preventive measures

1. In light of all the information noted above, which populations or persons born or resident in your country are most at risk of statelessness?
2. In States where there are large populations of persons following a nomadic lifestyle, how does the State apply rules relating to residence, ensure birth registration etc. for such populations to ensure that they have access to citizenship where entitled?
3. Does the State have any estimates of the numbers of people affected who may be stateless or have difficulty obtaining proof of nationality? Please provide these numbers, if so.
4. What steps is the State taking to ensure that such groups are able to obtain recognition or grant of citizenship and the relevant documents, whether of the State itself or another State?

II. Citizenship legislation currently in force in Africa

(revised texts are in parentheses)

Algeria	– Ordonnance No. 70-86 du 15 décembre 1970 portant code de la nationalité algérienne (modifiée par Ordonnance No. 05-01 du 27 février 2005) – Loi No 84-11 du 9 juin 1984 (révisée par l'Ordonnance No. 05-02 du 27 février 2005 et Loi du 4 mai 2005) portant Code de la famille – Ordonnance No 70-20 du 19 février 1970 portant Code de l'état-civil
Angola	– Constituiçao da Republica de Angola aos 21 Janeiro de 2010 – Lei No.1/05 da nacionalidade, de 1 de julho 2005
Benin	– Loi No. 65-17 du 23/06/65 portant Code de la nationalité dahoméenne – Loi No. 2002-07 du 7 juin 2002 portant Code des personnes et de la famille (révisé le 14 juin 2004 suite à la décision DCC 02-144 du 23 décembre 2002 de la Cour constitutionnelle).
Botswana	– Citizenship Act Cap 01:01, Act 8 of 1998 (as amended by Act 9 of 2002 and Act 1 of 2000) – The Children's Act 2009, No. 8 of 2009
Burkina Faso	– Zatu No. An VII 0013/FP/PRES du 16 novembre 1989, portant institution et application du Code des personnes et de la famille
Burundi	– Constitution du 18 mars 2005 – Loi No. 1-013 du 18 juillet 2000 portant réforme du Code de la nationalité – Loi No 1-024 du 28 avril 1993 portant Réforme du Code des personnes et de la famille
Cameroon	– Loi No. 1968-LF-3 du 11 juin 1968 portant Code de la nationalité camerounaise
Cape Verde	– Constitution du 25 septembre 1992 (révisée le 03 mai 2010) – Decreto-Lei No 53/93 de 30 de Agosto de 1993 – Codigo de Registo Civil, Decreto-Lei No 47678, de 5 de Maio de 1967 (Alterado pelo Decreto-Lei No 49177, de 4 de Junho 1977)
Central African Republic	– Loi No. 1961.212 du 20 avril 1961 portant Code de la nationalité centrafricaine
Chad	– Ordonnance No. 33/PG-INT du 14 août 1962 portant Code de la nationalité tchadienne
Comoros	– Loi No. 79-12 du 12 décembre 1979 portant Code de la nationalité comorienne – Loi No 84-10 du 15 mai 1984 relative à l'état-civil – Loi No 05-2005 du 3 juin 2005 relative au Code de la famille
Congo Republic	– Loi No. 35-61 du 20 juin 1961 portant Code de la nationalité congolaise (modifiée par Loi No. 2-93 du 30 septembre 1993) – Loi No 04-2010 du 14 juin 2010 portant Protection de l'enfant en République du Congo
Côte d'Ivoire	– Loi n° 61-415 du 14 Décembre 1961 portant Code de la nationalité ivoirienne (modifiée par la loi No.64-381 du 7 octobre 1964, la loi No.72-852 du 21 Décembre 1972, la Loi No.2004-662 du 17 décembre 2004, les décisions No. 2005-03/PR du 15 juillet 2005 et No. 2005-09/PR du 29 aout 20052013, et la Loi No.2013-654 du 13 septembre 2013) – Loi No 64-374 du 7 octobre 1964 relative à l'état-civil (modifiée par les Loi No. 83-799 et 83-802 du 2 août 1983)
DR Congo	– Constitution du 18 février 2006 (modifiée par la Loi constitutionnelle No. 11/002 du 11 février 2011) – Loi No. 04-024 du 12 novembre 2004 relative à la nationalité congolaise – Loi No 87-010 du 1er août 1987 relative au Code de la famille – Loi No 09-001 du 10 janvier 2009 portant protection de l'enfant

