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CITIZENSHIP AND STATELESSNESS IN THE MEMBER STATES OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

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Map of the 16 SADC Member States

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Methodology and acknowledgments

This report was written through desk research and the author's previous experience of researching access to citizenship in the southern Africa region. It analyses the laws in force in the member states of the Southern Africa Development Community (as listed in appendix 1), as well as implementing regulations where available, and other official policy statements. Among the sources are the Briefing paper for UNHCR Regional Conference on Statelessness in Southern Africa, held in Mbombela, South Africa 1-3 November 2011, prepared by the same author. The updated report draws on publications of intergovernmental agencies, as well as government and constitutionally established bodies at national level, including court decisions, and reports by non-governmental organisations. The regional and national offices of UNHCR supplied important information and commentary. The draft report was shared with the government focal points on statelessness in each country, with the assistance of the relevant UNHCR office, for their comment and feedback. This report is proposed as the foundation for further study of the risks of statelessness in each country, based on research in the field.

The report aims to be up to date until the end of August 2020 (with the addition of references to the important report of the Zimbabwe Human Rights Commission on access to identity documents, released on 30 September 2020). The tables comparing provisions of national citizenship laws included throughout the report inevitably involve some simplification of complex provisions, and neither these nor the text describing them should be relied upon for a definitive interpretation of the law. Those wishing to understand particular provisions should rather refer to the original texts and seek legal advice in the country concerned. The views expressed and any errors and omissions are those of the author, and do not necessarily reflect the official view of UNHCR. This report may be quoted, cited, and uploaded to other websites, provided that the source is acknowledged.

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A note on terminology

"Nationality", "citizenship", and "stateless person"

In international law, nationality and citizenship are now used as synonyms, to describe a particular legal relationship between the state and the individual; the terms can be used interchangeably in English, though "nationality" is more commonly used in international treaties. Neither term has any connotation of ethnic or racial content but is simply the status that gives a person certain rights and obligations in relation to a particular state.

Other disciplines, such as political science or sociology, have different ways of using the terms in other contexts. And even in law, different languages have different nuances, and different legal traditions have different usages at national level. In national law, "citizenship" is the term used by lawyers in the British common law tradition to describe this legal bond, and the rules adopted at national level by which it is decided whether a person does or does not have the right to legal membership of that state and the status of a person who is a member. Nationality can be used in the same sense but tends to be more restricted to international law contexts. In the French, Belgian and Portuguese civil law traditions, meanwhile, nationalité or nacionalidade is the term used at both international and national levels to describe the legal bond between a person and a political entity, and the rules for membership of the community.

This report will use citizenship and nationality according to the terms used in the national context, and (in general) nationality at the international level. The 1954 Convention relating to the Status of Stateless Persons provides the international definition of "stateless person": "a person who is not considered as a national by any state under the operation of its law" (Article 1(1)). UNHCR notes that determining whether a person is stateless is a "mixed question of fact and law" (Handbook on the Protection of Stateless Persons, paragraph 23), and thus a person may be stateless even if they appear to be entitled to citizenship, because they cannot prove the relevant facts. In its discussions around the development of a protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, the African Commission on Human and Peoples' Rights proposed clarifying this definition to confirm that the definition includes a person who is unable to establish a nationality in practice. Although stateless people may also be refugees, most stateless persons have never crossed a border.

The terminology of nationality law

Most people obtain a nationality at birth, by operation of law. Nationality attributed at birth by operation of law is termed "nationality of origin" (nationalité d'origine / nacionalidade originária) in the civil law countries of Southern Africa; while in the common law countries the term used may be citizenship by birth (if born in the country) or a citizenship by descent (if born outside the country). This dual terminology in the common law states derives from the law in place in all immediately after independence (based on the law in Britain at that time), that a person born in the country acquired citizenship at birth automatically, in most cases regardless of the citizenship of the parents.

In determining the nationality of a child at birth, both the common law and the civil law models of citizenship applied in southern Africa today combine the two basic concepts known as jus soli (literally, law or right of

the soil), whereby an individual obtains citizenship because he or she was born in a particular country; and jus sanguinis (law or right of blood), where citizenship is based on descent from parents who themselves are citizens. A variant on the jus soli principle is the concept of "double jus soli", whereby a child born in a country of at least one parent also born there is attributed nationality at birth.

In general, a law based only on jus sanguinis will tend to exclude from nationality residents of a country who are descended from individuals who have migrated from one place to another. An exclusive jus soli rule, on the other hand, would prevent individuals from claiming the nationality of their parents if they had moved away from their "historical" home, but is more inclusive of the actual residents of a particular territory.

In practice, another distinction is often more important in citizenship law, between citizenship attributed at birth and citizenship that is acquired later in life on the basis of an application that is founded on a strong connection to the country. Citizenship laws thus also provide for an adult to be able to acquire nationality (through procedures variously termed registration, naturalisation, option, or declaration) based on criteria that usually include long-term residence and marriage, but may also include other grounds such as birth and/or residence during childhood.

This distinction between "attribution" of nationality (automatic, by operation of law) or "acquisition" of nationality (based on an application) is explicit in the language used in the laws of the civil law countries. In the common law tradition, however, "acquisition" is often used to cover both attribution at birth and later acquisition on the basis of an application. The terms will here be used as they are in national law. In many countries, the rights of those who are citizens from birth or who have acquired citizenship later are the same; but others apply distinctions, especially in relation to the holding of public office. In addition, citizenship acquired on application may usually be more easily withdrawn.

Summary

Extent of statelessness

The Member States of the Southern African Development Community (SADC) host significant populations of people that are stateless or at risk of statelessness. That is, of people for whom there is a possibility or probability that they are "not considered as a national by any state under the operation of its law", the international law definition of a stateless person. It is not possible to put a number on the total population at risk, nor on the smaller but still significant number of people who are in fact stateless.

Causes of statelessness

The reasons why a significant number of people are at risk of statelessness in the region date back to the colonial history of Africa, the arbitrary delineation of borders which divided many ethnic groups between two or more countries, the forced movement of populations, and the discriminatory systems to document identity; the challenges created by more recent conflict and forced displacement, in part a legacy of this colonial past, as well as management of migration more generally; discrimination based on sex, ethnicity, and other characteristics; and gaps in law and procedures to protect vulerable children, including those of unknown or undocumented parents.

If the transitional provisions applied at independence (the rules on state succession) did not enable those with a strong connection to the country and without access to another nationality to acquire the nationality of the country of residence, they – and their descendants – are at high risk of statelessness today. The probability that substantial numbers of people will be stateless are greatest where the law now in force provides no rights to nationality based on birth in the territory (as is the case in many SADC member states), and where naturalisation is very difficult to access (true in all SADC member states).

In practice, civil registration and identification systems are key to recognition of nationality. The systems bequeathed by the colonial powers were focused on control of the "native" population rather than the effective administration of the state to ensure the rights of all, meaning that the civil registration systems that record the details essential to prove entitlement to nationality were very incomplete at independence. Civil registration remains weak in many states. Even in states with more complete coverage, parents without identity documents are often unable to register the births of their children, while single parents commonly face discrimination. Weak civil registration and discrimination in turn affect determination of eligibility for identity documents issued to adults. Where systems of identification and registration are weak or have inadequate independent oversight, many people who are entitled to nationality under the law may be unable to get recognition of that nationality in practice.

Groups at risk of statelessness

The groups at risk of statelessness in the SADC region are similar to those in the rest of the African continent. They fall into five main groups: orphans, abandoned infants, and other vulnerable children, including those trafficked for various purposes; people of mixed parentage; border populations, including nomadic and pastoralist ethnic groups who regularly cross borders, as well as those affected by border disputes or transfers of territory; migrants—historical or contemporary—without documentation of another nationality, and especially their descendants; and refugees and former refugees, as well as some people internally displaced within borders, and those deported or returned to a country "of origin" where they have few current links.

The impact of statelessness

The impact of lack of recognition as a national can be severe. Statelessness and discrimination in access to citizenship and identity documents has a strong negative impact on the ability of individuals and groups to enjoy respect for their other human rights, and to participate fully in the economic, social and political life of a country.

The most serious risk is arbitrary detention and expulsion, which can impact not only people who are foreigners under the law (although very long-term residents), but also people who may in fact be nationals or entitled to acquire nationality. Where there is a requirement to hold a national identity card, whether newly instituted or over many decades, lack of an identity card can lead to complete exclusion from many other rights. These include: the right to vote or stand for public office; the right to freedom of movement; the right to education, health care, and social protection; and the right to hold or inherit property, or to participate in the formal economy through employment or access to financial services.

Historically, it has been possible for peasant farmers or nomads in remote areas, or others who remain entirely in the informal sector, to avoid the need for documentation, even in countries where an ID card has been established. But requirements to have identity documents are becoming ever more pervasive. Even a person from the most remote community will interact with the modern state at some point, and therefore will require a document showing who the person is and, in most cases, to which state or states he or she belongs. The rules governing automatic attribution or voluntary acquisition of nationality, and the issue of identity documents recognising nationality, are thus ever more critical.

International and African standards

Minimum standards for the content of nationality laws are established by the UN human rights treaties, including the Convention on the Rights of the Child, as well as the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. UNHCR has published a Handbook on Protection of Stateless Persons and guidelines on prevention of childhood statelessness that provide authoritative interpretation of the obligations under these treaties. In addition, the African Charter on the Rights and Welfare of the Child provides in its Article 6 for every child to have the right to a name, to be registered at birth and to a nationality; the Committee of Experts responsible for the treaty has adopted a General Comment clarifying states' obligations under this article. The African Committee of Experts, as well as the African Commission and the African Court on Human and Peoples' Rights, have developed extensive jurisprudence interpreting the obligations of states under these treaties. The African Commission also initiated a process to draft a protocol to the African Charter on Human and Peoples' rights on the right to a nationality and the eradication of statelessness in Africa, which is currently before the political organs of the African Union.

Protection against statelessness in the legal frameworks of SADC states

Among the countries in the SADC region, only Mozambique has a legal framework for nationality administration that complies with the international and African norms on the prevention and reduction of statelessness, including the protections against statelessness among children required by the African Charter on the Rights and Welfare of the Child.

The strongest protections against statelessness are provided by those states with the strongest rights to acquire nationality based on birth in the territory, whatever the legal status of the parents, whether at birth or a later date. The countries in the SADC region that provide the broadest rights to attribution of nationality at birth are Mozambique and Namibia; while Comoros, Democratic Republic of Congo (DRC), South Africa and Zambia establish the legal right to apply for nationality at majority for those born and still resident in the territory. However, the existence of a right in law is often not converted into its application in practice: South Africa has been ordered by its own courts to adopt regulations enabling this right to be implemented.

Laws that are based purely on descent in attribution of nationality at birth, do not contain minimum protections for vulnerable children, and that restrict access to naturalisation in practice, place significant numbers at risk of statelessness. This risk is exacerbated where the law is not clear or different laws contradict each other.

The states with the weakest legal protections against statelessness for children born in their territory who cannot obtain recognition of the nationality of one of their parents are Botswana, Eswatini, Malawi, Mauritius, Seychelles and Zimbabwe; Tanzania must be added to that list, since, although its law provides on paper for acquisition of citizenship based on birth in Tanzania, a purely descent-based rule is applied in practice. There are six states that have no legal provision to provide nationality to children found on their territory whose parents are not known (Botswana, Lesotho, Namibia, Seychelles, South Africa, and Tanzania);

Comoros and Mauritius appear to restrict this protection to abandoned newborn infants (and the law is in fact not clear that the protection exists). Other laws have the more open wording of "children of unknown parents", while Eswatini, Zambia and Zimbabwe have all provided that older children whose parents are not known are to be presumed citizens, up the age when found of 7 (Eswatini), 8 (Zambia) or 15 (Zimbabwe).

Angola, DRC, Lesotho, Malawi, Mozambique, Namibia, and South Africa all have safeguards in law for children born in the territory who would otherwise be stateless, although some of these depend on application rather than providing a legal entitlement. But even where the protection is automatic in theory, it is generally not implemented in practice: in the case of South Africa, the Department of Home Affairs has refused to obey Supreme Court orders that citizenship be granted to a child of Cuban parents who has no right in law to acquire the parents' nationality.

Ethnic or racial discrimination creates particular risks of statelessness. DRC creates a presumption of nationality for members of the "ethnic groups of which the individuals and territory formed what became Congo at independence", leaving many with doubtful status, above all the Banyarwanda of eastern DRC. In Eswatini, a strong ethnic preference is reflected in a reference in the constitution to "the class of persons generally regarded as Swazi by descent"; while Madagascar's descent-based law, coupled with transitional provisions in favour of persons of "Madagascan origin" at independence creates the presumption that those not of "Madagascan origin" are not nationals.

No SADC Member State has in place a system for the identification and protection of stateless persons, although several states have adopted national action plans that would enable this and other measure to be put in place.

The minimum legal reforms required by international law are the attribution of nationality to children born in the territory of a state who cannot acquire nationality from one of their parents, and to children found in the territory whose parents are not known. The African Committee of Experts recommends stronger protections against statelessness, including automatic attribution of nationality to a child born in the territory of one parent also born there, and the right to acquire nationality for a child born in the territory who remains resident during his or her childhood, at the latest at majority.

Due process and transparency

Excessive executive discretion in deciding questions of nationality creates major risks of statelessness and violations of other rights. The common law countries have inherited a tradition of excessive executive discretion. In Tanzania, the law still provides that the decision of the minister is final in immigration and citizenship matters, explicitly excluding court review. While other Commonwealth states have changed this rule as new constitutions have been adopted, and provide a right of access to the courts, the procedure of judicial review is difficult to access. The procedure for appealing a decision to refuse to recognise nationality is more straightforward in the civil law states, where the procedure for contestation of nationality decisions is often set out in the nationality code itself. However, in all cases access to independent court review may be difficult and too expensive in practice.

There is an urgent need to create rapid and low-cost access to independent review and appeal of decisions on the issue of identity documents confirming nationality. This should include administrative review by the relevant identity authority, an easily accessible appeal to an independent authority, and access to courts by the usual processes. Ideally, states should consider establishing independent identity commissions, similar to the independent electoral commissions in place in most countries. Paralegal support for applicants whose applications for nationality documents have been rejected plays a key role in ensuring that systems are fair and that applicants with entitlement to identity documents can prove their case.

There is also a need for more transparency in nationality administration, including publication of statistics in relation to issue of documents, naturalisation, and deprivation of nationality, with reasons for rejection of any application or the decision to deprive.

Lack of access to naturalisation

All SADC states provide for the possibility of acquiring nationality based on long-term residence and fulfilment of other conditions. The provisions in law, however, are severely limited in application. Naturalisation is practically inaccessible to long-term residents of SADC states – as it is in all African countries. South Africa used to provide access to naturalisation for several thousand people a year, based on a process decided at the administrative level, but has more recently decided that naturalisation should be "exceptional", and granted by the minister. Like other countries in the region, it seems that no more than a few tens or hundreds of people are now being naturalised each year.

Lack of access to naturalisation does not create statelessness if the person concerned has another nationality and this nationality is documented. But it does create exclusion, if naturalisation is impossible to access for those who have lost any connection to their country of origin; and it greatly increases the risk of statelessness for later generations. Those most impacted are often long-term refugees. Namibia, Zambia and especially Tanzania have taken positive steps to provide access to naturalisation for such populations, but in other cases long-term refugees, and especially former refugees, and their children are amongst those at highest risk of statelessness.

Civil registration and identification

Universal birth registration is the most important practical measure to prevent statelessness. Birth registration establishes in legal terms the place of birth and parental affiliation, which in turn serves as documentary proof underpinning acquisition of the parents' nationality, or the nationality of the state where the child is born. Even there is universal registration, however, some children may still be left stateless if there is discrimination or gaps in the nationality law. Birth registration is also fundamental to the recognition of many other rights: lack of birth certificates can prevent citizens from registering to vote, putting their children in school or entering them for public exams, accessing health care, or obtaining identity cards, passports, and other important documents.

Several SADC states have very low rates of birth registration. For those states covered by this report, the average rate is 58 percent birth registration for children under five; but the average conceals huge variation,

from 100 percent registration claimed in Mauritius, to only 11 percent in Zambia. Six of the 16 SADC countries have birth registration rates of less than 50% of those under five years old, while the percentage holding birth certificates is generally lower. Older children and adults generally have even lower rates of registration. If the parents of a child are not nationals of the country of birth, access to consular services may be essential for that child's right to the parent's nationality to be assured; including through issue of identity documents to the parents and transcription of the birth certificate into the records of the state of origin. Yet the fees and other difficulties in accessing such consular services put them out of reach for many.