Djibouti	– Loi No. 200/AN/81 portant Code de la nationalité djiboutienne (modifiée par la Loi No 79/AN/04, 5e Législature) – Loi No. 152/AN/02 du 31 janvier 2002, 4e Législature portant Code de la Famille
Egypt	– Law No. 26 of 1975 concerning Egyptian nationality (as amended by Law No. 154 of 14 July 2004) – Law No. 12 of 1996 promulgating the Child Law amended by Law No 126 of 2008
Equatorial Guinea	– Constitution du 1er septiembre 1988 (révisée le 17 janvier 1995 et en janvier 2011 par référendum) – Ley núm. 8/1990, de fecha 24 de octubre, reguladora de la nacionalidad ecuato-guineana – Real Decreto de 24 Julio 1889 Dispone la publicación del Cogido Civil
Eritrea	– Constitution of 23 May 1997 – Eritrean Nationality Proclamation No. 21/1992
Ethiopia	– Constitution of 8 December 1994 – Proclamation No. 378/2003 on Ethiopian Nationality – Proclamation No. 760/2012 A Proclamation on the registration of vital events and national identity Card – Proclamation No. 213/200 on the Revised Family Code – Proclamation No. 165 of 1960 on the Civil Code
Gabon	– Loi No. 37-1998 portant Code de la nationalité – Loi No 15-72 du 29 juillet 1972 relative au Code civil
Gambia	– Constitution of 8 April 1996 (as amended in 2001) – Gambia Nationality and Citizenship Act No. 1 of 1965 – The Children's Act 2005
Ghana	– Constitution of the Republic of Ghana 1992 (amended by Act 527 of 1996) – The Citizenship Act 591 of 2000 – The Dual Citizenship Regulation Act 91 of 2002 – The Children's Act 1998 (Act 560 of 1998) – The Registration of births and deaths Act 1965 (Act 301 of 1965)
Guinea	– Loi 004/APN/83 du 16 février 1983, portant Code civil de Guinée – Loi No 2008-011 du 19 août 2008 portant Code de l'enfant guinéen
Guinea Bissau	– Constitution du 16 mai 1984 (révisée en 1991 et en 1996) – Lei da cidadania No. 2/92 de 6 de abril (révisée la Lei 06/2010)
Kenya	– The Children's Act No. 8 of 2001 – Constitution of Kenya 2010 – Kenya Citizenship and Immigration Act No. 12 of 2011 (as amended by The Statute Law (Miscellaneous Amendment Act No. 12 of 2012).
Lesotho	– Constitution 1993 – Lesotho Citizenship Order No. 16 of 1971 – The Children's Protection and Welfare Act 2011
Liberia	– Constitution 1986 – Aliens and Nationality Law 1973 – The Children's Law 2011
Libya	– Law No. 24 of 2010 on the Provisions of Libyan Nationality

Madagascar	– Ordonnance No. 1960-064 portant Code de la nationalité malgache (modifiée par la Loi No. 1961-052) – Ordonnance No 62-041 du 19 septembre 1962 relative aux dispositions générales de droit interne et de droit international privé (Code civil) modifiée par la Loi No. 2007-040 du 14 janvier 2008 relative à la délivrance des jugements supplétifs d'actes de naissance dans le cadre des programmes de réhabilitation de l'enregistrement des naissances. – Loi No. 2007-03 du 20 août 2007 relative aux droits et à la protection des enfants – Loi No. 2007-022 du 20 août 2007 relative au mariage et aux régimes matrimoniaux
Malawi	– Constitution 1994 – Malawi Citizenship Act 1966 (revised by Act No. 22 of 2002) – The Children and Young Persons Act 2001. – The Birth and Death Registration Act 1964 (Act 219/1964) revised in 1969 (Act 1/1969)
Mali	– Loi No. 6218 AN-RM du 3 février 1962 portant Code de la nationalité malienne (modifiée par la Loi No. 95-70 du 25 août 1995 et par la Loi 2011-087 du 30 décembre 2011) – Ordonnance No. 02-062/P.RM du 7 juin 2002 portant Code de protection de l'enfant – Loi No. 06-024 du 28 juin 2006 régissant l'état-civil
Mauritania	– Constitution 1991 – Loi No. 1961-112 du 12 juin 1961 portant Code de la nationalité mauritanienne telle que modifié par la Loi No.1962-157 et la Loi No.1976-207 (modifiée par la Loi. No. 2010-023 du 11 février 2010)
Maurice	– Constitution 1968 (amended by Act No.23 of 1995) – The Mauritius Citizenship Act 1968 – The Civil Status Act 1981 – Code civil mauricien, Act 18 of 1974
Mozambique	– Constitution 2004 – Lei da Nacionalidade de 20 de Junho de 1975 (telle que modifiée par Lei No. 16/87 de 21 de Dezembro 1987) – Lei de Promoçao e Protecçao dos Direitos da Criança No. 7/2008 de 9 Julhio de 2008 – Lei da Familia No. 10/2004 de 25 de Agosto de 2004 – Cogido de Registo civil, Leil No. 12/2004 de 8 de Decembro de 2004
Namibia	– Constitution 1990 (as amended by Act No. 7 of 2010) – Namibian Citizenship Act No. 14 of 1990 as amended by the Immigration Control Act 7 of 1993 – Birth, Marriage and Death Registration Act 81 of 1963 (as amended in 1974) – The Child Status Act, 2006 (Act 6 of 2006) – The Married Persons Equality Act, 1996 (Act 1 Of 1996)
Niger	– Constitution 1999 – Ordonnance No. 84-33 du 23 août 1984 portant Code de la nationalité (modifiée par l'Ordonnance No. 99-17 du 4 juin 1999) – Code civil du Niger, 2005
Rwanda	– Loi organique No. 30/2008 du 25/07/2008 portant code de la nationalité rwandaise – Loi relative aux droits et à la protection de l'enfant No. 54/2011 du 14 décembre 2011 – Loi No. 14-2008 du 4 juin 2008 gouvernant l'enregistrement de la population et l'émission des cartes nationales d'identité
SADR	No law
São Tomé and Príncipe	– Constitution 2003 – Lei da nacionalidade No. 6/90 – Lei No. 2-77 Regula juridicamente as instituiçoes de familia (Livro IV – Codigo civil Direito da Familia)

Senegal	– Loi No. 61-70 du 7 mars 1961 déterminant la nationalité sénégalaise (modifiée par la Loi No.61-10 du 7 mars 1961, la Loi No.67-17 du 28 février 1967, la Loi No.70-27 du 27 juin 1970, la Loi No.70-31 du 13 octobre 1970, la Loi No.79-01 du 6 janvier 1979, la Loi No.84-10 du 4 janvier 1984, la Loi No.89-42 du 26 décembre et la Loi No.2013-05 du 8 juillet 2013) – Code de la famille, Loi No. 72-61 du 12 juin 1972
Seychelles	– Constitution 1993 (as amended by Act 7 of 1994, Act 5 of 1995, Act 19 of 1995, Act 14 of 1996, SI 11 of 1998, Act 7 of 2000, SI 31 of 2000, SI 22 of 2001, SI 32 of 2002, Act 7 of 2011 and Act 11 of 2013) – The Citizenship Act No. 18 of 1994 – The Children Act No. 16 of 1982 (revised by Act 8 of 1991, 4 of 1998 and 9 of 1999) – The Civil Code of Seychelles Act 13 of 1975 revised by Act 8 of 1992
Sierra Leone	– Constitution 1991 – The Sierra Leone Citizenship Act, 1973 No. 4 of 1973 (as amended by Act No. 13 of 1976 and Act No. 11 of 2006) – The Child Rights Act, 2007 (Act 43 of September 3, 2007) – The Birth and death Registration Act, 1983 (Act 11 of 1983) – The National Registration Act, 2008 (Act 32 of 2008)
Somalia	– Law No. 28 of 22 December 1962 on Somali Citizenship – The Somali Transitional Federal Charter 2004
South Africa	– Constitution 1996 (most recent amendment is the Constitution Seventeenth Amendment Act of 2012 – citizenship provisions not affected) – South African Citizenship Act No. 88 of 1995 (as amended by Act No. 19 of 1997, Act No. 17 of 2004 and Act No.17 of 2010)
South Sudan	– Transitional Constitution of the Republic of South Sudan 2011 – The Nationality Act 2011 – The Child Act 2008 (Act 10 of 2008)
Sudan	– Interim National Constitution of the Republic of Sudan 2005 – The Sudanese Nationality Act 1994 (amended 2005 and 2011) – The Child Act, 2010
Swaziland	– Constitution 2005 – The Swaziland Citizenship Act No. 14 of 1992 – The Children Protection and Welfare Act 2012 – The Birth, Marriage and Death Registration Act, 1983
Tanzania	– The Tanzania Citizenship Act No. 6 of 1995 – The Law of the Child Act 2009 – The Registration and Identification of persons Act, 1986 – The Law of Marriage Act, 1971
Togo	– Constitution 1992 – Ordonnance 78-34 du 7 septembre 1978 portant Code de la nationalité togolaise – Loi No. 2007-017 du 6 juillet 2007 portant Code de l'enfant