The extent of the problem of statelessness is, paradoxically, in some ways being revealed by recent efforts to strengthen administrative systems and ensure universal birth registration and access to identity documents. Many people are only now finding, as registration processes are implemented for upgraded or newly instituted national identity cards, that they are in fact not considered as nationals of these countries. Appeal and review processes are often weak, meaning that many of those not recognised are in fact nationals under the law, but cannot get recognition in practice.

Civil registration systems become more important as population mobility increases, and those most at risk of not being registered—the poor and marginalised; the nomadic; members of minority ethnic groups living in remote areas; undocumented migrants; refugees and asylum-seekers—are those most in need of proof of the facts of their birth so that they can establish a nationality. Child protection systems to ensure late registration of birth and engagement with the relevant administrative processes for reocgnition of nationality are also essential – but weak or absent.

Regional cooperation and efforts to reduce statelessness

The SADC Treaty of 1992 establishes that SADC and its Member states shall act in accordance with principles that include respect for human rights; its objectives include the strengthening of "the long-standing historical, social and cultural affinities and links among the people of the Region". SADC has yet to adopt any binding commitments at ministerial or head of state level for the resolution of statelessness, although they would clearly be required by these principles and objectives.

However, the states of the SADC region have already taken some important steps towards ensuring respect for the right to a nationality. These include the progress towards gender equality in transmission of citizenship, which now leaves only Eswatini and Tanzania with discriminatory provisions; the naturalisation of long-term refugees, especially in Tanzania; and reforms introduced to provide protections against statelessness for children born in the territory and those of unknown parents, including, in recent years, Eswatini, Zambia and Zimbabwe.

The SADC Migration Dialogue for Southern Africa (MIDSA), which convenes Member States to discuss migration governance, has adopted recommendations that included ratification and domestication of the African and international treaties on the rights of the child, strengthening birth registration and national identification systems, gender equality in transmission of nationality, and work towards the development and adoption of a SADC Ministerial Declaration and Action Plan on Statelessness. A draft plan was proposed at state expert level in December 2018 and submitted by the SADC Secretariat to its Public Security Sub-

Committee in April 2019. SADC States have appointed national focal points on statelessness within the context of these discussions, and some states have progressed with the conduct or planning of national studies and national plans of action, including Eswatini, Madagascar, Malawi, Namibia, and Zambia. Other states have made pledges to accede to the statelessness conventions and adopt measures to prevent and reduce statelessness at national level.

Overview of the report

This study seeks to provide a comparative analysis of nationality law and its implementation in SADC Member States and highlight the gaps that allow statelessness; to identify the populations that may be stateless or at risk of statelessness and the reasons why statelessness remains prevalent; and to make recommendations for the remedies that may address the problem at both national and regional level. These recommendations are directed to actions that may be taken by the SADC institutions; by Member States acting in cooperation and individually; and by other overlapping regional institutions whose mandates cover statelessness-related issues, such as the International Conference for the Great Lakes Region (ICGLR).

This report is the third in a series commissioned by UNHCR, covering nationality and statelessness in West, East and Southern Africa. The other two reports have covered the Member States of the Economic Community of West African States (ECOWAS) and the Partner States of the East African Community (EAC).[1] It also updates and expands a previous briefing paper on statelessness in the southern Africa region, published by UNHCR in 2011.[2] This report draws on the analysis of statelessness in the previous reports, and builds on it, based on the experience of southern Africa and the increasing knowledge base and expertise of UNHCR and its partners in relation to statelessness and nationality law.

After this summary, Section 2 of this report summarises the history of nationality law in SADC Member States. Section 3 sets out the comparative provisions of nationality law today, and the gaps in the law that contribute to the risk of statelessness. Section 4 looks at nationality administration in practice, including birth registration and issuance of national identity cards and naturalisation certificates, and identifies some of the major blockages. Section 5 describes the groups most at risk of statelessness common to all SADC countries, and identifies individual examples of such groups. Section 6 describes the impacts of statelessness on those affected. Secion 7 outlines international and African standards on nationality and statelessness, and the jurisprudence of the African human rights institutions. A comprehensive set of recommendations is provided in section 8.

[1] *Bronwen Manby, "Migration, Nationality and Statelessness in West Africa" (Geneva: UNHCR and IOM, 2015), https://www.unhcr.org/ecowas2015/Nationality-Migration-and-Statelessness-in-West-Africa-REPORT-EN.pdf; Bronwen Manby, "Citizenship and Statelessness in the East African Community" (Geneva: UNHCR, November 2018), https://data2.unhcr.org/en/documents/download/66807.*

[2] *Bronwen Manby, "Statelessness in Southern Africa" (Geneva: UNHCR, 2011), https://www.refworld.org/pdfid/50c1f9562.pdf.*

Key recommendations

In order to strengthen nationality systems and address the risk of statelessness caused by historical and contemporary migration, the priorities for action by SADC and its Member States, as well as other sub-regional bodies, collectively and on their own account, should be:

- The removal of provisions in the law and requirements in administrative procedures that discriminate on the grounds of sex or birth in or out of wedlock.
- The review of provisions in the law that create preferential access to citizenship on the grounds of race, religion or ethnicity or belonging to an indigenous group, to ensure that they are in compliance with international and African standards of non-discrimination and do not create risks of statelessness.
- The creation of independent oversight mechanisms that can provide rapid and low-cost review of decisions on the issue of identity documents confirming nationality, as well as access to courts by the normal procedures, including legal and paralegal support for those whose applications have been refused.
- Accession to the international and African conventions that provide for the right to a nationality, the prevention and reduction of statelessness and the protection of stateless persons.
- The incorporation of the measures for the prevention and reduction of statelessness required by these treaties into their national laws, especially attribution of the nationality of the country of birth to a child who is otherwise stateless, as provided by the African Charter on the Rights and Welfare of the Child.
- The establishment of procedures within countries and in collaboration between countries to identify populations at risk of statelessness; to determine the nationality of individuals where their status is in doubt; to provide, as an interim measure, a status of “stateless person” where an existing nationality cannot be determined; and to facilitate naturalisation for those who are stateless.
- The reform of nationality laws to create in all states at least some basic rights to nationality that derive from birth and residence as a child in that country, enabling that the children of migrants to be integrated into the national community.
- The reform of naturalisation procedures to make them accessible to a larger number of people, and in particular to the nationals of other SADC Member States, including refugees and former refugees.
- The achievement of universal birth registration for all children born in the territory of a state, and facilitation of consular access to preserve the right to the nationality of the country of origin of the parents.
- Support for the adoption of the draft Protocol to the African Charter on the Right to a Nationality and the Eradication of Statelessness in Africa.

Currently, the approach of those involved in identity management systems and their reform is usually to focus on ensuring their effective administration and preventing the fraudulent acquisition of documents by those who are not entitled to them. Successful measures to end statelessness will require an equal focus on ensuring that every person has a nationality, ideally in the place to which they have the strongest connections, and effective access to proof of that nationality. In addition to efforts at national level, measures to address statelessness would be greatly strengthened through coordination among SADC Member States, and with the region’s international partners, including the agencies of the United Nations, especially UNHCR.

SADC as an institution and its Member States can individually and collectively build on the positive steps already taken in order to reduce and ultimately eradicate statelessness in the region. This will not be achieved in a few months or even years, but should be a long-term objective, to ensure not only respect of the rights of the individuals concerned, but also the economic development and peace and security of the societies as a whole.

The history of nationality law in southern Africa

Migration and nationality since the colonial era

Africa shares challenges common to other post-imperial regions. The colonial powers established political borders that cut through the middle of communities that in the past had formed single social-political units. At the same time, they promoted — or forced — migration within the new zones of territorial control, moving unprecedented numbers of people away from their place of birth.

The states that today make up the Southern African Development Community (SADC) were governed during the colonial era by four different European powers: Britain, France, Portugal and Belgium (five, if Germany is included, before its territories were redistributed after the first world war). These legal traditions continue to influence the nationality laws in place today.[3]

The largest number of states were formerly governed by Britain, although with a variety of different legal statuses: Botswana, Eswatini (formerly Swaziland), Lesotho, Malawi, Mauritius, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe. Namibia (previously South West Africa) and Tanzania (Tanganyika) had previously been German territories, allocated to Britain by League of Nations mandate following the First World War, becoming UN Trust Territories when the United Nations was established in 1945. Tanganyika gained independence during the same period as the other British territories; South West Africa, however, was under the control of South Africa until 1990, despite UN resolutions that its continued occupation was illegal.[4] South Africa and Rhodesia (for a period known as Southern Rhodesia), were self-governing under their white minority regimes, with their own nationality laws, adopted in line with a scheme established by the 1948 British Nationality Act, long before democratic rule was established in 1994 and 1990, respectively. The British territories of Northern and Southern Rhodesia and Nyasaland (today's Zambia, Zimbabwe and Malawi) were also linked together as the Central African Federation from 1953 to 1963 (also known as the Federation of Rhodesia and Nyasaland); an entity that had its own citizenship law from 1957.[5]

Angola and Mozambique were Portuguese territories, ruled from Lisbon. The Democratic Republic of Congo was at first the private territory of the king of Belgium, and from 1908 an official colony of the Belgian state. The context of the island states was different, but still profoundly shaped by the colonial era. Madagascar was a French territory, as was the archipelago of Comoros (and one island of the archipelago, Mayotte, remains French). Mauritius and Seychelles were initially French territory, uninhabited at the time Europeans arrived, and later became British after the defeat of Napoleon in 1815.

Systematically organised and coerced labour migration within Southern Africa, especially to South Africa and Rhodesia, had profound effects that continue to shape the regional economy. The white minority

[3] *This history is set out at greater length in Bronwen Manby, Citizenship in Africa: The Law of Belonging (Oxford: Hart Publishing, 2018), chaps 2–3.*

[4] *John Dugard, The South West Africa/Namibia Dispute: Documents and Scholarly Writings on the Controversy Between South Africa and the United Nations (Berkeley, CA: University of California Press, 1973); Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970): Advisory Opinion, 1971 ICJ Reports 16 (International Court of Justice 1971).*

[5] *Colin Leys and Cranford Pratt, A New Deal in Central Africa (New York: Praeger, 1960); J. J. B. Somerville, "The Central African Federation", International Affairs 39, no. 3 (1963): 386–402.*

government of South Africa created a highly formalized system of bilateral contracts with neighbouring countries for the purpose of supplying labour to mines and farms established on forcibly expropriated land.[6] There were also significant inflows of white immigrants to the region, primarily from Europe. Both French and British administrations imported Asian and African labour to work on sugar plantations in Mauritius. Belgium also engaged in forcible recruitment of labour from Rwanda and Burundi to work on plantations in the east of its colony in the Congo, established on large tracts of expropriated land. Many others migrated to Congo independently of this programme; estimates of the total ranged up to several hundred thousand people, making them a very significant proportion of the population of eastern Congo, and a majority in some locations.[7]

The European empires established a many-tiered citizenship structure, founded on racial and ethnic distinctions that justified the gaps in standard of living and legal rights between rulers and ruled. On the one hand there were European settlers — who were full citizens with the same rights as their relatives who lived in the "home" country of the colonisers; and on the other there were African "natives" (*indigènes* or *indígenas* in French and Portuguese) — who held a lesser status and rights. These distinctions were taken to their logical extreme in South Africa. The policy implemented by the National Party government in power from 1948 until 1994, under the segregationist doctrine of *apartheid*, was that black South Africans should lose their South African citizenship and instead be allocated the citizenship of one of the ten "homelands", intended to become (nominally) independent states that would, however, function principally as labour reserves for (white) South Africa.[8]

The efforts of the apartheid government in South Africa to destabilise neighbouring states also had impacts that continue to influence today's challenges around nationality and statelessness.[9] Decades of South African-sponsored conflict in Angola and Mozambique contributed to an almost complete destruction of schools, health care, agricultural production, safe water facilities, and transport systems. By 1990, it was estimated that as many as 350,000 Mozambican refugees were living in the homelands of Gazankulu and KaNgwane in South Africa.[10] Three decades of war in Angola created more than half a million refugees, primarily fleeing to Namibia, Zambia, and the two Congos, but also to other states in the region; as well as displacing more than four million people within the country.[11]

Although these disruptions of the era of colonial and minority rule have ceased, migration within the SADC region and from the rest of Africa to SADC has increased greatly since South Africa attained democratic rule

[6] *Jonathan Crush, Alan Jeeves, and David Yudelman, South Africa's Labor Empire: A History of Black Migrancy to the Gold Mining Industry (Boulder, CO: Westview Press, 1991). These bilateral agreements were inherited by the post-apartheid government.*

[7] *Jean-Claude Willame, Banyarwanda et Banyamulenge: Violences Ethniques et Gestion de l'identitaire Au Kivu (Brussels; Paris: Institut africain-CEDAF ; L'Harmattan, 1997).*

[8] *John Dugard, "South Africa's Independent Homelands: An Exercise in Denationalization", Denver Journal of International Law and Policy 10, no. 1 (1980): 11–36.*

[9] *Joseph Hanlon, Beggar Your Neighbours: Apartheid Power in Southern Africa (London : Bloomington, Ind: Catholic Institute for International Relations in collaboration with J. Currey ; Indiana University Press, 1986).*

[10] *Chris Dolan, "Policy Choices for the New South Africa", in Southern African Migration: Domestic and Regional Policy Implications, ed. Richard de Villiers and Maxine Reitzes (Johannesburg: Centre for Policy Studies, 1995), 53–58.*

[11] *Kallu Kalumiya, "Angola: A Model Repatriation Programme?", Refugee Survey Quarterly 23, no. 3 (2004): 205–34, https://doi.org/10.1093/rsq/23.3.205; Jeff Crisp, José Riera, and Raquel Freitas, "Evaluation of UNHCR's Returnee Reintegration Programme in Angola" (Geneva: UNHCR, 2008).*

in 1994.[12] Conflict in Central Africa and the Horn of Africa has also displaced many millions of people at different times, and many have become refugees in SADC states (see below: Groups at Risk of Statelessness: Refugees, former refugees and returnees). Environmental damage is an increasing driver of migration, as droughts and cyclones have left destruction in several southern African states in recent years. South Africa is the most significant destination country for migrants in Africa, with around 4 million international migrants residing in the country. In 2005, international migrants comprised 2.8 per cent of South Africa's population; by 2019, this figure had risen to 7 per cent; the majority of these migrants are from neighbouring countries, which historically provided labour for farms and mines.[13]

Transition to independence and initial frameworks of law

The transfer of sovereignty over territory – known as state succession – is well-known for creating risks of statelessness for those whose nationality is not clearly established at that time, whether resident in the territory but with origins in another state, or resident outside the territory with origins within the state. These risks have led the International Law Commission to adopt detailed guidance on the rules that should be applied (see below: The right to a nationality in international law).

The transfer of sovereignty in Africa in the 1960s and 70s from the colonial powers to the newly independent states is no exception.[14] In states where the law applicable to those born after independence gave and continued to give strong rights based on birth in the territory, the transitional provisions at independence or lack of them – gradually lost their importance. However, where the post-independence law was or became based exclusively on descent, the failure to provide protections against statelessness in transitional rules created the origins of many stateless populations today (see below: Groups at risk of statelessness).

The new states adopted nationality laws largely based on models from the various colonial powers. In the former British protectorates, the rules to be applied were directly negotiated with the British government and included in the independence constitutions.[15] The new constitutions of Botswana, Eswatini, Malawi, Mauritius, and Tanzania provided for automatic attribution of citizenship at independence to (most) people born in the territory if one parent was also born there; in Lesotho, Seychelles, and Zambia there was no requirement for one parent also to have been born there. There were special temporary provisions for those born or resident in the country, but who did not qualify for automatic attribution, to be able to register as citizens within a two-year period after independence. For the most part, these rules created a theoretically water-tight protection against statelessness.

In practice, difficulties in proving location of birth and in accessing the temporary registration provisions left many with uncertain status. All the Commonwealth states provided for *jus soli* attribution of citizenship after independence, by which citizenship is automatically acquired based on birth in the territory, reflecting the

[12] *Jonathan Crush and Vincent Williams, "Labour Migration Trends and Policies in Southern Africa", SAMP Policy Brief (Waterloo, ON, Canada; Cape Town, South Africa: Southern Africa Migration Programme, March 2010); Jonathan Crush and Abel Chikanda, "Forced Migration in Southern Africa", in The Oxford Handbook of Refugee and Forced Migration Studies, ed. Elena Fiddian-Qasmiyeh et al. (Oxford ; New York: Oxford University Press, 2014).*

[13] *IOM, "World Migration Report 2020" (Geneva: International Organization for Migration, 2019), chap. 3, https://publications.iom.int/books/world-migration-report-2020.*

[14] *For more detail, see Manby, Citizenship in Africa, chap. 4; Elspeth Guild, "British Nationality and East African Independence", Immigration and Nationality Law and Practice 4, no. 3 (1990): 99–102.*

[15] *For the detail, see Laurie Fransman, Adrian Berry, and Alison Harvey, Fransman's British Nationality Law, 3rd ed. (London: Bloomsbury Professional, 2011) country catalogue entries.*

long-standing regime in Britain itself, codified for the first time in the British Nationality Act of 1948. A child born in the territory after independence was thus a citizen from birth as of right, subject to the exception that this did not apply if the father was entitled to diplomatic immunity or was an enemy alien, unless the mother was a citizen.[16] Provision was made for citizenship by descent for those not born in the country, but only if the father was a citizen at the time of the birth, and limited to one generation of transmission to those born outside.