Tunisia	– Constitution 1959 – Loi n°63-7 du 22 avril 1963 portant refonte du Code de la nationalité tunisienne (2010) modifiée par les Loi No. 21-12 du 9 mars 1971, Loi No. 84-81 du 30 novembre 1984 et Loi No. 2010-55 du 1er décembre 2010 -- Loi No. 95-92 du 9 novembre 1995 relative au Code de la protection de l'enfant – Loi No. 1957-3 du 1er août 1957 règlementant l'état civil – Décret du 13 août 1956 portant Promulgation du Code du Statut personnel
Uganda	– Constitution 1995 (as amended by Act 11 of 2005 and Act 21 of 2005) – Uganda Citizenship and Immigration Control Act 1999 (Chapter 66) (amended by Act 5 of 2009) – The Birth and Death Registration Act 1973 – The Children Act, 1997
Zambia	– Constitution of Zambia Act No. 1 of 1991 (as amended by Act No. 18 of 1996 and Act No. 20 of 2009) – Citizenship Act 1977 (Cap. 124) (as amended by Act No. 17 of 1986 and Act No. 13 of 1994)
Zimbabwe	– Constitution of Zimbabwe Amendment Act No. 20 of 2013 (enacting new constitution) – The Citizenship of Zimbabwe Act, No. 23 of 1984 (Cap. 4.01) (as amended by Act No. 7 of 1990, Act No. 12 of 2001, Act No. 22 of 2001, Act No. 23 of 2001, Act No. 1 of 2002 and Act No. 12 of 2003) – The Zimbabwe's Children Act 1972 revised by Act No. 14/2002. – The Birth and Death Registration Act 2005 – The Marriage Act (Acts 81/1964 to 666/1983)

III. Tables on the right to nationality in Africa

Based on the tables contained in a study by Bronwen Manby, C*itizenship law in Africa, A Comparative Study* (2nd edition, 2010) and updated in 2014.

Table 1: The right to a nationality for children born in the country

Country	Birth in the country	If otherwise stateless	Parents stateless (s) or unknown (u)	Foundlings
Algeria	(JS) JS/2~		u	x
Angola	C	(x)	s + u	x
Benin	(JS) JS/2		s + u	x
Botswana				
Burkina Faso	(JS) JS/2	x	u	x
Burundi			u	x
Cameroon	(JS) JS/2		u	x
Cape Verde	(JS)*	x	s + u	
CAR	(JS)		u	x
Chad	JS	x	u	
Comoros	(JS)			x
Congo Rep.	(JS) JS/2		u	x
Côte d'Ivoire				
DRC	(JS) ~	x	s + u	x
Djibouti			u	
Egypt	(JS) JS/2^ ~		u	x
Eq. Guinea	(JS)			
Eritrea	JS~		u	
Ethiopia	C			x
Gabon	(JS) JS/2		s + u	x
Gambia				
Ghana				x
Guinea	(JS) JS/2		u	x
G. Bissau		x	s + u	x
Kenya				x
Lesotho	JS	x		
Liberia †	JS~			
Libya				
Madagascar			u	x
Malawi	C	(x)		

Mali	(JS) JS/2^		u	x
Mauritania				x
Mauritius				
Mozambique	(JS) JS/2		s + u	
Namibia	(JS)*	x		
Niger	JS/2		u	x
Nigeria				
Rwanda	C (JS)		s + u	x
SADR	n/a		n/a	
Sao Tomé & Principe	(JS)*	x	s	x
Senegal	JS/2			x
Seychelles				
S. Leone	JS/2~	x		
Somalia †	JS~			
South Africa	C (JS)	x		
South Sudan	JS/2^~			x
Sudan				x
Swaziland				x
Tanzania	JS			
Togo †	(JS) JS/2X2	X		
Tunisia	JS/2^		s + u	x
Uganda	JS~			x
Zambia				
Zimbabwe				x

n/a: not available

C: right to nationality provided for in the constitution unless they provide only general principles and the detail is in the legislation (for Togo, nationality law conflicts with children's code)

(x): grant is discretionary

JS: right to nationality based on birth in country alone, *jus soli* (with exclusions for children of diplomats & some other categories)

(JS): child born in country of non-citizens is eligible to apply for citizenship at majority and/or after residence period

(JS)*: child born in country of parents who are legal residents has right to citizenship

JS/2: child born in country of one parent also born in the country has right to citizenship

JS/2X2: both parents must have been born in the country

~ racial, ethnic or religious discrimination in law impacts on jus soli rights; and in Uganda, the right to apply for citizenship at the age of majority does not apply if either parent was a refugee

^ Exceptions to JS/2 rules: in Egypt only applies to father, who must be of Egyptian origin or from an Arabic-speaking or Islamic country; in Mali, the parent born in the country must be 'of African origin'; in Tunisia it applies only if both father and grandfather born in Tunisia; in South Sudan a person born in or outside of South Sudan is South Sudanese if any parent, grandparent or great-grandparent was born in South Sudan or is or was a member of one of the indigenous ethnic groups of South Sudan

NB. complex provisions have been simplified

Table 2: The right to citizenship by descent

Country	Born in country				Born abroad			
	In wedlock + Father (F) &/or Mother (M) is citizen		Out of wedlock + Father (F) &/or Mother (M) is citizen		In wedlock + Father (F) &/or Mother (M) is citizen		Out of wedlock + Father (F) &/or Mother (M) is citizen	
	F	M	F	M	F	M	F	M
Algeria	R	=	=	=	=	=	=	=
Angola	R	=	=	=	=	=	=	=
Benin	R	=	=	=	=	=	=	=
Botswana	R	=	=	=	=	=	=	=
Burkina Faso	R	=	=	=	=	=	=	=
Burundi †	R	C*	C	C*	R	C*	C	C*
Cameroon	R	=	C	=	R	=	C	=
Cape Verde	R^	=	=	=	=	=	=	=
CAR	R	=	=	=	=	=	=	=
Chad	R	=	=	=	=	=	=	=
Comoros	R	=	=	=	=	=	=	=
Congo Rep.	R	=	=	=	=	=	=	=
Côte d'Ivoire	R	=	=	=	=	=	C	=
DR Congo	R~	=	=	=	=	=	=	=
Djibouti	R	=	=	=	=	=	=	=
Egypt	R	=	=	=	=	=	=	=
Eq. Guinea	R	=	=	=	=	=	=	=
Eritrea	R	=	=	=	=	=	=	=
Ethiopia	R	=	=	=	=	=	=	=
Gabon	R	=	C	=	R	=	C	=
Gambia	R	=	=	=	Rx1	=	=	=
Ghana	R^	=	=	=	=	=	=	=
Guinea	R	=	C	=	R	=	C	=
G. Bissau	R	=	=	=	C	=	=	=
Kenya	R	=	=	=	=	=	=	=
Lesotho†	R	=	=	=	Rx1	=	=	=
Liberia †	R~	=	=	=	C	-	C	-
Libya	R	C*	R	C*	R	-	R	-
Madagascar	R	C*	C*	R	R	C*	C*	R
Malawi	R	=	=	=	Rx1	=	=	=
Mali	R	=	C	=	R	=	C	=

Mauritania	R	=	=	=	R	C*	R	C*
Mauritius	R	=	=	=	Rx1	=	=	=
Mozambique	R	=	=	=	C	=	=	=
Namibia	R	=	=	=	C	=	=	=
Niger	R	=	C	=	R	=	C	=
Nigeria	R^	=	=	=	R	=	=	=
Rwanda	R	=	=	=	=	=	=	=
SADR	n/a							
Sao Tomé P	R	=	=	=	C	=	=	=
Senegal	R	=	=	=	=	=	=	=
Seychelles	R	=	=	=	=	=	=	=
Sierra Leone	-	-	-	-	R	-	R	-
Somalia	R	-	R	-	R	-	R	-
South Africa	R	=	=	=	=	=	=	=
South Sudan	R	=	=	=	=	=	=	=
Sudan †	R	C	R	C	R	C	R	C
Swaziland †	R	-	R	C*	Rx1	-	Rx1	C*
Tanzania	R	=	=	=	Rx1	=	=	=
Togo †	R	C*	R	C*	R	C*	R	C*
Tunisia	R	=	=	=	=	=	=	=
Uganda ~	R^	=	=	=	=	=	=	=
Zambia	R	=	=	=	=	=	=	=
Zimbabwe †	R ^	=	=	=	C^	=	=	=

n/a: not available

!! the position is ambiguous in that legislation conflicts with the constitution – the constitutional provisions are noted here unless they provide only general principles and the detailed rules are established by legislation

= same as column to the left

- no rights

R: child is citizen from birth as of right

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

~ racial, religious or ethnic discrimination in citizenship law: specified groups listed for preferential treatment

C: can claim citizenship following an administrative process (including to establish parentage but excluding birth registration)

* mother (or father) passes citizenship only if father (or mother) of unknown nationality or stateless or if the other parent does not claim paternity (or maternity)

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

In the case of Sierra Leone, a citizen parent does not transmit nationality to a child born in the country unless the parent or grandparent was also born in Sierra Leone and of negro-African descent. In Uganda, a child is not a citizen if born in the country unless the parent is a citizen by birth – requiring membership in one of the indigenous communities listed in the 3rd schedule to the Constitution.

NB. complex provisions have been simplified

Table 3: Acquisition of nationality through marriage

Country	Citizenship by marriage	Resident period (if any)*	Marriage period (if any)	Government can oppose
Algeria	=	2 yrs	3 yrs	
Angola	=		5 yrs (waived if loses other nationality)	
Benin	m		aut.	x
Botswana	-			
Burkina Faso	=		aut.	
Burundi	m			
Cameroon	m			x
Cape Verde	=			
CAR	m		aut.	x
Chad	=			x
Comoros	m		aut.	x
Congo Rep.	m	5 yrs		
Côte d'Ivoire	=		aut.	x
DR Congo	=		7 yrs	
Djibouti	=		10 yrs‡	
Egypt	m		2 yrs	
Eq. Guinea	m		aut.	
Eritrea	=	3 yrs		
Ethiopia	=	1 yr	2 yrs	
Gabon	=		3 yrs	
Gambia †	=	7 yrs		
Ghana	=			
Guinea	m		aut.	
G. Bissau	=	1 yr	3 yrs	
Kenya	=		7 yrs	
Lesotho	m			
Liberia	-			
Libya	m		2 yrs	
Madagascar	m			x
Malawi †	m			x
Mali	=		aut.	x
Mauritania	m	5 yrs	5 yrs	
Mauritius	=	4 yrs		x