Southern Rhodesia (later Rhodesia, and today Zimbabwe) was a self-governing territory and had its own nationality law from 1949 (the Southern Rhodesian Citizenship and British Nationality Act, 1949; replaced after the period of the Central African Federation[17] by the Citizenship of Southern Rhodesia and British Nationality Act 1963). The 1979 constitution of newly democratic Zimbabwe provided for continuity of citizenship, and for those born after the act came into force it re-enacted the citizenship provisions already in existence without major revision. The absolute jus soli rule in place in 1949 had already been modified, and acquisition of citizenship based on birth in the territory applied only if the father of the child (or, if out of wedlock, the mother) was a citizen or ordinarily resident and legally present in Zimbabwe.

South Africa also had its own citizenship law from 1949, amended during the apartheid era. The interim constitution of 1993 restored citizenship to Black South Africans, as it abolished the homelands and established new administrative provinces.[18] A new South African Citizenship Act was adopted in 1995 that provided for continuity of citizenship, retained rights to citizenship based on birth in South Africa for the children of permanent residents as well as citizens, and created new protections against statelessness (with the notable omission of a provision for children of unknown parents and place of birth). The new government also granted a series of amnesties to several categories of migrants and refugees, recognising the role of the apartheid regime in driving long-distance labour migration and stoking conflict in the region (see below: Naturalisation of long-term migrants and their descendants).

Although South Africa had never accepted the authority of the UN Trusteeship Council over South West Africa, a UN-brokered agreement ultimately led to the independence of Namibia in 1990. The new constitution and citizenship act did not contain explicit transitional provisions, but established a relatively open regime for citizenship with transitional rights based on ordinary residence in Namibia, and, for those born after the date of independence, attribution of citizenship to children born in Namibia of parents who are ordinary residents.

In both the former French and Portuguese territories, nationality was left to the new states rather than negotiated. Gaps between the date of independence and the adoption of a nationality code could leave uncertainty about the status of those born during that period, while transitional provisions were often incomplete.

[16] *For example: "Every person born in Botswana on or after 30th September, 1966 shall become a citizen of Botswana at the date of his birth: Provided that a person shall not become a citizen of Botswana by virtue of this section if at the time of his birth if (i) neither of his parents is a citizen of Botswana and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Botswana; or (ii) his father is a citizen of a country with which Botswana is at war and the birth occurs in a place then under occupation by that country." Constitution of Botswana 1966, sec. 21.*

[17] *The Central African Federation existed from 1953 to 1963 and linked Southern Rhodesia (today's Zimbabwe), Northern Rhodesia (Zambia) and Nyasaland (Malawi).*

[18] *The National Party government had already partially restored citizenship by an act adopted in 1986: see Bently J. Anderson, "The Restoration of The South African Citizenship Act: An Exercise in Statutory Obfuscation", Connecticut Journal of International Law 9 (1994): 295–323.*

The nationality code adopted in Madagascar included explicitly discriminatory transitional provisions, stating that persons with one or two parents of "Madagascan origin" were presumed to have Madagascan nationality; those with only one parent of "Madagascan origin" could decline that nationality, as could those with a civil status under "modern law". The right to opt for Madagascan nationality was given to those from another member state of the "French Community"[19] married to a Madagascan national, and French nationals, including those naturalised as French, who had their domicile in Madagascar at independence.[20] In part, this discrimination in favour of those with connections to France was derived from pre-independence French decrees aimed at protecting French nationality from dilution through immigration to Madagascar from British-ruled Asia.[21] The law did not include a provision for the automatic attribution of nationality to the second generation born in the country, whether before or after independence, a departure from the norm for the territories of French West and Central Africa (*Afrique occidentale française* and *Afrique équatoriale française*). The provisions based on descent for those born after independence discriminated on the basis of gender and birth in or out of wedlock.

Comoros did not gain independence until 1975. A nationality code was adopted only in 1979, which provided that any person born in Comoros is Comorian, unless both parents are foreigners (*étrangers*) – leaving a great deal of room for interpretation as to who was to be regarded as "foreign". The transitional provisions provided that those habitually resident in Comoros before 6 July 1975, the date of independence, could be naturalised on the basis of request within one year of entry into force of the new nationality code.[22]

In Angola and Mozambique, transitional measures favoured the automatic attribution of the nationality of the new state to those born or resident in the territory, as well as facilitating access to nationality by those who had fought against the Portuguese. In Mozambique, those domiciled in the country at independence acquired nationality automatically, while individuals who had participated in the liberation struggle were given the right to opt for Mozambican nationality, and nationality was excluded for people who had been members of "colonial-fascist political organisations".[23] Those born abroad also obtained nationality if either father or mother was Mozambican who had fought in the liberation struggle, but otherwise only if the father was Mozambican.[24] An amendment to the law in 1982 introduced the possibility of reacquisition of nationality in "a spirit of clemency" towards those who had renounced Mozambican nationality in the immediate aftermath of independence.[25] Angola provided for automatic attribution based on birth in Angola or to a person with a parent who was Angolan; for those who had given services to the national liberation struggle to be considered Angolans with full rights; and denied nationality to those who had committed crimes

[19] *The 1958 Constitution for the 5th French Republic provided for the free association of autonomous republics within a Communauté française, in which France was the senior partner. The Community as originally envisaged functioned only during 1959; however, it remained formally in existence until the relevant articles of the Constitution were repealed in 1995. Frederick Cooper, Citizenship between Empire and Nation: Remaking France and French Africa, 945–1960 (Princeton, N.J: Princeton University Press, 2014), chapters 6 and 7.*

[20] *Ordonnance no. 1960-064 portant Code de la nationalité malgache, arts.90-92.*

[21] *Roger Decottignies and Marc de Biéville, Les nationalités africaines, Collections du Centre de recherche, d'étude et de documentation sur les institutions et les législations africaines 4 (Paris: A. Pedone, 1963), 14–25 & 201–10.*

[22] *Loi No. 79-12 du 12 décembre 1979 portant Code de la nationalité comorienne, arts. 10 & 108.*

[23] *Mozambique: Lei de 20 de Junho de 1975, arts. 3 and 7; Constitution 2004 art.23(1)(c).*

[24] *Lei de 20 de Junho de 1975, art. 8.*

[25] *Lei no.2.82 de 06 de abril de reaquisição de nacionalidade.*

against the people or the national liberation struggle.[26] For those born after independence, all the lusophone countries adopted laws based on Portugal's civil law system, with strong elements of jus soli.

Belgium's hasty abandonment of its central African colony in Congo without putting in place a comprehensive framework to cater for those resident on the territory, especially the large population of migrant workers forcibly imported by Belgium from the League of Nations mandate territories of Rwanda-Urundi, created problems that still resonate today. Independent Congo did not adopt provisions on nationality until 1964, four years after independence: the "Luluabourg Constitution" provided for nationality to be attributed to any person who was a "member of a tribe [*tribu*] or a part of a tribe established on the territory of Congo before 1908" (the date when the "Congo Free State" legally became a colony of the Belgian state). There was no guidance on which tribes were to be regarded as presumptively Congolese and which were not, nor on determining membership of a tribe. Those with a foreign nationality were given the right to acquire Congolese nationality by declaration within one year of entry into force of the new constitution, or within one year of majority.[27] The nationality code adopted in 1965 confirmed this position, and drew on Belgian models to create a descent-based system, primarily through the father.[28]

Post-independence trends

In general, the two dominant trends in nationality law reforms in southern Africa, as in the rest of Africa (and the rest of the world), are towards greater gender equality and towards greater tolerance of dual nationality.[29]

The lusophone states, with their later attainment of independence and socialist leanings, were more gender-equal right from the date of independence in 1975 in respect of transmission of nationality (although in Mozambique there was initially gender discrimination in transmission to children born outside the territory and to spouses).

A key turning point for the Commonwealth countries came in 1992 with the landmark decision in the *Unity Dow* case in Botswana, where the Court of Appeal upheld a woman's right to pass Botswana citizenship to her spouse and children, and the law was reformed as a result.[30] The decision received widespread publicity,[31] and Dow's own status as an activist ensured that the result was well-diffused among the women's rights networks. In some cases – including Botswana itself, as well as Mauritius, Zambia, and Zimbabwe – concessions of gender equality were paired with removal of rights to acquire nationality based on birth in the territory.[32] In others – again including Botswana, Zambia, and Zimbabwe – an end to gender

[26] *Angola: Lei de 10 de Novembro de 1975, arts. 1, 4 & 6.*

[27] *Luluabourg Constitution 1964, art. 6. For detail, see Manby, Citizenship in Africa, chap. 7.5.*

[28] *Décret-loi du 18 septembre 1965 portant Loi organique relative a la nationalité congolaise.*

[29] *Manby, Citizenship in Africa, chap. 5.*

[30] *Unity Dow, ed., The Citizenship Case: The Attorney General of the Republic of Botswana vs. Unity Dow, Court Documents, Judgements, Cases and Materials (Gaborone: Metlhaetsile Women's Information Centre, 1995).*

[31] *For example, Human Rights Watch, "Botswana: Second Class Citizens: Discrimination against Women under Botswana's Citizenship Act" (New York, September 1994).*

[32] *The amendments took place over different time periods. In Mauritius, for example, the citizenship provisions of the independence constitution of 1968 (which replaced earlier constitutions for the island) and the Citizenship Act of 1968 provided for jus soli attribution of citizenship based on birth in Mauritius (Art. 22), and for the children of Mauritian fathers to acquire citizenship at birth if born outside Mauritius. in 1995 the constitution and legislation*

discrimination in the rules on acquisition through marriage was achieved by making any acquisition through marriage subject to conditions similar to those for any other foreigner (though Zambia and Zimbabwe have since restored a degree of easier access).[33] In Madagascar gender discrimination only removed in January 2017.[34]

As in the rest of the world, gender equality in transmission to children also contributed to the greater tolerance of dual nationality, along with pressure from the growing diasporas of each country. Often presented as a binary – dual nationality is allowed or not – there are often detailed conditions that create intermediate positions (allowed for naturalised only, or for those born with nationality only, or for spouses but not others, or only for children, or only with permission). In practice, interpretation and application of these laws can vary widely, or small differences in wording result in different outcomes.

Two other, less dominant, trends that southern Africa shares with other parts of the continent have been to reduce rights to nationality based on birth in the territory, and to increase the length of time required for a person to naturalise. All the Commonwealth states in Africa, with the exception only of Tanzania and Lesotho, have amended the initial frameworks of their citizenship laws to remove the absolute right to citizenship based on birth in the territory; in practice, however, neither Lesotho nor Tanzania apply this provision of the laws. In southern Africa, Namibia, South Africa, and Zambia have retained or restored some rights based on birth in the territory (see below: Nationality based on birth in the country). Angola too has amended its nationality law to reduce rights based on birth in Angola. Many of the Commonwealth states have, however, introduced previously absent protection for children of unknown parents found in their territory. Meanwhile, the most common period of residence in the country to qualify for naturalisation has increased from five to ten years.

were amended to remove gender discrimination (see next footnote), but also to provide only for descent-based citizenship, whether born in or outside Mauritius.

[33] *Mauritius Constitution Amendment Act No.23 of 1995 and Citizenship Amendment Act No.24 of 1995; Constitution of Zambia Act No.1 of 1991; Constitution of Zimbabwe Amendment (No.14) Act No.14 of 1996.*

[34] *Transmission of nationality to a child born in wedlock was restricted to the father. A child born in wedlock of a Malagasy mother might claim Malagasy nationality up to the age of majority (21 years), and a child born out of wedlock took the nationality of the mother, or might claim nationality through the father if descent was established. Ordonnance no. 1960-064 portant Code de la nationalité malgache (amended by loi no. 1961-052 ; loi no.1962-005 ; Ordonnance no.1973-049 ; and loi no.1995-021), sec. 16. These rules were changed to bring gender equality in transmission to children by Loi n°2016-038 of 25 January 2017.*

Comparative analysis of nationality legislation

Southern Africa shows the same variety in its citizenship laws as the rest of the continent. In southern Africa, two principal traditions of law continue to shape the frameworks for nationality law: the common law of the British empire, and the civil law traditions of Belgium, France and Portugal. In all cases, however, the laws have been significantly amended since independence.

A number of states set out the main substantive provisions of their nationality law in the constitution, especially in relation to the attribution of citizenship at birth – including Eswatini, Lesotho, Mauritius, Mozambique, Namibia Zambia, and Zimbabwe – even if more detail is provided in a statute. In the other states, the constitution may provide a general statement (such as the right of every child to acquire a nationality) but the detailed provisions are all in the legislation.

In some countries, there is conflict between the constitution and legislation: for example, in Mozambique the nationality law dates from 1975 (amended in 1987), but the 2004 Constitution provides different (and less discriminatory) provisions on nationality; in Zimbabwe, the 2013 Constitution establishes rules which are not yet reflected in an updated statute. There are several other examples noted below. In addition, of course, the provisions of the law may well not be implemented in practice, in the individual low level administrative decisions related to recognition of nationality through the issue of identity documents (see below: Nationality administration in practice). The rights guaranteed in theory may be far from the rights afforded in fact. These complexities should be born in mind in reading the tables below, which are based on the laws listed in Appendix 1.

Gaps in nationality laws contributing to statelessness

Gender discrimination

Where women cannot transmit their nationality to their children, those who have children with a father of another nationality (or who is stateless or of unknown nationality), or with a father who abandons a child or who dies without leaving nationality documentation or obtaining nationality documents for his children, there is a real risk that their children will be stateless, especially if they do not live in the country of the father.

Racial and ethnic discrimination

Racial and ethnic discrimination in the law leaves those who are not perceived to be of the "right" racial or ethnic group at risk of statelessness, especially where combined with discrimination on the basis of sex and where the father is from the excluded group.

Weak rights attached to birth in the country

Countries which provide very limited rights based on birth in the country – in particular, those which do not provide protections for children of unknown parents, or for children whose parents cannot transmit their nationality to their children, or whose parents are stateless or of unknown nationality – leave many children at risk of statelessness. In general, states which provide no access to nationality even if successive generations are born in the country, and no rights based on birth in the country and residence during childhood (enabling automatic or optional access to nationality at majority), tend to have large populations of stateless persons.

Dual nationality rules hard to interpret

Where dual nationality is prohibited or rules are complex and inconsistently applied, some can be left at risk of statelessness, especially those who under the law might have the right to two nationalities from birth, but have documents from neither country.

Provisions on state successions have created statelessness

Many countries face continuing problems related to poor management of nationality in the transitional provisions of the laws adopted at independence.

Non-existent systems for the protection of stateless persons

No SADC Member State has a legal framework in place to identify and provide an interim protective status for stateless migrants and facilitate their acquisition of a nationality.

Constitutional and legislative protection for the right to a nationality

Angola, Malawi, and South Africa all provide in their constitutions for the right to a nationality.[35] Some other states provide the same protection in specific legislation, often a children's code, including Botswana, Lesotho, and Tanzania.[36]

Nationality based on birth in the country

Jus soli, double jus soli, and birth + residence

The countries with the strongest protections against statelessness for children born on their territory are those that apply a *jus soli* rule, attributing citizenship automatically to any child born on their soil (usually with an exception for the children of diplomats or other state representatives). A lesser but still important protection is provided by a double jus soli rule, attributing citizenship automatically to the second generation.

In southern Africa, the strongest jus soli rights are today provided in Mozambique, which attributes nationality to all those born in the territory, as well as (redundantly, in case of those born after independence) on the basis of double jus soli (two generations born in the territory). The only exclusions are if both parents are foreign and one is a diplomat; but even in this case the child has a right to opt for nationality based on birth and residence until majority, as is the rule for those whose parents were resident in Mozambique at independence but declined Mozambican nationality at that time.[37] The Nationality Regulation provides that Mozambican citizenship is presumed for all individuals born in Mozambique, unless the birth registration has any mention to the contrary.[38]

[35] *Constitution of the Republic of South Africa, 1996, art. 28(1)(a); Angola Constitution 2010, art. 32; Constitution of Malawi, 1994, art. 23.*

36 Botswana Children's Act No.8 of 2009, sec. 12; Lesotho Children's Protection and Welfare Act No 7 of 2011, sec. 7; Tanzania Law of the Child Act No.21 of 2009, sec. 6.