Mozambique †	=		5 yrs (waived if stateless)	
Namibia	=	10 yrs		
Niger	m			
Nigeria	m			
Rwanda	=		3 yrs	
SADR	n/a			
STP	=			
Senegal	=		5 yrs	x
Seychelles	=	5 yrs	10 yrs	
Sierra Leone	m			
Somalia	m		aut.	
South Africa	=	'a prescribed period'	'a prescribed period'	
South Sudan	=	5 yrs		
Sudan	m	2 yrs		
Swaziland	m			
Tanzania	m			
Togo	m		aut.	
Tunisia	m	2 yrs		x
Uganda	=		5 yrs	
Zambia	m			
Zimbabwe	=	5yrs		

* if residence period noted then residence is after marriage

† legislation conflicts with the constitution

= equal rights for men and women to pass on citizenship

m: Only men are permitted to pass on citizenship to their spouses

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

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

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

‡ 5 yrs if there are children from the marriage

Table 4: Rules on dual citizenship

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

† legislation conflicts with constitution (in case of Sudan, dual nationality under law is permitted with any country other than South Sudan)

(x) government permission required

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

(‡) dual citizenship allowed for naturalised citizens only (included in the 'no' column because naturalisation is highly discretionary)

‡ dual citizenship allowed for citizens from birth only (or in case of Uganda for those who qualify to be citizens from birth & other complex conditions apply)

NB. complex provisions have been simplified

37 countries recognise dual citizenship in some form for citizens from birth; more, if we include countries where individuals are allowed dual citizenship in case of automatic acquisition of citizenship by marriage – which is rare

Table 5: Right to acquire citizenship as an adult by naturalisation, registration or declaration

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

Country	Residence period	Language / cultural requirements	Character	Renounce other nationalities	Other
Côte d'Ivoire	5 yrs / 2 yrs if born in CI	-	Good conduct and morals.		Good physical and mental health; period reduced to 2 yrs if important services; immediate if 'exceptional services'
Dem. Rep. Congo	7 yrs	Speak one of the Congolese languages; must maintain clear cultural, professional, economic, emotional or familial links with the DRC	Good conduct and morals; never convicted for treason, war crimes, genocide, terrorism, corruption or various other crimes.	Yes	Must have rendered distinguished service or naturalisation must be of real benefit to the country; must never have worked for foreign state; application must be considered by the Council of Ministers and the National Assembly
Djibouti	10 yrs	Assimilation, in particular sufficient knowledge of one of the languages used	Good conduct and morals; no convictions		Good health; period reduced to 5 years if important services
Egypt	10 yrs 5 years if 'of Egyptian origin'	Knowledge of Arabic	Good conduct and reputation, no convictions resulting in a prison sentence		Mentally sound and no disability; 'legal means to earn a living'; no conditions except residence if of Egyptian origin; no conditions if 'honourable services to Egypt and to the heads of the Egyptian religious sects'
Equatorial Guinea	10 yrs	-	-	Yes	Residence requirement can be reduced to 5 yrs if important services or investments
Eritrea	20 yrs (or 10 yrs before 1974)	Speaks one of the languages of Eritrea	High integrity and no convictions	Yes	Free of mental and physical disabilities, ability to provide for one's own needs, not committed 'anti-people act during the liberation struggle of the Eritrean people'
Ethiopia	4 yrs	Able to communicate in any one of the languages spoken by the nations/ nationalities of the country	No convictions, good character	Yes	Sufficient and lawful source of income to maintain self and family
Gabon	5 yrs	-	Good conduct and morals; no convictions		Good physical and mental health; must have 'invested' in the country; decree of head of state required; period can be reduced if the person has rendered 'exceptional services'
Gambia †	15 yrs		Good character	Yes	Capable of supporting self and dependents
Ghana	6 yrs	Speak and understand an indigenous language; assimilated into Ghanaian way of life	Good character attested by two Ghanaian lawyers, senior civil servants or notaries public; no convictions		'Capable of making a substantial contribution to progress or advancement in any area of national activity.