[37] *For a comprehensive discussion, see Patrícia Jerónimo, "Report on Citizenship Law: Mozambique" (Fiesole: Global Citizenship Observatory (GLOBALCIT), May 2019).*

[38] *Dereto Regulamenta a Lei da Nacionalidade alterado pelo Decreto No. 5/88, art. 4 (1).*

Both Lesotho and Tanzania have citizenship laws that appear to provide for *jus soli* attribution of citizenship to all children born in the territory. Lesotho adopted amendments to its law that first reduced but then restored a right to citizenship based on birth in the territory. The 1993 Constitution, which partially repealed the 1971 Citizenship Order, restored *jus soli* citizenship for all, with only the usual exceptions if the father was entitled to diplomatic immunity or an enemy alien (and the mother was not a citizen).[39] In practice, however, Lesotho does not apply the law as written, implementing jus soli citizenship only if the child would otherwise be stateless.[40] in Tanzania, the 1995 Citizenship Act removed gender discrimination in transmission of citizenship to children born outside Tanzania, but left the basic *jus soli* framework unaltered for those born in Tanzania.[41] However, the official interpretation of the law in Tanzania has come to be that the citizenship regime was based on descent.[42]

Comoros provides that a child born in Comoros acquires nationality at birth "unless both parents are foreigners",[43] implying that the child of parents who are of unknown nationality or stateless would be considered Comorian, as well as the child of one Comorian and one foreign parent. Very similar language used in Côte d'Ivoire, however, has not been interpreted in this way.[44]

Namibia retains the rule previously also applied in South Africa and Zimbabwe, that a child born in the country of parents who are "ordinarily resident" there is attributed nationality at birth, unless the parents are in the employment of another country or "illegal immigrants" (with exceptions if the child is stateless; see below).[45] In 2016 the government backed down from a proposal to overrule a Supreme Court decision upholding the right to Namibian citizenship of a child born in the country to foreign parents who were long-term residents.[46] In Zimbabwe, the 2013 Constitution provides that a person born in Zimbabwe before the new constitution came into force became a citizen by birth if one or both parents was a citizen of a SADC

[39] *Constitution of Lesotho, 1993 art. 38:*

(1) Subject to the provisions of subsections (2) and (3), every person born in Lesotho after the coming into operation of this Constitution shall become a citizen of Lesotho.

(2) Save as provided in subsection (3), a person shall not become a citizen of Lesotho by virtue of this section if at the time of his birth neither of his parents is a citizen of Lesotho and (a) one or both of his parents possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Lesotho; or (b) one or both of his parents is an enemy alien and the birth occurs in a place then under occupation by the enemy.

(3) A person born in Lesotho on or after the coming into operation of this Constitution who is disqualified to become a citizen of Lesotho by virtue of subsection (2) of this section shall become a citizen of Lesotho if he would otherwise become stateless.

[40] *Meeting between UNHCR and the Commissioner for Refugees and Chief Legal Officer, Ministry of Home Affairs, Lesotho, 21 August 2020.*

[41] *Section 5(1) of the Citizenship of Tanzania Act No.6 of 1995 provides that a person born in Tanzania becomes a citizen at birth, unless provisos in section 5(2) apply: "(a) neither of his parents is or was a citizen of the United Republic and his father possesses the immunity from suit and legal process which is accorded to an envoy of a foreign sovereign power accredited to the United Republic; or (b) any of his parents is an enemy and the birth occurs in a place then under occupation by the enemy."*

[42] *See discussion in Manby, "Citizenship and Statelessness in the East African Community".*

[43] *Loi No. 79-12 du 12 décembre 1979 portant Code de la nationalité comorienne, art. 10: "Est comorien, tout individu né aux Comores sauf si ces deux parents sont étrangers."*

[44] *See Mirna Adjami, "Statelessness and Nationality in Côte d'Ivoire" (Geneva: UNHCR, December 2016).*

[45] *Constitution of Namibia, 1990, Art. 4(d). See discussion in Faith Chipepera and Katharina G Ruppel-Schlichting, "Children's Right to Citizenship", in Children's Rights in Namibia, ed. Oliver C. Ruppel (Windhoek: Konrad Adenauer Stiftung, 2009).*

[46] *Namibia Constitution 1990, art. 4; De Wilde vs. Minister of Home Affairs, Supreme Court of Namibia, Case SA 48/2014; Report of the National Council Select Committee on the Namibian Citizenship Bill [B11 of 2016] 3 August 2016; Kaity Cooper and Dianne Hubbard, "By the Skin of Its Teeth: How Namibia Narrowly Avoided a Constitutional Crisis", Citizenship Rights in Africa (blog), 7 February 2017, http://citizenshiprightsafrica.org/by-the-skin-of-its-teeth-how-namibia-narrowly-avoided-a-constitutional-crisis/.*

Member State, and the parent was ordinarily resident in Zimbabwe; but the constitution did not restore the right to citizenship for children of any legally resident parent that had existed until 1996.[47]

In South Africa, the rules applied since amendments to the law in 2010 came into effect are that a child born in the country of parents who are permanent residents can apply for citizenship at majority,[48] while a child born in the country of parents who were not permanent residents also qualifies to naturalise as a citizen if he or she remains resident in the country at majority.[49] These rights are subject to the child's birth being registered according to the law, a condition not applied to citizenship derived from a parent.[50] In a number of court cases brought on behalf of applicants fulfilling these criteria, the Department of Home Affairs argued that the right to naturalise applied only to children born after 2013 rather than children who turned eighteen years old after 2013.[51] Both the High Court[52] and the Supreme Court[53] dismissed the arguments of non-retroactivity and ordered the adoption of regulations. The UN Committee on the Rights of the Child has also criticised South Africa for setting "disproportionately strict conditions for granting the nationality of the State party on certain groups of children".[54] Applicants ordered to be naturalised by the Supreme Court of Appeal were naturalized in 2019, as ordered by the court.[55] In July 2020, the Department of Home Affairs published draft amendments to the citizenship regulations[56] responding to the various court judgments. However, civil society organisations criticised the draft amendments for failing to implement the substance of the court orders and for leaving some children at risk of statelessness.[57]

In Zambia, where rights based on birth in the territory had been reduced in 1973 and removed in 1991, the new constitution of 2016 created the right "to apply to be registered as a citizen" on attaining majority for a person born in Zambia and ordinarily resident there for at least five years.[58]

[47] *Constitution of Zimbabwe, 2013, art. 43(2). See discussion in Bronwen Manby, "Draft Zim constitution fails citizenship test", OSISA/Citizenship Rights in Africa (blog), 11 October 2012 http://citizenshiprightsafrica.org/draft-zim-constitution-fails-citizenship-test/.*

[48] *South African Citizenship Amendment Act No.17 of 2010, amending section 2 of the principal act on citizenship by birth. See discussion in Christine Hobden, "How South Africa Has Squeezed Options for Migrants over 25 Years", The Conversation (blog post), 15 December 2019, http://theconversation.com/how-south-africa-has-squeezed-options-for-migrants-over-25-years-128257.*

[49] *South African Citizenship Amendment Act No.17 of 2010, amending section 4 of the principal act on citizenship by naturalisation. The different between being born in the country of parents who are permanent residents and those who are not is thus slight, resting on the greater discretion given to the state in case of citizenship by naturalisation.*

[50] *South African Citizenship Act, 1995, as amended to 2010, sec. 2(3) and 4. The 2010 amendments came into force on 1 January 2013.*

[51] *Christine Hobden, "The case of Chisuse and Others versus Department of Home Affairs (CC:155/19)", GlobalCit (blog post) 14 April 2020 http://globalcit.eu/the-case-of-chisuse-and-others-versus-department-of-home-affairs-cc155-19/*

[52] *Miriam Ali and others vs Minister of Home Affairs, Case number 15566/2016, High Court of South Africa, Western Cape Division, Cape Town, Judgment of 7 September 2017; Joseph Emmanuel José and Jonathan Diabaka "Junior" vs. Minister of Home Affairs and others, Case No.38981/17, High Court of South Africa (Gauteng Division), [2019] ZAGPPHC 88, 15 March 2019.*

[53] *Minister of Home Affairs and Another vs. Miriam Ali and others, Case No.1289/17, Supreme Court of Appeal, South Africa, Judgment of 30 November 2018.*

[54] *UN Committee on the Rights of the Child, Concluding Observations on the Second Periodic Report of South Africa, CRC/C/ZAF/CO/2, 27 October 2016.*

[55] *Information from Lawyers for Human Rights, May 2020 (Miriam Ali Case).*

[56] *South African Citizenship Act (88/1995): Publication of the Draft Regulations on the Citizenship Act, 1995 for Comments, South African Department of Home Affairs, Government Gazette Vol. 661 (no. 43551), 24 July 2020.*

[57] *See comments from the Scalabrini Centre of South Africa and others, 31 August 2020, available at http://citizenshiprightsafrica.org/written-comments-on-the-draft-amendment-regulations-on-the-south-african-citizenship-act-1995/.*

[58] *Constitution of Zambia (Amendment) Act No.2 of 2016, art. 37.*

Angola, Botswana, Eswatini, Malawi, Mauritius, Seychelles and Zimbabwe no longer provide in law for any general right to acquire citizenship based on birth in the territory – though all have done so in the past. The date of birth of a person or their ancestor will in these cases be critical to establish whether birth in the territory conferred nationality automatically, and therefore that the descendant is also a national. In Zimbabwe, Section 43 (1) of the Constitution, as interpreted by the Constitutional Court and High Court, has confirmed this right for persons born in the territory between 1890 and 1963.[59]

Foundlings: children of unknown parents

The presumption of citizenship for children of unknown parents is one of the oldest in international law relating to nationality, dating back to 1930.[60] Article 2 of the 1961 UN Convention on the Reduction of Statelessness provides the same protection, stating that: "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State". UNHCR's guidance is that this protection should be interpreted at least to "apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth."[61]

The independence constitutions of Commonwealth African states did not include this protection (which was not added to British law until 1964[62]; though in the UK there was a presumption in practice of citizenship). However, many states have introduced the presumptions in favour of children of unknown parents during constitutional reforms from the turn of the millennium. In southern Africa, Eswatini, Zambia, and Zimbabwe have all added provisions for children of unknown parents to be presumed to be citizens, if when found they are believed to be under the age of 7, 8, or 15, respectively. Zambia's Citizenship Act 2016, implementing the new constitutional presumption of citizenship for foundlings, establishes a procedure for the government agency responsible for matters relating to children to present the child to the Children's Court and take out proceedings for the determination of the age, nationality, residence and the parentage of the child.[63]

Angola provides for the child of unknown parents to have the right to apply for nationality, and a presumption of nationality in the case of abandoned infants; the distinction between these two situations creates some confusion in the implementation of the law;[64] however, the definition of "abandoned child" in the Angolan Civil Registration Code covers both new-born babies and children up to 14 years of age.[65]

In 2017, modifications to the Madagascar nationality code established that any child of unknown parents found in Madagascar would be presumed to have been born there, removing the previous restriction to

[59] *Christina Janet Veitch v Registrar General of Citizenship & Ors HH – 422 – 19. With thanks to Tafadzwa Ralph Mugabe for this reference.*

[60] *Convention on Certain Questions Relating to the Conflict of Nationality Laws, The Hague, 1930, art. 14.*

[61] *UNHCR, "Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness" (Geneva: United Nations, December 2012), para. 58.*

[62] *British Nationality Act No. 2 of 1964, sec. 2 (Additional grounds for citizenship by birth).*

[63] *Citizenship of Zambia Act No.33 of 2016, sec. 16.*

[64] *Lei No.2/16 de 15 de avril, art. 9 &15; Decreto Presidencial n.º 152/17, de 4 de Julho, regulamento da Lei da nacionalidade, art. 4. See Patrícia Jerónimo, "Report on Citizenship Law: Angola" (Fiesole: Global Citizenship Observatory (GLOBALCIT), April 2019).*

[65] *Código do Registo Civil - Decreto-Lei n.º 47 678, de 5 de Maio de 1967, art.133.*

new-born infants. However, the law retains the previous restriction of protection to those children where "one can presume that at least one parent is Malagasy", based on the name, physical characteristics, and other aspects of the child's environment, opening the door to arbitrary discrimination.[66]

In southern Africa, Botswana, Lesotho, Malawi, Namibia, Seychelles, South Africa and Tanzania do not have this most basic protection against statelessness for children found in their territory of unknown parents. While there may be other routes to recognition of citizenship for such children[67], these depend on an application and may be difficult to access. The UN Committee on the Rights of the Child has deplored the lack of protections against statelessness for children of unknown parents, for example in its concluding observations of 2018 on the state report of Seychelles.[68]

In Comoros and Mauritius the situation is not clear: amendments to the citizenship laws have not included consequential amendments to clarify the situation of children of unknown parents. In Comoros, Article 10 of the nationality code provides that any person born in Comoros is Comorian, unless both parents are foreigners; Article 13 provides that birth and descent must be proved by civil registration, but that a child found in Comoros is presumed born there unless there is proof to the contrary. The combination of the two provisions would create a presumption of nationality for foundlings, if the parents were not shown to be foreigners, but the law should be clearer on the point.[69] In Mauritius, the Citizenship Act provides that "a new born child found abandoned within Mauritius shall, unless the contrary is shown, be deemed to have been born within Mauritius".[70] This would have provided protection against statelessness – albeit only for new-born infants and not older children – until 1995, when jus soli attribution of citizenship based on birth in Mauritius was repealed in favour of a descent-only system. The current situation is not clear. The Child Protection Act creates an offence of inciting abandonment of a child but does not protect the rights of an abandoned child to Mauritian citizenship.[71]

Mozambique also creates a confusion by an error in agreement of adjectives in the constitution;[72] however, the nationality law has the correct agreement, making clear the intention to protect children of unknown parents born in Mozambique – although it does not create a presumption of birth in Mozambique for children found in the territory.[73] The implementing decree states that the presumption of Mozambican nationality will

[66] *Ordonnance n° 60-064 du 22 juillet 1960 portant Code de la nationalité Malagasy, as amended by Loi n°2016-038, art.11.*

[67] *For example, under section 18 of the Malawi Citizenship Act, providing for registration of stateless persons; while the National Registration Act and regulations provide for registration of new-born children found in the territory National Registration Act No.13 of 2010, sec. 26; National Registration Regulations 2015, regulation 5(b), 22(b) and 23(b)).*

[68] *UN Committee on the Rights of the Child, "Concluding observations on the combined fifth and sixth periodic reports of Seychelles", CRC/C/SYC/CO/5-6, 5 March 2018.*

[69] *Loi n° 79-12 du 12 décembre 1979 portant Code de la nationalite comorienne, arts.11 and 13.*

[70] *Mauritius Citizenship Act No. 45 of 1968, as amended, sec. 2(e).*

[71] *Child Protection Act No.30 of 1994, as amended, sec. 13B.*

[72] *Section 23(1)(b) provides that Mozambican nationality is attributed to those born in Mozambique "de pais apátridas, de nacionalidade desconhecida ou incognita", for which the English translation would be "of parents who are stateless or of unknown or unknown nationality" (desconhecida and incognita are synonyms for unknown); for the sense, this should read "de pais apátridas, de nacionalidade desconhecida ou incognitos", that is "of parents who are stateless, of unknown nationality, or unknown". See discussion in Jerónimo, "Report on Citizenship Law: Mozambique", 25–26.*

[73] *Lei de 20 de Junho de 1975 (alterada pela Lei no.2.82 de 06 de Abril & pela Lei No. 16/87 de 21 de Dezembro), art.1(1)(b).*

depend on there being no contrary mention in the birth registration, and would thus depend on late registration of birth for foundlings.[74]

The UN Committee on the Rights of the Child has expressed its concern about these gaps, for example, noting in the case of Lesotho that foundlings who appear to have been born in the State party were not being provided with citizenship even if they would otherwise be stateless.[75]

In October 2019, at the 'High-Level Segment on Statelessness' hosted by UNHCR in Geneva, Comoros, Eswatini[76], Lesotho, and Malawi all committed to the introduction of legal reforms to provide protections against statelessness for children of unknown parents found in the territory, and for children born in the territory who would otherwise be stateless; Namibia pledged the introduction of protection for children of unknown parents.[77] In Malawi the Law Commission is indeed conducting a review of the Citizenship Act to bring the provisions into line with Malawi's international obligations.[78]

Children of stateless parents or who would otherwise be stateless

Like the presumption of nationality for foundlings, protection in international law against statelessness for children of parents who are stateless or whose nationality is unknown also dates back to 1930.[79] More recent treaties have reinforced this right. The 1961 Convention specifies that a child born in the territory who would otherwise be stateless should acquire the nationality of the state of birth. This protection is repeated in article 6(4) of the African Charter on the Rights and Welfare of the Child.