Guinea	5 yrs / 2 yrs for spouse or if born in Guinea	-	Good conduct and morals; no convictions		Good physical and mental health; period reduced to 2 years if born in Guinea or 'important services' rendered; immediate if exceptional services or interest
Guinea Bissau	6 yrs	Basic knowledge of and identification with Guinea Bissau's culture	Good conduct and civic probity	Yes	Immediate if services rendered to the Guinean people before or after the liberation struggle or for Guinea's development
Kenya	7 yrs	Adequate knowledge of Kenya and of the duties and rights of citizens; able to understand and speak Kiswahili or a local dialect	Not convicted of crime and sentenced to imprisonment of 3 yrs or longer		Capable of making a substantive contribution to the progress or advancement in any area of national development within Kenya; not bankrupt
Lesotho	5 yrs	Adequate knowledge of Sesotho or English	Good character	Yes	Financially solvent, no mental incapacity
Liberia ~	2 yrs	'No person shall be naturalised unless he is a Negro or of Negro descent'	Good moral character and attached to principles of Liberian constitution; must 'state that he does not believe in anarchy'	Yes	Residence period may be waived by president
Libya ~	10 yrs		Sound conduct and behaviour, no convictions for crime against honour or security		Lawful entry; legitimate, steady source of income; free of infectious diseases; no older than 50 yrs. Palestinians may not be granted nationality, except Palestinian women married to Libyan men.
Madagascar	5 yrs	Proven assimilation including sufficient knowledge of Malagasy language	Good conduct and morals; no conviction previous year		Good physical and mental health; immediate if having provided important services to the state
Malawi	7 yrs	Knowledge of indigenous language or English	Good character	Yes	Financially solvent; preferential treatment for Commonwealth citizens, citizens of other African states and persons with a close connection to Malawi
Mali	5 yrs / 2 yrs for spouse	Assimilation into the Malian community	Good conduct and morals; no convictions		Period reduced to 2 years for a person who has rendered 'exceptional services' to the state; renounce other nationalities
Mauritania	10 yrs / 5 yrs if born in Mauritania	Must speak fluently one of: Arabic, Pulaar, Soninké or Wolof	Good conduct and morals; no convictions		Good mental and physical health; residence period can be reduced if 'exceptional services.
Mauritius	6 yrs (1+5)	Knowledge of English or any other language spoken in Mauritius, and of the responsibilities of a citizen of Mauritius	Good character	Yes	Exceptions to the residence period rule can be made if, for instance, the person has made investments in Mauritius

Country	Residence period	Language / cultural requirements	Character	Renounce other nationalities	Other
Mozambique†	10 yrs	Knowledge of Portuguese or a Mozambican language	Civic probity		Means of subsistence; period and language can be waived if the person has provided 'relevant services' to the state
Namibia	10 yrs	Adequate knowledge of the responsibilities and privileges of Namibian citizenship	Good character; no convictions in Namibia	Yes	
Niger	10	-	Good conduct and morals; no convictions		Period waived if exceptional services
Nigeria	15 yrs	Acceptable to and assimilated into the way of life of the local community in which he is to live permanently	Good character	Only of other non-birth nationalities	Capable of making a contribution to the advancement, progress and well-being of Nigeria
Rwanda	5 yrs	Respect Rwandan culture and be patriotic	Good conduct and morals; no convictions		The owner of 'sustainable activities in Rwanda'; not implicated in the ideology of genocide; not a burden on the state; conditions can be waived for a person 'of interest' to Rwanda
Sahrawi ADR	n/a	n/a	n/a		n/a
São Tomé and Príncipe	5 yrs	Knowledge of Portuguese or another national language. Civic and moral guarantees of integration into STP society		Yes	Residence period and renunciation of previous nationality can be waived in case of relevant services or higher state interests/reasons
Senegal	10 yrs	-	Good morality; no convictions	Yes	Good physical and mental health; residence period may be reduced if the person has provided important services to Senegal
Seychelles	15 yrs	80% score in test on one of 3 national languages	Not been sentenced to prison	No	Special circumstances must justify the naturalisation; or other connection to Seychelles by marriage or ancestry. Conditions may be waived if distinguished service rendered
Sierra Leone ~	15 yrs	Adequate knowledge of indigenous language	Good character		Residence period 8 yrs for a person 'of Negro African descent'
Somalia	7 yrs	-	Good civil and moral conduct	Yes	Period can be reduced to 2 yrs for 'child of a Somali mother'
South Africa	5 yrs	Communicate in one of 11 official languages	Good character, adequate knowledge of the privileges and responsibilities of citizenship	Yes if other country does not allow dual citizenship	Must first acquire permanent residence, which usually takes 5 years, unless special skills or a spouse
South Sudan	10 yrs		Not convicted of any offence related to dishonesty or moral turpitude		Sound mind; conditions may be waived if individual has served in the national interest