Few states in Africa have such a safeguard in their nationality legislation. However, in southern Africa, Angola, DRC, Lesotho, Mozambique, Namibia, and South Africa have an explicit provision that provides at least some level of protection for stateless persons born in their territory.

Angola provides that a child of stateless parents, or parents whose own nationality is unknown, or who would otherwise be stateless has the right to request nationality.[80] DRC provides that the child born in Congo of parents "with the status of stateless person" is Congolese, as are those who cannot acquire nationality of their parents because their law recognises only jus soli attribution, or discriminates on the basis of birth in or out of wedlock.[81] Mozambique, where the general rights based on *jus soli* already provide substantial protection against statelessness, the constitution also provides that a child of stateless parents

[74] *Decreto 3/75 da 16 da Agosto, amended 1988, art.4.*

[75] *UN Committee on the Rights of the Child, Concluding observations on the second periodic report of Lesotho, CRC/C/LSO/CO/2, 25 June 2018, para. 24.*

[76] *Eswatini, however, already has protection in law for children of unknown parents, so it is not clear why the pledge was necessary.*

[77] *Results of the High-Level Segment on Statelessness, October 2019, https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/*

[78] *"Malawi's Citizenship Act to conform to democratic principles, other laws", Maravi Post, 11 April 2019.*

[79] *Convention on Certain Questions Relating to the Conflict of Nationality Laws, The Hague, 1930, art. 15.*

[80] *Lei No.2/16 de 15 de avril, art. 15; Decreto Presidencial n.º 152/17, de 4 de Julho, regulamento da Lei da nacionalidade, art. 4. See Jerónimo, "Report on Citizenship Law: Angola".*

[81] *Loi no. 04/024 du 12 novembre 2004 relative à la nationalité congolaise, art.9.*

or parents of unknown nationality born on its territory has its nationality.[82] Lesotho provides that a child born on the territory who falls under the exception to jus soli attribution relating to the children of diplomats, will be a citizen if he or she would otherwise be stateless.[83] Namibia also provides that the exceptions to the right to citizenship from birth of a child born in the country of parents who are ordinarily resident (if the parents are illegal immigrants or have diplomatic or similar status) do not apply if the child would be stateless.[84]

The South African Citizenship Act includes a provision granting citizenship to any child born on its territory who does not have the citizenship of any other country or the right to any other citizenship.[85] The South African Department of Home Affairs has, however, failed to implement a Supreme Court order that the child of Cuban parents born in South Africa, who has no right to Cuban citizenship under Cuban law and is therefore stateless, should be recognised as a South African citizen.[86] Draft amendments to the Citizenship Regulations published for comment in July 2020 were criticised by civil society for continuing to fail to protect children against statelessness.[87]

Malawi provides for the possibility of the registration as a citizen for a person born in its territory who is stateless, but the conditions applied are similar to those for naturalisation, including a clean criminal record: UNHCR knows of no cases where this procedure has been accessed in practice.[88]

There are nine states in southern Africa, more than half the SADC region, that fail to make any provision for the acquisition of nationality by children whose parents are known, but who do not acquire another nationality at birth: Botswana, Comoros, Eswatini, Madagascar, Mauritius, Seychelles, Tanzania, Zambia and Zimbabwe.

[82] *Constitution of Mozambique 2004, art. 23(1)(b).*

[83] *Constitution of Lesotho 1993, art. 38(3).*

[84] *Constitution of Namibia 1990, art. 4(1)(b).*

[85] *South Africa Citizenship Act 1995, as amended 2010, sec. 2(2)(a).*

[86] *DGLR and Another vs. Minister of Home Affairs and Others, Supreme Court of Appeal, Case No 1051/2015, order dated 6 September 2016; "High Court Dismisses Attempt To Revoke Stateless Child's Citizenship", Lawyers for Human Rights, 30 May 2019. See also Fatima Khan, "Exploring Childhood Statelessness in South Africa", Potchefstroom Electronic Law Journal 23 (2020): 1–34, https://doi.org/10.17159/1727-3781/2020/v23i0a6414.*

[87] *See references at footnotes 56 and 57.*

[88] *Malawi Citizenship Act 1966, as amended, sec. 18; information from UNHCR Southern Africa bureau, April 2020.*

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

COUNTRY	BIRTH IN THE COUNTRY	BIRTH & ONE PARENT ALSO BORN	BIRTH AND RESIDENT AT MAJORITY	PARENTS STATELESS (PS) OR OF UNKNOWN NATIONALITY (PUN) OR CHILD OTHERWISE STATELESS (OS)	ABANDONED INFANT (AI) OR PARENTS UNKNOWN (PU) – WITH AGE OF CHILD IF GIVEN[89]	RELEVANT LEGAL PROVISION (DATE OF LATEST AMENDMENT IN PARENTHESES)
ANGOLA				(ps) (pun) (os)	ai pu	C2010ART9 L2016ARTS9&15
BOTSWANA						L1998(2004)ART4
COMOROS			(JS)		Ai !!	L1979ART10,13, 20-22
DRC~			(JS)	ps os	pu	L2004ARTS8&9
ESWATINI					ai pu – 7 !!	C2005ART47 L1992ART17
LESOTHO	JS !!			os		C1993(2018)ART38
MADAGASCAR					ai ~ pu ~	L1960(2017)ART11
MALAWI				(os)		C1994ART47 L1966(2019)ART18
MAURITIUS					ai !!	L1968(1995)ARTS2(2)(B) &22
MOZAMBIQUE	JS	JS/2	(JS)	ps pun os	pu !!	C2004ART23&24 L1975(1987)ART2
NAMIBIA	JS*			os		C1990(2010)ART4(1)(D)
SEYCHELLES						C1993(2011)ARTS1&3
SOUTH AFRICA			(JS)	os		C1996(2013)ART28 L1995(2010)ART2
TANZANIA	JS !!					L1995ART5
ZAMBIA			(JS)		pu – 8	C2016ART35(2) L2016ART16
ZIMBABWE					pu – 15	C2013ART36(3)

C / L: constitution / legislation

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

JS*: child born in country of parents who are legal residents is attributed citizenship

JS/2: child born in country of one parent also born in the country is attributed citizenship

( ): grant is based on an application procedure

~ racial or ethnic discrimination in law

!! Conflict between different laws, ambiguity in the law, or the literal meaning of the law and its application in practice

Countries indicated in **bold blue** have particularly weak legal protections against statelessness

[89] *There is significant overlap between provisions on children of unknown parents or on foundlings; however, in some jurisdictions this protection is restricted to a new-born or very young infant.*

Nationality transmitted by parents

In Southern Africa today, gender neutrality in the right of a parent to transmit his or her nationality to a child is the norm, with only Eswatini providing for discriminating based on the sex of a parent (see Table 2: Nationality transmitted by parents). Discrimination based on ethnicity is, however, encoded in the laws of DRC, Eswatini, and Madagascar; and widespread in practice elsewhere.

Children born in the country

All southern African countries, with the exception of Eswatini, provide on paper for every child born in the country of one parent who is a national to be attributed nationality at birth, whether or not the parent is the father or mother, and whether or not the child is born in or out of wedlock. The most recent state to introduce gender equality was Madagascar, in 2017.[90] Zimbabwe introduced gender equality in citizenship by descent from 1996; since 2009, the constitution has provided that a person born in Zimbabwe is attributed citizenship at birth if one parent or grandparent is or was a citizen.[91] Reforms to provide gender equality are not retroactive in all cases: for example, in Botswana only those born after the 1995 amendment to the law have equal rights from father or mother.[92]

In the case of Eswatini, the law discriminates on the grounds of both gender and marital status. The child of a Swazi father born in the country is a Swazi citizen, whether born in or out of wedlock. The child of a Swazi mother and a non-citizen father has no right to Swazi citizenship if the parents were married; only if born out of wedlock and not claimed by the father is the child a citizen by birth.[93]

Several countries in Africa limit citizenship from birth to members of ethnic groups whose ancestral origins are within the particular state or within the African continent. Among the SADC states, nationality is legally linked to ethnicity in DRC, through a constitutional and statutory provision that nationality of origin is in the first instance attributed to "every person belonging to the ethnic groups of which the individuals and territory formed what became Congo at independence."[94]

In Eswatini, the law does not specifically refer to ethnicity in relation to those born after the constitution came into force, but a strong ethnic preference is reflected in a reference in the constitution to "the class of persons generally regarded as Swazi by descent" and the provision of the 1992 Citizenship Act providing

[90] *Loi n°2016-038 modifiant et complétant certaines dispositions de l'Ordonnance n° 60-064 du 22 juillet 1960 portant Code de la nationalité malagasy, 25 January 2017. Art. 20 of the Code continues to provide, however, that a child born out of wedlock who is legitimized during his or her minority acquires nationality only if the father is a national (this happens automatically if the parents later marry and the child is recorded as a child of the marriage at that time). The 2017 reforms did not have retroactive effect; however, some children born before the reform have nonetheless been recognized as Malagasy (thanks to Focus Development Association for clarification on these points).*

[91] *The current provision is set out in Constitution of Zimbabwe 2013, art. 25. This rule was first introduced in constitutional amendments adopted in 2009. Tthe Citizenship Act, however, has yet to be amended and still quotes in its preamble previous (discriminatory) constitutional provisions on citizenship by birth.*

[92] *Botswana Citizenship Amendment Act No.14 of 1995, amending sections 4 and 5 of the Citizenship Act No. 25 of 1982.*

[93] *Constitution of the Kingdom of Eswatini, 2005, art. 43; Citizenship and Immigration Act No.14 of 1992 secs. 6 and 7.*

[94] *« Est Congolais d'origine, toute personne appartenant aux groupes ethniques dont les personnes et le territoire constituaient ce qui est de venu le Congo (présentement la République Démocratique du Congo) à l'indépendance » ; Constitution de la République Démocratique du Congo, 2006, art.10 ; Loi n°.04/024 du 12 novembre 2004 relative à la nationalité congolaise, art.6.*

for citizenship "by KuKhonta" (that is, by customary law).[95] Discrimination on ethnic grounds in relation to citizenship is common in practice in many other places, even if not explicitly stated in law. Similar discrimination applies in Madagascar, where a descent-based law, coupled with transitional provisions in favour of persons of "Madagascan origin" at independence creates the presumption that those not of "Madagascan origin" are not nationals.[96] The recent reform of the law to create equal rights to men and women to transmit nationality to their children somewhat reduces the impact of these provisions, but does not remove it.[97]

Malawi restricted attribution of citizenship at birth to children with a parent of "African race" from 1971 (unless the child would otherwise be stateless), but the provision was repealed in 1992.[98]

Such laws and practices obviously create the danger of statelessness for persons born in the country who have citizenship in no other state but do not fulfil the explicit or implicit racial or ethnic conditions imposed. The failure of the state to recognise the nationality of whole groups of people is also a central element of some conflicts in Africa, for example the wars in Côte d'Ivoire and DRC.

Multigenerational statelessness: In Madagascar ...

Asha is stateless woman of 51, with three children. She comes from a "Karana" family that has lived in Madagascar for at least three generations. During his lifetime, her father had tried without success to get recognition of his Malagasy nationality. Her mother, a migrant from Zanzibar, did not seek to regularise her situation until the end of her life. Asha had married a Malagasy man in 2006, following the legal steps required in Madagascar. She was already the mother of her eldest daughter, four years old at the time. She could have requested the nationality of her husband at the time of the marriage, an option offered by the law which she missed out of ignorance: "I did not know that I could, he had not offered it to me either." She divorced her husband after one year as a result of domestic violence so severe that it resulted in the miscarriage of a child. Statelessness was then passed on from generation to generation: both Asha and all of her surviving children are stateless. This situation makes Asha and her children more vulnerable. Her ex-husband began to abuse her eldest daughter at the age of 11 and took her to live with him when she was only 15 years old. She was made pregnant and became a mother at 16. Powerless, Asha has lived this ordeal for years. Without work or any other source of income for almost a year, she lives on the charity of her neighbours, even begging to feed them. Above all, she wants her children to acquire Malagasy nationality: "because I am already an elderly woman, it is for the future of my children (...). At least my eldest may have a chance to get out of this misery she is living (...) I would like her to go back to school. If you could help us, help my daughter and my two other children to have nationality... ".

Story as told to Focus Development Association Madagascar; names have been changed.

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

[96] *Ordonnance no. 1960-064 portant Code de la nationalité malgache, as amended, arts.9-10 and 90-92.*

[97] *"Nouveau code de la nationalité, 1361 familles obtiennent leurs certificats", L'Actualité (Antananarivo), 6 April 2018.*

[98] *Malawi Citizenship Act, No.28 of 1966, secs. 4, 5 and 12-15 (provisions left in place by amendments in Acts No. 37 of 1967 and 5 of 1971). Those not "of African race" could naturalise.*

… and in South Africa

Elizabeth Nthunya was born in Lesotho in 1982. Her mother was a Lesotho citizen, while her father was South African. When she was three years old, she came to stay with her paternal grandmother in South Africa. Over the years, she struggled to register as South African because she does not have a birth record from Lesotho, which is required in terms of the Births and Deaths Registration Act.

Lesotho has very low rates of birth registration. Home Affairs told her to go back to Lesotho and find her mother. Eventually, she returned to Lesotho for her mother's funeral. She discovered that the clinic where she was born does not have records prior to 1985. She returned to South Africa but Home Affairs still refuses to assist her. Her father and grandmother have since passed away, but she has five South African aunts and uncles willing to testify to her identity. Elizabeth eventually managed to get a birth certificate issued from Lesotho. The South African Home Affairs Department, however, refused to accept the certificate, because it was not issued at the time of her birth. This reveals another barrier to foreign birth registration. South African citizens who obtain birth certificates through late registration of birth in their country of origin will not be considered for birth registration in South Africa.

Elizabeth has a son born in South Africa to a South African father, but Home Affairs will not allow them to register the child's birth because Elizabeth does not have an ID. Thus her son is also unable to access his South African citizenship, even though his father has a valid South African ID document.

Elizabeth's case illustrates the generational impact that lack of documentation has on the right to nationality. Such strict requirements – for a foreign birth certificate and for the mother's ID document – result in complete block to citizenship for Elizabeth and her son, with consequences on their economic mobility, right to work and education, and their physical and emotional health.

"I was born in Lesotho but I am South African. That is the only thing I want in my life. I feel like I'm a mess. There is nothing I can do. I have spent many years sitting at home and doing nothing. When I wanted to write my matric it was a mess – I didn't have an ID. When you go to even computer lessons they still want a document and I felt bad. There is a lot I want to achieve but I can't because I don't have an ID. In years to come, Neo must go to school but they will want his birth certificate and he doesn't have one."
Case study from: "Promoting Citizenship and Preventing Statelessness in South Africa: A Practitioner's Guide", Lawyers for Human Rights, 2014

Children born outside the country

In most African countries, a child born to a citizen acquires the nationality of a parent at birth, whether the child is born in or outside the country. Gender discrimination remains, however, in some laws, including in Eswatini and Tanzania in southern Africa.[99] As in the case of those born in the country, some reforms do not have retroactive effect. In Seychelles, for example, gender discrimination was removed for those born

[99] *In Lesotho, the 1993 Constitution repealed part II of the 1971 citizenship order (otherwise remaining in force) which discriminated on the basis of gender in relation to children born abroad. This discrimination continues to apply to those born before the 1993 constitution came into effect.*

in the country, but still applies for those born outside the country between the entry into force of the independence constitution of 1976 and the republican constitution of 1979.[100]

A handful of African countries allow for citizenship to be passed for only one generation outside the country: a citizen from birth born in the country can pass his or her citizenship to a foreign-born child but that child cannot pass citizenship on to the next generation born outside. Provisions to this effect, derived from British law presumptions in place at independence that citizenship would be attributed by the state in whose territory a person was born, remain in force in Eswatini, Lesotho, Malawi, Mauritius, and Tanzania in southern Africa.

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

Some states require a deliberate option for nationality to be transmitted to children born outside the country. In Mozambique, the child of a Mozambican parent born outside of Mozambique must opt to acquire nationality – either through legal representatives or in his or her own name at majority (unless their parents were abroad in service of the state).[101] Similarly, the constitution of Eswatini provides that a child born abroad of a Swazi father also born abroad must notify the authorities within one year of majority of his or her desire to retain citizenship of Eswatini; if this is not done, the person ceases to be a citizen (the child of a Swazi mother has no similar rights).[102] Tanzania has discriminatory provisions for the second generation born abroad, who are not automatically attributed citizenship at birth. The child born abroad of a Tanzanian father who was also born abroad (i.e. the child of a father who is a "citizen by descent") does not acquire citizenship as of right, but has easier access to naturalisation; the child born abroad of a mother who is a "citizen by descent"' has no greater access than any other foreigner.[103]

Namibian and South African children born abroad must only be registered with a consulate.[104] This lesser requirement is not recorded in Table 2, though arguably this exclusion is too generous, as is evidenced by a case heard by the South African Constitutional Court in February 2020. Lawyers for Human Rights sought confirmation of a High Court order that amendments made to the Citizenship Act in 2010 should be read in such a way as not to remove rights to citizenship from those born outside the country before the amendments came into force, whose birth had not been registered in accordance with the Births and Deaths Registration Act before that date.[105] The High Court had ordered late registration of birth and grant of

[100] *Constitution of the Republic of Seychelles, 1993, as amended, art. 10A: "A person born outside Seychelles on or after the Independence Day but before the 5th June, 1979 whose mother was a Seychellois at the time of the person's birth is eligible to become a citizen of Seychelles by naturalization or registration."*

[101] *Constitution of Mozambique 2004 art. 23(3) ; Lei de 20 de Junho de 1975 (amended 1987), art. 8(1). The law provides for renunciation of any other nationality they may have acquired; but since the 2004 constitution permits dual nationality this would no longer apply.*

[102] *Constitution of Swaziland, 2005, art.43(3).*

[103] *Tanzania Citizenship Act 1995, sec. 6.*

[104] *Constitution of Namibia 1990, Art.4; Citizenship Act No.14 of 1990, Art.2.*

[105] *South African Citizenship Act 88 of 1995, as amended 2010, secs. 2(1)(a) and 2(1)(b).*

citizenship to the five applicants. Reflecting a general trend in South African citizenship administration, the Department argued before the Constitutional Court (it was not represented at the High Court) that the amendments were necessary to prevent fraudulent acquisition of citizenship by the "children of foreigners".[106] The Constitutional Court disagreed, finding that the Citizenship Act must be interpreted to conform to the constitution, and that applicants and other children born abroad to a South African parent must be recognised as South African citizens.[107]

Under its 2013 constitution, children born outside Zimbabwe become Zimbabwean citizens by descent if "either of their parents or any or their grandparents was a Zimbabwean citizen by birth or descent"; or either of their parents was a Zimbabwean citizen by registration. If the parents were "ordinarily resident" in Zimbabwe or posted abroad on state duties, however, citizenship "by birth" is attributed to the child, even if born abroad.[108] Neither the Citizenship Act nor the Births and Deaths Registration Act have yet been updated to reflect these provisions.

[106] *Christine Hobden, "The case of Chisuse and Others versus Department of Home Affairs (CC:155/19)", GlobalCit (blog post) 14 April 2020* http://globalcit.eu/the-case-of-chisuse-and-others-versus-department-of-home-affairs-cc155-19/

[107] *Yamikani Vusi Chisuse and Others v Director-General, Department of Home Affairs and Another CCT 155/19, South African Constitutional Court, judgment of 22 July 2020.*

[108] *Constitution of Zimbabwe 2013, arts. 36(2) and 37.*

Table 2: Nationality transmitted by parents

COUNTRY	BORN IN COUNTRY				BORN ABROAD				LEGAL PROVISION (DATE OF LATEST AMENDMENT IN PARENTHESES)
	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	
ANGOLA	R	R	R	R	R	R	R	R	L2016ART9
BOTSWANA	R	R	R	R	R	R	R	R	L1998(2004)ARTS4 &5
COMOROS	R	R	R	R	R	R	R	R	L1979ARTS10-13
DRC~	R	R	R	R	R	R	R	R	C2005ART10 L2004ARTS4,6,7
ESWATINI !!	R	-	R	C*	Rx1(C)	-	Rx1(C)	C*	C2005ART43 L1992ART7
LESOTHO	R	R	R	R	Rx1	Rx1	Rx1	Rx1	C1993(2018)ART38 &39
MADAGASCAR	R	R	R	R	R	R	R	R	L1960(2017)ART9
MALAWI	R	R	R	R	Rx1	Rx1	Rx1	Rx1	L1966(2019)ARTS4 &5
MAURITIUS	R	R	R	R	Rx1	Rx1	Rx1	Rx1	C1968(1995)ARTS2 2-23
MOZAMBIQUE	R	R	R	R	C	C	C	C	C2004ART23 L1975(1987)ARTS1& 8
NAMIBIA	R	R	R	R	R	R	R	R	C1990(2010)ART4(1)(C)&(2) L1990ART2
SEYCHELLES	R	R	R	R	R	R	R	R	C1993(2011)ART11
SOUTH AFRICA	R	R	R	R	R	R	R	R	L1995(2010)ART2
TANZANIA	R	R	R	R	Rx1	Rx1	Rx1	Rx1	L1995ARTS5-6
ZAMBIA	R	R	R	R	R	R	R	R	C2016ARTS35&36
ZIMBABWE !!	R^	R^	R^	R^	R^	R^	R^	R^	C2013ARTS36&37 L1984(2003)ART5

R: child is attributed citizenship at birth

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

Rx1: child is attributed citizenship at birth only if parents born in country

~ racial / ethnic discrimination in citizenship law: specified groups listed for preferential treatment

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

^ Rights to citizenship if one grandparent is a citizen

!! Constitution and the legislation conflict—the constitutional provisions are noted here unless they provide only general principles and the detailed rules are established by legislation

Adopted children

Most countries provide for children adopted from abroad to be able to acquire nationality. In some cases this is automatic when the formal adoption order is granted; in others, the parents of the child must apply for nationality on his or her behalf, and grant of nationality may then be awarded as of right, or subject to a discretionary decision (Table 3: Adopted children). The laws in Botswana (for children under three years old only), Eswatini, Mozambique, Namibia, South Africa, and Zambia, provide for automatic acquisition of citizenship through the adoption order. Mozambique introduced rights based on adoption only in the 2004 constitution, providing for automatic acquisition though the adoption order[109], but the law and implementing decree have yet to be updated. In Zambia too, the constitution and the act conflict. In some countries, an application is required, but acquisition is in theory as of right: this is the case in Angola (since 2016), DRC, and South Africa.

In Botswana the grant of citizenship is discretionary if the adopted child is older than three years old[110], as it is in Lesotho for all adopted children. In Zimbabwe, the children's code provides that adoption of a child who is not a citizen is only possible with the consent of the minister (while the constitution and the Citizenship Act conflict).[111]There is no provision relating to adoption in Comoros, Malawi, and Tanzania (although in Tanzania there is the possibility for naturalisation of the "minor child" of a citizen, which could be used to cover adopted children[112]). Gender discrimination applies in some countries in relation to adoption, even where it has been eliminated for attribution of citizenship at birth. The Mauritius Citizenship Act provides for citizenship to be automatically attributed at the time of an adoption order, but if it is a joint adoption, only if the male adopter is a citizen of Mauritius.[113] In Zimbabwe the Citizenship Act has not been updated to remove discrimination in line with the constitution. In Madagascar, the general provision of the law on adoption provides for an adoptive child to have the right to acquire nationality by declaration, if resident in Madagascar for five years, without discrimination based on the sex of the adopting parent; the procedure can be the object of government opposition based on various grounds, including lack of integration and mental or physical incapacity.[114] However, the nationality code additionally still provides for automatic acquisition of nationality through a "*légitimation adoptive*" if the adopting father is a national.[115]

[109] *Constitution of Mozambique 2004, art.29.*

[110] *In 2015, the Botswana High Court ruled that Section 4(2)(d)(i) of the Adoption of Children Act was unconstitutional to the extent that it does not require the consent of the father in the adoption of his child born out of wedlock. See judgment in the case at the website of the Southern Africa Litigation Centre https://www.southernafricalitigationcentre.org/2015/02/02/botswana-ending-discrimination-in-adoption/.*

[111] *Children's Act Cap.5.06 (Children's Protection and Adoption Act No. 22/1971, as amended), sec. 59(7).*

[112] *Tanzania Citizenship Act 1995, sec. 10.*

[113] *Mauritius Citizenship Act 1968, as amended, sec. 3.*

[114] *Ordonnance n° 60 -064 du 22 juillet 1960 portant Code de la nationalité malgache, as amended, art. 17.*

[115] *Ordonnance n° 60 - 064 du 22 juillet 1960 portant Code de la nationalité malgache, as amended, art. 21. There is no definition of légitimation adoptive and the interpretation of this article is not entirely clear, given the overlap with art.17 (on adoption generally). In the French law on adoption in effect at the time of Madagascan independence (reformed in 1958 and again in 1960), légitimation adoptive resulted from a court order that gave a child (under seven years old, whose parents were unknown or dead, or had abandoned the child) the status of a child born in wedlock to the adopting parents, and ended all legal connection with the family of origin. See Mauricette Craffe, 'L'adoption et la légitimation adoptive en France depuis l'ordonnance du 23 décembre 1958', Revue internationale de droit comparé 13, no. 3 (1961): 585–90. The French law was reformed in 1966 (Loi n° 66-500 du 11 juillet 1966 portant réforme de l'adoption) to rename légitimation adoptive as adoption plénière.*

Table 3: Adopted children

COUNTRY	AUTO.	OPT.	DISC.	NO PROVISION	COMMENTS	LEGAL PROVISION
ANGOLA		x			Parents must request, and at 14 years old the adopted child must show desire to obtain nationality	L2016Art12
BOTSWANA	x		x		Automatic only if under 3 yrs old; if more than 3 yrs old discretionary based on "good character"	L1998(2004)Art7-8
COMOROS				x		-
DRC		x				L2004Arts13(2)&17
ESWATINI	x					C2005Art43(5)
LESOTHO			x			C1993(2018)Art11
MADAGASCAR		x			Five years residence, government can oppose the declaration; legitimising adoption also applies	L1960(2017)Art17
MALAWI				x		-
MAURITIUS	x				Gender discrimination if joint adoption	C1968(1995)Art3
MOZAMBIQUE !!	x					C2004Art29
NAMIBIA	x				Becomes citizen by descent	L1990Art2(2)(b)
SEYCHELLES	x					L1994(2013)Art 3
SOUTH AFRICA		x			Birth must be registered under B&DRA	L1995(2010)Art3
TANZANIA				x		-
ZAMBIA !!	x				Constitution states automatic at date of adoption; law requires application and proof of lawful residence of the child	C2016Art38 L2016Art19
ZIMBABWE !!		x			Constitution states application required; law provides for automatic acquisition if adopting father a citizen	C2013Art38(3) L1984(2003)Art7(4)

Auto.: Acquisition of nationality automatic on completion of adoption formalities

Opt.: Child has the right to opt for nationality

Disc: Child can apply for nationality, award is discretionary

!! Constitution and law conflict, constitutional provisions noted here

Right to transmit nationality to a spouse

Achieving gender equality in the right of a woman to pass citizenship to her husband has proved more difficult than ensuring nationality for children on a gender-neutral basis. More than two dozen countries in Africa today still do not allow women to transmit nationality to their spouses or apply discriminatory residence qualifications. In southern Africa these countries are Comoros, Eswatini, Madagascar, Malawi and Tanzania (see Table 4: Transmission of nationality to spouses). Lesotho was the most recent to amend its law to provide for equal rights, in 2018.[116]

In the case of Malawi, the grant of nationality to spouses remains highly discretionary, so that it hardly gives any additional rights over naturalisation. Moreover, the Citizenship Act additionally requires every female Malawian citizen who marries a non-Malawian citizen and acquires another citizenship to formally state her intention to either retain her Malawian citizenship and renounce any foreign citizenship acquired by virtue of her marriage or lose her Malawian citizenship (section 9). There is no equivalent requirement in respect of male Malawian citizens. Eswatini specifically provides that a foreign woman who acquired Swazi citizenship through marriage may be deprived of that citizenship where the marriage was entered into merely for the purpose of acquiring citizenship (in other countries this eventuality might be covered by provisions on fraud).[117] In Mozambique the constitution is gender neutral, but the nationality law has yet to be amended to conform to the superior law, and still provides that women married to Mozambican men (but not vice versa) acquire nationality if they renounce their former nationality.[118]

In other cases, marriage provides no, or very limited, access to nationality beyond that of any other foreigner. In Botswana, Zambia and Zimbabwe the struggle of women to obtain equal rights successfully removed discrimination in the grant of citizenship to spouses — but only to put a spouse on the same conditional terms as other applicants for naturalisation, or simply reducing the period of residence required (in the case of Botswana and Zimbabwe). In Zambia, the 2016 constitution restored some rights based on marriage, on a gender-equal basis, but at the discretion of the authorities.[119] Zimbabwe's 2013 constitution reduced the period of residence in case of marriage compared to other foreigners, but makes acquisition of citizenship subject to satisfaction of conditions to be established in law (yet to be amended by mid-2020).[120] In DRC, marriage provides no right to nationality in itself: an application for citizenship by marriage must be approved by decree of the Council of Ministers and considered by the National Assembly.[121]

In 2010, Namibia amended its constitution to change the period for acquisition of citizenship by marriage from two to 10 years.[122] South Africa requires that a spouse be admitted for permanent residence (which usually takes a minimum of five years but may be issued immediately to a spouse) in addition to a minimum period of marriage — the original act provided for a two year period of marriage and ordinary residence in

[116] *8th Amendment to the Constitution Act, No.8 of 2018.*

[117] *Constitution 2005, art. 49(2). The constitution also makes specific provision for (voluntary) renunciation of Swazi citizenship in case of women who are or are about to be married to a citizen of another country.*

[118] *Constitution 2004, art.26; Nationality law 1975, as amended, art.10.*

[119] *Zambia Constitution 2016, art. 37(2); Zambia Citizenship Act 2016, sec. 18.*

[120] *Zimbabwe Constitution 2013, art. 38.*

[121] *Loi No.04/024 du 12 novembre 2004 relative à la nationalité congolaise, art. 19.*

[122] *Namibian Constitution Second Amendment Act, 2010 (Act No. 7 of 2010), sec. 1.*

the country, but 2010 amendments simply refer to "a prescribed period".[123] Angola's 2016 law introduced conditions for acquisition based on marriage that had not been present in the 2005 law. Only Mozambique provides a specific waiver in relation to the marriage period for stateless spouses.[124]

Most of the civil law countries specify that marriage (like other civil status events) is only officially recognised if formally registered. In a continent where the majority of marriages are religious or traditional, the impact of this gap may be to exaggerate gender discrimination, and render rights based on marriage available only to a few—there is a lack of research on this point. Only a few countries, including Namibia and South Africa in Southern Africa, explicitly recognise customary marriages in their nationality or family laws.[125]

Although most spouses affected by these discriminatory or restrictive provisions will not be stateless, the risk of statelessness is increased, and may affect their children (especially where, as is sometimes the case, gender discrimination also applies to transmission of nationality to children, or to birth registration, and the children are born in the mother's state of nationality).