Sudan	10 yrs		Good morals; not convicted of a crime against honour or honesty.		Sound mind; lawful way of earning a living; Notwithstanding any provision to the contrary, President can grant nationality to any alien.
Swaziland	5 yrs	Adequate knowledge siSwati or English	Good character	Not always	Adequate means of support; has contributed to the development of Swaziland; immediate if investment
Tanzania	8 yrs	Adequate knowledge of Kiswahili or English	Good character	Yes	Would be a suitable citizen
Togo	5 yrs/ imm. for spouse	Assimilation to the Togolese community, including sufficient knowledge of a Togolese language	Good conduct and morals; no convictions	Yes	Good mental and physical health. No residence period if 'exceptional services'
Tunisia	5 yrs / imm. for spouse	Sufficient knowledge of Arabic	Good conduct and morals; no convictions		Good health; no residence period required if a person has provided 'exceptional services' to the state
Uganda	10 yrs (20 yrs if not 'legal and voluntary')	If not 'legal and voluntary' must have adequate knowledge of 'a prescribed vernacular language' or Englisht	If not 'legal and voluntary' then good character	In some circumstances	May be refused if 'immigration file contains substantial inconsistencies as to put his or her demeanour in issue'.
Zambia	10 yrs	Adequate knowledge of English or any other language commonly used by indigenous inhabitants in Zambia	Good character	Yes	Conditions may be waived if distinguished service to Zambia
Zimbabwe †	10 yrs / 5 yrs for spouse	-	Good character; 'fit and proper person'	Yes	Sound mind; Residence period can be reduced by the President under 'special circumstances'

Most countries require an applicant for naturalisation to be habitually and legally resident and to intend to remain so; this provision is not recorded here.

n/a not available

† legislation conflicts with the Constitution

imm.: 'Immediate'

~ racial, ethnic or religious discrimination applies

NB. complex provisions have been simplified, including those relating to residence periods

Uganda has particularly complex distinctions between registration and naturalisation which are hard to represent in table form

Table 6: Criteria for loss of nationality

Country	Dual cit.	Citizenship from birth			Citizenship by naturalisation						
	Acquires another citizenship	Work for / act like national of another state	Crime against state	Permit required to give up	Work foreign state (incl. army)	Fraud	Crime against state	Ordinary crime	Disloyal / incompatible behaviour	Resident out of country	Protection against statelessness
Algeria				x		x	x	x	x		x
Angola		x	x		x	x	x				
Benin		x		x		x	x	x	x		
Botswana	x			x		x	x		x	x	
Burkina Faso				x		x	x	x	x		
Burundi					x	x					
Cameroon	x	x					x		x		
Cape Verde											
CAR	x	x		x		X	x	x	x		x
Chad						x	x		x		
Comoros †				x^{MS}		x	x				
Congo Republic †		x		x^{MS}		x	x	x	x		
Côte d'Ivoire	x	x		x		x	x	x	x		
Dem. Rep. Congo	x					x	x	x			
Djibouti											
Egypt	x	x	x			x	x	x	x	x	
Equatorial Guinea	x	x			x		x	x	x		
Eritrea	(x)	x	x			x	x	x	x		
Ethiopia	x			x							
Gabon						x	x	x			
Gambia						x		x	x		
Ghana						x	x		x		
Guinea	x	x		x^{MS}		x	x	x	x	x	
Guinea Bissau	x	x	x			x	x				
Kenya						x	x	x			
Lesotho	x					x	x	x	x	x	x
Liberia	x	x				x			x	x	
Libya	x					x	x			x	
Madagascar	x	x	x	x		x	x	x	x		
Malawi	x			x		x	x	x	x	x	x
Mali		x		x		x	x	x	x		x
Mauritania	x					x	x	x	x		

Mauritius						x	x	x	x	x	x
Mozambique †											x
Namibia						x	x	x	x	x	x
Niger	x	x	x				x	x	x		
Nigeria							x	x	x		
Rwanda						x	x				x
Sahrawi ADR	n/a										
STP		x			x				x		
Senegal				x^{MS}			x	x	x		
Seychelles				x^{MS}		x	x	x	x	x	
Sierra Leone				x			x	x	x	x	
Somalia †						x	x				
South Africa †					x	x		x			x
South Sudan		x			x	x	x				
Sudan		x		x^{MS}		x	x	x	x		
Swaziland						x				x	
Tanzania				x^{MS}		x	x	x	x	x	
Togo	x	x				x	x	x	x		
Tunisia		x		x		x	x	x	x		
Uganda				x	x	x	x	x	x		
Zambia †	x			x^{MS}		x					
Zimbabwe †				x^{MS}	x						

n/a not available

† legislation conflicts with the constitution

(x) permission of government required for dual citizenship

x^{MS} permission required during period in which military service obligations apply or if person concerned is a national of an enemy country

NB. complex provisions have been simplified