[123] *South African Citizenship Act, 1995, sec. 5(5) as amended by South African Citizenship Amendment Act No.17 of 2010; South Africa Immigration Act, No.13 of 2002, sec. 26.*

[124] *Constitution, 2004, art. 26.*

[125] *The Namibian Constitution, art. 4(3)(b), states that for the purposes of citizenship "a marriage by customary law shall be deemed to be a marriage"; the South African Citizenship Act 1994 defines "marriage" to include a marriage conducted under the Recognition of Customary Marriages Act, No. 120 of 1998.*

Table 4: Transmission of nationality to spouses

COUNTRY	CITIZENSHIP BY MARRIAGE	RES. PERIOD (IF ANY)*	MARRIAGE PERIOD (IF ANY)	LEVEL OF DISCRETION	RELEVANT LEGAL PROVISION(S) (DATE OF LATEST AMENDMENT IN PARENTHESES)
ANGOLA	=		5 yrs	On application; marriage is with community of property (comunhão de adquiridos); other spouse must be heard; offer civic and moral guarantees of integration into Angolan society; not convicted of crime punishable by more than 3 years in prison	L2016ART13
BOTSWANA	=	5 yrs		Same conditions as naturalisation except shorter residence period	L1998(2004)ART14
COMOROS	w			Automatic unless declines; govt can oppose	L1979ARTS15-19
DRC	=		7yrs	Marriage has no effect as of right; acquisition authorised by decree adopted by National Assembly	L2004ARTS18-20
ESWATINI	w			By declaration	C2005ART44 L1992ART8
LESOTHO	=	5yrs		"Shall be registered"	C1993(2018)ART40
MADAGASCAR	w			On request, automatic if stateless; govt can oppose	L1960(2017)ARTS22-26
MALAWI	w			Must satisfy most conditions relating to naturalisation	L1966(2019)ART16
MAURITIUS	=	4yrs		On application, though exceptions may be prescribed	C1968(1995)ART24 L1969(1995)ART7(2)
MOZAMBIQUE !!	=		5 yrs (waived if stateless)	By declaration, if satisfies conditions established by law	C2004ART26 L1975(1987)ART10
NAMIBIA	=	10 yrs		"On application shall be granted"	C1990(2010)ART4(3) L1990ART3
SEYCHELLES	=	5yrs	10 yrs	On application, if satisfies conditions including no criminal record	C1993(2011)ART12 L1994(2013)ART6
SOUTH AFRICA	=	"prescribed period"	"prescribed period"	On application, if admitted as a permanent resident	L1995(2010)ART5(5)
TANZANIA	w			"On application shall be entitled"	L1995ART11
ZAMBIA	=	5yrs		"is entitled to apply"; marriage under system of law recognized in Zambia, not a prohibited immigrant, no imprisonment for criminal offence	C2016ART37(2) L2016ART18
ZIMBABWE !!	=	5yrs		"Is entitled on application" if satisfies conditions prescribed by Parliament	C2013ART38(1) L1984(2003)ART7

* If residence period noted then residence is after marriage

= Equal rights for men and women to pass citizenship

w Only women may acquire citizenship through their husbands **!!** legislation conflicts with the constitution

Dual nationality

Southern Africa has joined the continental trend to permit dual nationality, with Lesotho, Malawi, and Zambia the most recent to amend their laws (see Table 5). Among the 16 SADC States, five now permit dual nationality in all circumstances (at least according to the constitutional provisions): Angola, Lesotho, Mozambique, Seychelles, and Zambia. Another eight-permit dual nationality for adults in only some circumstances. Eswatini, Malawi, Mauritius, and Namibia allow dual citizenship only for citizens from birth; while Comoros and Botswana allow dual citizenship for naturalised citizens only; Madagascar allows dual nationality for those who are naturalised, who are born with two nationalities, or who acquire another nationality automatically through marriage; and South Africa requires permission to hold another nationality if not acquired at birth. In line with the initial rules for the Commonwealth states, Tanzania permits dual citizenship for children, but not for adults: those born with two citizenship have a period after majority during which an option must be made; the same rules apply to those born Botswanan. Only DRC provides (in theory) for automatic loss of nationality by any person acquiring a foreign nationality, whether adult or child. Zambia's law is somewhat ambiguous: the 2016 constitution provides that citizenship is not lost on acquisition of another and establishes no requirement to renounce another citizenship on naturalisation, and the law does not contradict these provisions; but at the same time the Citizenship Act provides that a person "may apply for dual citizenship", while regulations establish forms to notify the government of acquisition of another nationality.[126] In Malawi, similarly, the 2019 amendment to the law provides on the one hand that a citizen "may hold the citizenship of one other country" (that is, triple nationality is not permitted), but also provides that a person "shall notify the minister" on acquisition of another citizenship, or on reaching adulthood if born with two citizenships. No penalty is prescribed for failure to complete this step.[127] There is also confusion in Seychelles, where the constitution is clear that dual citizenship is permitted, but the law provides for a declaration that a person holds two citizenships and for failure to make the declaration to be a criminal offence subject to a fine.[128] In the context of an ambiguity between the constitution and the statute, several High Court rulings in Namibia have affirmed that under the constitution a citizen from birth can only lose his or her citizenship by voluntary renunciation and that dual citizenship is permitted for citizens from birth, even though the Citizenship Act states that no Namibian citizen may also be a citizen of a foreign country).[129]

Legal amendments in Comoros have been complicated. The Comorian nationality code has provided since it was first adopted in 1979 for loss of nationality on acquisition of another (but no requirement for renunciation of original nationality on naturalisation). The constitution, however, has made several changes. Before 1996, the constitution simply stated that nationality would be provided for in law; from 1996 the constitution provided that no person born Comorian could be deprived of nationality, and that a person who acquired another nationality would not lose nationality of origin; from 2001, the constitution provided only that no person born Comorian could be deprived of nationality; but 2018 amendments to the 2001

[126] *Constitution of Zambia 2016, arts. 37 and 39; Citizenship of Zambia Act No.33 of 2016, Part VI (secs. 25-26); Citizenship of Zambia Regulations 2017, regulation 9 and Form VI.*

[127] *Malawi Citizenship Amendment Act, No.11 of 2019, replacing sections 6 and 7 of the principal act.*

[128] *Seychelles Citizenship Act 1994, as amended 2013, sec.12.*

[129] Constitution of Namibia, 1990, art. 4(8): Namibian Citizenship Act 14 of 1990, sec.26; Tlhoro v Minister of Home Affairs (Case No. (P) A159/2000) [2008] NAHC 65 (2 July 2008), reaffirmed by Le Roux v Chief of Immigration and Others (A 322/2010, High Court of Namibia). See also Werner Menges, "Court confirms legality of dual citizenship for some Namibians," The Namibian, 9 July 2008; Werner Menges, "Dual citizenship legal for born Namibians", The Namibian, 7 June 2011; *Chipepera and Ruppel-Schlichting, "Children's Right to Citizenship".*

constitution qualified that statement by stating "except as the law provides otherwise".[130] It is thus now clearly the case that dual nationality is not allowed for those born Comorian. In Mozambique, the 2004 Constitution provides no restrictions in relation to dual nationality – but the law has not been updated since 1987, and still provides that children born abroad must renounce any other nationality to which they are entitled, that women marrying Mozambican men must renounce another nationality, and that those who acquire another nationality automatically lose their Mozambican nationality.[131] While in the case of Mozambique it seems this difference has not caused difficulties, and the constitution has been understood to prevail, the question of dual citizenship continues to create challenges in Zimbabwe. The 2013 constitution of Zimbabwe permits dual nationality for those who acquired Zimbabwean citizenship at birth[132], but the Citizenship Act has not been updated since 2003 and continues to prohibit dual citizenship for adults in all circumstances. The refusal of the Registrar-General to issue citizenship documents to those with dual nationality has been successfully challenged in court,[133] but others continued to face the same difficulties.[134] In September 2018, President Mnangagwa committed to amending the act to bring it into line with the constitution,[135] but this legislation had not yet been adopted as this report was finalised. A bill to amend the Botswana Citizenship Act to permit dual citizenship has also been in discussion for several years, but not yet adopted.[136]

In DRC, the law clearly prohibits dual nationality.[137] However, in early 2007 the newly elected National Assembly adopted a resolution purporting to bring in a six-month moratorium on the enforcement of the provision to its own members, after it emerged that a number of deputies in fact held two passports. A special committee was appointed to propose a solution to the problem.[138] The law has not been modified, although the debate remains active. In his December 2019 address to the nation, President Félix Tshisekedi called for the issue to be resolved.[139] A prohibition on dual nationality creates a risk of statelessness especially for those born with the potential right to two (or more) nationalities, who are alleged by the authorities of the state of birth and residence to have the nationality of another country, even if the person has never sought formal recognition of another nationality and has no documented connection on which to found a claim. There can also be a risk of statelessness if a person is obliged to renounce a birth nationality in order to naturalise in another country, but then is not in fact granted that other nationality.

[130] *Constitution 1996, art.4; Constitution 2001, art.5, original version and as amended 2018.*

[131] *Lei de 1975 de 20 de Junho, alterada pela Lei No.16/87 de 21 de Dezembro, arts. 8(1), 10 and 14(1)(a). See discussion in Jerónimo, "Report on Citizenship Law: Mozambique".*

[132] *Constitution 2013, Art. 42(e).*

[133] *Mawere v. Registrar General & Others, Constitutional Court of Zimbabwe (CCZ 27/13) [2015] ZWCC 04 (judgment of 26 June 2013); Whitehead v Registrar General of Citizenship & Others, Supreme Court of Zimbabwe (SC 308/12) [2015] ZWSC 21 (judgment of 13 September 2013); Madzimbamuto v Registrar General & Others, Constitutional Court of Zimbabwe (CCZ 114/13) [2014] ZWCC 5 (judgment of 4 June 2014).*

[134] *See discussion in Bronwen Manby, "Report on Citizenship Law: Zimbabwe" (Fiesole: European University Institute, 2019), http://cadmus.eui.eu//handle/1814/60436. Tafadzwa Ralph Mugabe, "Citizenship of Zimbabwe by birth for persons born abroad upheld by the Supreme Court of Zimbabwe!", (blog post) 13 September 2019 http://trm.co.zw/?p=253.*

[135] *"FULL TEXT: Mnangagwa's state of Zimbabwe address", News Day (Harare), 19 September 2018.*

[136] *"Dual citizenship bill deferred to allow consultation", Botswana Daily News, 1 March 2018.*

[137] *Constitution 2006, art.10; Loi No 04-024, art. 1: "La nationalité congolaise est une et exclusive. Elle ne peut être détenue concurremment avec aucune autre."*

[138] *"Un moratoire accordé aux personnes concernées par la double nationalité", Agence Congolaise de Presse, 13 February 2007.*

[139] *"Félix Tshisekedi appelle les congolais à la réflexion pour résoudre la problématique de la double nationalité" Kinshasa Times, 13 December 2019.*

Table 5: Dual nationality

COUNTRY	DUAL NATIONALITY PERMITTED FOR ADULTS?			RELEVANT LEGAL PROVISIONS
	Yes	Sometimes	No	
ANGOLA	x (1991)			C2010ART9 L2016ART17(1)(A)
BOTSWANA		x †* (1982)		L1998(2002&04)ART15
COMOROS		x† (1979)		C2001(2018)ART5 L1979ART51
DRC			x (1964)	C2005ART10 L2004ART1, 22, 26, 51
ESWATINI		x ‡* (1967)		C2005ARTS42(3)&49(1)(C) L1992ART10(1)(C)
LESOTHO	x (2018)			C1993(2018)ART41
MADAGASCAR		x †* (1960)		L1960(2017)ARTS27,42&47
MALAWI		x ‡ (2019)		L1966(2019)ARTS6-11&20-22
MAURITIUS		x ‡ (1995)		L1968(1995)ARTS9(4)&14
MOZAMBIQUE !!	x (2004)			C2004ARTS27,31,33&147 L1975(1987)ARTS10&14
NAMIBIA !! [A]		x ‡ (1990)		C1990(2010)ART4(8)(A) L1990ART7(1)&26
SEYCHELLES	x (1993)			C1993(2011)ART13(2) L1994(2013)ART12
SOUTH AFRICA [B]		(x) (2010)		L1995(2010)ART5(1)(H)&6
TANZANIA			x (1961)	L1995ART7
ZAMBIA	x (2016)			C2016ART39 L2016ART35
ZIMBABWE !!		x ‡ (2013)		C2013ART42 L1984(2003)ART4(1)(IV)&9

dates in brackets are the year the current rule was adopted

!! constitution conflicts with legislation: constitutional provisions noted here

Dates in brackets are the year the current rule was adopted

(x) permission of government required

* allowed for married woman (in some circumstances)
‡ dual nationality allowed for nationals from birth / prohibited for those who naturalise
† dual nationality allowed for naturalized citizens / prohibited for those who voluntarily acquire another nationality
[a] Namibia states that a person who has naturalized and then acquires another nationality loses naturalized nationality
[b] South Africa requires naturalised citizens to show proof that the other state permits dual nationality, while citizens from birth must apply to retain citizenship.

Acquisition of nationality by naturalisation or registration

All African countries permit, in principle, the acquisition of citizenship by naturalisation, at the discretion of the authorities, based on long-term residence in the country, intention to remain there, and various other conditions.[140]

More than 20 African countries provide on paper for a right to naturalise based on residence of five years; though in some countries the period is longer. In southern Africa, the majority of countries now establish a ten-year period to be able to apply for naturalisation, some increasing the period in recent years.[141] South Africa provides a two-step process. A person must first become a permanent resident, a process which usually takes five years (except when married to a citizen), and on completion of five years "ordinary residence" may apply to naturalise.[142] However, the Regulations to the Act purport to provide for a ten year "ordinary residence" period.[143] The lack of specific legislative authority for the residence period established in the regulations has led to litigation in which the regulations were ruled invalid by the courts.[144]

Conditions relating to integration with the national community are common. Botswana, for example, requires knowledge of Setswana or another language spoken by a "tribal community" in Botswana.[145] Such language requirements may be reasonable to ensure the integration of new citizens, but they should not be overly onerous, especially for those naturalising as adults.

Naturalisation conditions often include very vaguely defined components requiring "good character" or related to integration to the local community. For example, in Malawi, a person wishing to naturalise or register as a Malawian citizen must satisfy the responsible minister that, among other things, he or she is "of good character" and "would be a suitable citizen of Malawi".[146] It is preferable for such restrictions to be limited to more objective requirements, such as a clean criminal record.

Angola made the conditions for naturalisation slightly more onerous in its 2016 law, so that a shorter period of imprisonment could result in disqualification. The ten-year period for naturalisation only starts to run from the date a person was granted permanent residence.[147] Proposed amendments to give the president more discretion to award naturalisation had led to protests during 2014.[148]

[140] *Note that the terminology used may differ. Naturalisation is usually the legal term used (in English and in French/Portuguese) for acquisition of citizenship after long term residence; while registration or option may be used for an easier procedure for acquisition of citizenship based on marriage or other connection, giving less discretion to the state. However, in some Commonwealth countries, such as Zambia, the term registration is used in both these situations.*

[141] *Namibia in 2010 and Mozambique in 2003 raised the period to ten from five years.*

[142] *South African Citizenship Act (No. 88 of 1995), as amended 2010, sec. 5(1)(b) & (c).*

[143] *Regulations on the South African Citizenship Act, 2012, reg. 3(2)(a).*

[144] *Mulowayi and Others v Minister of Home Affairs and Another, South Africa Constitutional Court,*

Case CCT249/18, [2019] ZACC 01, judgement of 29 January 2019. See also, Jo Venkov, "Case Note: Mulowayi v Minister of Home Affairs [2019] ZACC 1 (29 January 2019)", Statelessness and Citizenship Review 2, no. 1 (2020): 179–184.

[145] *Citizenship (Amendment) Act, 1995, sec. 5, amending sec. 12 of the Citizenship Act, 1982.*

[146] *Citizenship Act, sec. 13(1)(c) and (d) and sec. 21(1)(c) and (d).*

[147] *Decreto Presidencial n.º 152/17, de 4 de Julho regulamento da Lei da Nacionalidade, art. 9.*

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

It is important that the naturalisation process also provide that minor children resident with the person naturalised can acquire citizenship at the same time. While Lesotho, Malawi, Mozambique, Namibia and South Africa provide for children to be naturalised, this is a separate application procedure, subject to its own conditions, and discretionary. Other countries have no explicit provision. This leaves such children at the risk of statelessness, in particular if the children have lost any previous nationality they held together with their parents. Very few states provide for easier access for stateless persons, in line with the obligations in the 1954 Convention relating to the Status of Stateless Persons.[149]

Malawi and Lesotho both have specific measures in law to provide for naturalisation of stateless persons; although these are very limited in their application. In the case of Lesotho, the person must have been lawfully resident in Lesotho since 1966 and satisfy other requirements: in recent years three people with close connections to Lesotho are reported to have acquired citizenship under this provision.[150] Malawi provides for acquisition of nationality by discretionary registration of Commonwealth citizens; citizens of other African countries; persons with a "close connection" to Malawi, including those born in the country; and stateless persons born in the country. The applicant must also satisfy the authorities that he or she has been ordinarily resident in Malawi for three years, intends to remain there, and has no serious criminal convictions.[151]

Zambia makes no specific provision for registration of stateless persons, but does provide for the discretionary registration of persons who were born in Zambia and have been resident for five years, and for those born outside Zambia who have a Zambian ancestor and have been resident for five years (whereas the general rule for those with no such connection is ten years' residence). Importantly, for the purposes of stateless persons, the law provides that the period of residence required is "ordinary residence" rather than a formal immigration status (though "prohibited immigrants" are excluded).[152] The new regulations issued under the 2016 act, however, establish a range of other requirements that are not provided in the legislation.[153]

A requirement to renounce other nationalities before naturalising may create a risk of statelessness if the application for naturalisation is then rejected. In southern Africa, this is required by the laws of Lesotho, Malawi, Namibia, and Zimbabwe. Such provisions also adversely affect asylum seekers, refugees and former refugees, and stateless persons, and their children, who may not be able to access assistance from the authorities of their country of origin. It is desirable to exempt people in these situations from a requirement to show proof of renunciation of nationality issued by the state of origin: a simple declaration should be sufficient. Amendments to the South African Citizenship Act in 2010 added a requirement that a person applying for naturalisation must satisfy the minister that they are either a citizen of a country that allows dual

[149] *In accordance with Article 32 of the 1954 Convention relating to the Status of Stateless Persons, "(...) Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such procedures".*

[150] *Lesotho Citizenship Order, No.16 of 1971, sec. 10; Meeting between UNHCR and the Commissioner for Refugees and Chief Legal Officer, Ministry of Home Affairs, Lesotho, 21 August 2020.*

[151] *Malawi Citizenship Act 1966, secs.12-15 and 18.*

[152] *Constitution of Zambia 2016, art. 37; Citizenship of Zambia Act No.33 of 2016, Part V (secs. 20-24) .*

[153] *The requirements established by the Citizenship of Zambia Regulations 2017 include publication of a notice in the Gazette and a daily newspaper, and completion of an extensive form with statements in relation to good character, knowledge of English and a local language, details of sponsors, residence permit etc, as well as a certificate of renunciation of a former citizenship -- none of which are now required by the law. Citizenship of Zambia Regulations 2017, regs.3 and 4 and forms II and IV.*

nationality; or that, if their presumed other nationality is with a country that does not allow dual nationality, they have renounced that nationality.[154] Congolese refugees who applied for citizenship in South Africa, were denied naturalisation because they were required to show proof of renunciation of DRC citizenship (on grounds that DRC does not permit dual nationality; although the Congolese law also provides for automatic loss on acquisition of another nationality).[155]

Most countries in southern Africa have no provisions specifically directed at naturalisation of refugees and stateless persons. Lesotho's 1983 Refugee Act, however, provides that the minister may grant a refugee naturalisation, if qualified according to similar conditions to those established for other applicants, that fees shall be "minimal" in this case, and that the period of residence may be reduced.[156] New refugee legislation adopted in Zambia in 2017 provides that "The Minister shall, as far as possible, facilitate the assimilation and naturalisation of persons who have ceased to be recognised refugees".[157] This provision does not meet the requirements of the 1951 UN Convention relating to the Status of Refugees for naturalisation to be facilitated for all refugees,[158] but it does provide protection for those most at risk of statelessness – that is those who no longer have refugee status (for example, because it is now considered safe to return) and thus have no legal status in the country. By contrast, the law in Botswana specifically provides that a refugee is not regarded as being ordinarily resident (other than for the purposes of taxation), and thus excludes refugees from normal naturalisation procedures.[159] (See further below: Naturalisation or recovery of nationality by long-term refugees and their descendants).

Naturalisation procedures are usually left almost entirely to the discretion of the executive in both the civil and common law systems (see further below: Judicial and other oversight of administrative decisions). Many states provide that, although reasons must be provided for a decision that the person is not formally qualified to naturalise, a refusal to approve a naturalisation has no reasons attached and the decision cannot be challenged in court (among them, in southern Africa, Comoros, Eswatini, Lesotho, Madagascar, Seychelles, Zambia, and Zimbabwe). Discretion in naturalisation is illustrated by power given by almost all nationality laws for the executive to grant nationality in case of "exceptional services" rendered to the country or other similar criteria. In addition, the international trend for small islands to seek revenue through granting "citizenship by investment" was followed by Mauritius, which in 1999 raised the fee to US$500,000 for its existing provision for citizenship based on two years' residence only; while Seychelles created the new option in 2013, for the price of one million dollars.[160] Comoros took this to a higher level with its 2008 law on "economic citizenship" (see further below, 'Economic citizenship' in Comoros).[161]

[154] *South African Citizenship Act, 1995, as amended 2010, sec. (5)(1)(h).*

[155] *Stefanie de Saude-Darbandi, "Inept Home Affairs creating a generation of children who don't exist", Cape Times / Independent Online (South Africa), 22 January 2018. This case (Mulowayi and others) was heard by the Constitutional Court, see footnote 144.*

[156] *Refugee Act 1983, sec. 14 and schedule.*

[157] *Refugees Act 2017, sec. 49.*

[158] *Convention relating to the Status of Refugees, Art. 34.*

[159] *Botswana Refugees (Recognition and Control) Act, Laws of Botswana, chapter 25:01. See Jonathan Klaaren and Bonaventure Rutinwa,* "Towards the Harmonisation of Immigration and Refugee Law in SADC," Migration Dialogue for Southern Africa (MIDSA), Report No.1, 2004, pp.90-91.

[160] *Seychelles Citizenship Act No. 18 of 1994, amended by Act 11 of 2013, sec.5C.*

[161] *Loi n°08-014/AU relative à la citoyenneté économique en Union des Comores, promulgué par Décret n°08-138/PR du 13/12/2008.*

Table 6: Naturalisation or registration/declaration[162]

COUNTRY	RES. PERIOD	LANGUAGE / ASSIMILATION REQUIREMENTS	CHARACTER	REN. OTHER	HEALTH / INCOME	OTHER[1]	MINOR CHILDREN INCLUDED?	LEGAL PROVISION
ANGOLA	10 yrs	Civic and moral guarantees of integration into Angolan society; sufficient knowledge of Portuguese language; effective connection to national community; knowledge of rights and duties under constitution	Not sentenced to prison more than 3 years; can be opposed on grounds no effective connection; conviction for crime punishable by 3 years imprisonment, or crime against security of state; exercise sovereign powers for another state; military service for another state	No	Capacity to make decisions (reger a sua pessoa); means of subsistence	Regulation provides that ten years starts from when granted permanent residence Nat. Ass. can authorise naturalisation if relevant services or exceptional qualifications.	Yes, on application	C2010ARTS110, L2016ARTS7,11,14,16,19,20,30 REG2017ART9
BOTSWANA	11 yrs (10+1)	Sufficient knowledge of Setswana or any language spoken by any "tribal community" in Botswana	Good character	No	-	Any person may be registered if signal honour or distinguished service, or special circumstances; language requirement may be waived	Yes, at discretion of minister	C1966(2002)ARTS 33&39 L1998(2002&04)ARTS9-14
COMOROS	10 yrs / 5 yrs for husband	Assimilation with the Comorian community	Good conduct and morals	No	Sound mind; physical health means will not become a	Period reduced to 5 yrs if born in Comoros or in case of "important services"; no residence period in some	Yes, automatic if father acquires (or mother if	L1979ARTS28-35, 48-50

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

					charge on the public	cases for children or spouse. Fee set in law at 20,000F (1979)	father dead), though can be opposed	
DRC	7 yrs	Speak one of the Congolese languages; must then maintain clear cultural, professional, economic, emotional or familial links with the DRC	Good conduct and morals; never convicted for treason, war crimes, genocide, terrorism, corruption or various other crimes.	Yes	-	Must have rendered distinguished service or naturalisation must be of real benefit to the country. Other conditions also apply in case of marriage.	Yes, automatic	C2006ART72 L2004ART11,18-25, 49
ESWATINI	5 yrs	Adequate knowledge siSwati or English	Good character	Not always, but can be required	Adequate means of support	Must "contribute to the development of the country". Special procedure for those supported by chief's council.	-	C2005ARTS45&49 L1992ART9
LESOTHO	5 yrs	Adequate knowledge of Sesotho or English	Good character	Yes	No mental incapacity; financially solvent	Facilitated access for persons from Commonwealth countries and stateless persons (some conditions waived).	Yes, on application, if also resident 5 yrs & of "good character"	L1971(1993)ARTS9-12
MADAGASCAR	5 yrs	Assimilation into the Malagasy community, including sufficient knowledge of Malagasy language	Good conduct and morals; no conviction more than 1 yr in prison or various other offences	No	Sound mind; physical health means will not become a danger to the public (unless contracted in service of Madagascar)	No residence period if important services to the state or wife of foreigner who naturalises.	Yes, automatic	L1960(2017)ARTS27-29, 35-41

MALAWI	7 yrs	Knowledge of prescribed vernacular language or English	Good character & suitable citizen	Yes	Financially solvent	Preferential treatment for Commonwealth citizens, citizens of other African states, and persons with a close connection to Malawi, women married to Malawian citizens, and for stateless persons born in Malawi; and all conditions may be waived in "special circumstances"	-	C1994(1998)ART80 L1966(2019)ARTS12-21
MAURITIUS	6 yrs (1+5)	Knowledge of English or any other language spoken in Mauritius, and of the responsibilities of a citizen of Mauritius	Good character	Yes	-	Preferential terms for Commonwealth citizens; residence period reduced to 2 yrs if $500k invested	Yes, on application (discretionary)	L1968(1995)ARTS5-10
MOZAMBIQUE	10 yrs	Knowledge of Portuguese or a Mozambican language	Good reputation (*idoneidade civica*)	No	Capacity to make decisions (*reger a sua pessoa*); means of subsistence	Residence period and language can be waived if the person has provided 'relevant services' to the state	Yes, on application	C2004ART27 L1975(1987)ARTS11-13
NAMIBIA	10 yrs	Adequate knowledge of the responsibilities and privileges of Namibian citizenship	Good character; no convictions in Namibia for listed offences	Yes	-	Honorary citizenship may be granted if "distinguished service"	Yes, on application (discretionary)	C1990(2010)ART4(5)&28 L1990ART5,6 & 14
SEYCHELLES	15 yrs	Obtains at least 80 per cent of marks in 1 of the 3 national languages in a	Not been sentenced to prison sentence 1yr or more	No	-	"Special circumstances" must justify the naturalisation: (a) extraordinary ability in	Yes, on application (discretionary)	C1993(2011)ARTS10-13 L1994(2013)ART4-6

		citizenship qualifying examination				science, arts, education, economics, business, law or sports; (b) degree in an area which is likely to contribute significantly to the development of Seychelles; (c) significant contribution to the development of Seychelles; or (d) marriage to a Seychellois & there are children. Special terms for spouses, investors of $1m, those who have studied in Seychelles & those with Seychellois ancestry. Conditions may be waived if distinguished service rendered.		
SOUTH AFRICA	5 yrs ‼	Communicate in one of 11 official languages	Good character, adequate knowledge of the privileges and responsibilities of citizenship	Only if other country does not allow	-	Law unclear on residence period: must first acquire permanent residence, which usually takes 5 years. Conditions may be waived in “exceptional circumstances”.	Yes, on application	C1996(2013)ART3 L1995(2010)ART5

TANZANIA	8 yrs	Adequate knowledge of Kiswahili or English	Good character	Yes	-	In terms of potential contribution, would be a suitable citizen. Child born outside country of father who was citizen by descent may naturalise without other conditions	Yes, on application	C1977(1995)ART39 L1995ARTS8-10, & 2ND SCHEDULE
ZAMBIA	10 yrs (5 if born in country or ancestor was a citizen)	-	No imprisonment following conviction of an offence, not bankrupt, not a prohibited immigrant; may be rejected if "not in the public interest"	No	-	-	-	C2016ART37(1) L2016ARTS20-24
ZIMBABWE ‼	10 yrs	-	Good character; "fit and proper person"	Yes	Sound mind	Residence period can be reduced by the president under "special circumstances"	Yes, on application (discretionary)	C2013ARTS35,38 (2)&91 L1984(2003)ARTS 4&5

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

‼ legislation conflicts with the constitution or law unclear; constitutional provisions noted here

- No provision

Loss, deprivation, renunciation, and reacquisition of nationality

Three constitutions in southern Africa establish protections against deprivation of citizenship: Article 20 of the South African constitution states simply that "No citizen may be deprived of citizenship"; the constitution of Angola prohibits deprivation of nationality held from birth; while Malawi's constitution provides that "citizenship shall not be arbitrarily denied or deprived".[163] In all three countries, however, legislation is in conflict with the constitution: in South Africa, the Citizenship Act provides for deprivation of citizenship in several circumstances; in Angola, the law provides for involuntary loss in one situation; and in Malawi the act establishes a rather extensive list of reasons for deprivation of citizenship from a naturalised citizen, arguably in violation of this protection. In several other cases, including Mozambique, Namibia, and Zimbabwe, the constitution establishes an exhaustive list of reasons for withdrawal of nationality, but legislation purports to extend these reasons.

Several countries do not permit loss or deprivation of nationality held from birth, at least according to constitutional provisions (Eswatini, Malawi, Mauritius, Mozambique, Namibia, South Africa, Zambia, and Zimbabwe), or only on acquisition or retention of another (Botswana, DRC, and Tanzania). South Africa (where the law conflicts with the constitution) and Seychelles have recently expanded the reasons for which citizenship can be deprived to include a wider range of crimes related to national security. Deprivation of nationality acquired by naturalisation is usually permissible on a much wider range of grounds.

It was not possible to obtain any statistics for cases of deprivation of nationality for this report. However, the numbers of formal deprivations invoking the powers given in the law are believed to be low: it is more common to deny that a person ever legitimately held citizenship to start with.

The terms used at national level vary, but this report follows the terminology used in the 1961 Convention on the Reduction of Statelessness. In the 1961 Convention, loss of citizenship refers to an automatic withdrawal of nationality by operation of the law (most commonly on voluntarily obtaining another nationality); while deprivation refers to withdrawal following an executive or judicial act. Renunciation is used here to refer to a person's voluntary decision to give up nationality; and reacquisition to the restoration of citizenship after it has been lost, deprived, or renounced.

Loss and deprivation of nationality attributed at birth

Most of the Commonwealth states in Africa do not create the possibility for the executive to deprive a person who has been a citizen from birth: citizenship acquired at birth can only be lost by operation of law (if at all) if another nationality is retained or acquired as an adult. Thus, in Botswana and Tanzania, where dual citizenship is not permitted for adults, a person will lose citizenship acquired at birth if he or she retains or acquires another citizenship after the age of majority (see above: Dual nationality). While the possibility of depriving a person of citizenship from birth (of origin) is more common among the civil law countries, some of them also only provide for deprivation to be possible from someone who has acquired citizenship by naturalisation.

[163] *Constitution of South Africa, 1996, art. 20; Constitution of Angola, 2010, art. 9(4); Constitution of Malawi, 1994, art. 47(2).*

The constitution of Angola prohibits deprivation of nationality that a person has held from birth; but the law nonetheless provides for involuntary loss if a person exercises sovereign functions of another state (unless this is communicated in advance to the National Assembly).[164] Amendments to the Comoros constitution adopted in 2018 removed protection against deprivation of citizenship from birth.[165] The nationality code provides that a person loses birth nationality on voluntary acquisition of another nationality (subject to authorisation during the period in which the person might be eligible for military service); and that a citizen from birth can be deprived of nationality, whether or not he or she has another nationality, if he or she behaves like the national of another state, or continues to exercise functions for another state when instructed not to.[166]

The constitutions of Mozambique, Namibia and Zimbabwe include the main substantive provisions on acquisition and loss of citizenship. In all three cases, the legislation conflicts with the constitution, which creates room for misapplication of the provisions, even if the constitution is clearly the superior law and should prevail. In Mozambique the constitution provides only for voluntary renunciation of nationality (however acquired); but the law states that birth nationality can be lost if a person exercises sovereign functions for another state.[167] The Zimbabwean constitution provides for revocation of citizenship by birth if acquired by fraud, or in case of a person benefiting from the presumption in favour of foundlings whose parentage of nationality becomes known; the Citizenship Act, however, continues to provide for loss of citizenship on retention or acquisition of another.[168] In Namibia, the legislation conflicts with the constitution in relation to loss of nationality by those born with dual citizenship (see above: Dual nationality).

The South African constitution that entered into force in 1996 prohibits deprivation of nationality from any citizen. The original version of the South African Citizenship Act adopted in 1995, however, provided for loss of citizenship of a citizen from birth or by acquisition if he or she was also a citizen of another country and served in the armed forces of that country in a war against South Africa, or if a person acquired another citizenship without the permission of the government (as well as deprivation from naturalised citizens).[169] These powers have not been repealed.

In 2013, Seychelles inserted a new article to its citizenship law expanding the grounds for deprivation of citizenship, including from a citizen from birth, if the minister "is satisfied" that the person has been involved in terrorism, piracy, drugs offences, treason, and other offences, or has acted with disloyalty.[170] The constitution generally permits parliament to provide for deprivation of citizenship if it has been unlawfully acquired.[171]

[164] *Constitution of Angola, 2010, art. 9(4); Lei 2/2016, art.17(1)(b).*

[165] *Constitution of Comoros, 2001, amended 2018, art.5 ("Hors des cas où la loi dispose autrement, aucun comorien de naissaince ne peut être privé de sa nationalité"). See also above: Dual nationality.*

[166] *Loi n° 79-12 du 12 décembre 1979 portant Code de la nationalité comorienne, arts.51, 55, & 56.*

[167] *Constitution of Mozambique 2004, art.31; Lei da nacionalidade de 1975, as amended 1987, art.14.*

[168] *Constitution of Zimbabwe 2013, art.39; Citizenship of Zimbabwe Act 1984, as amended 2003, section 9.*

[169] *South African Citizenship Act, No. 88 of 1995, sec. 6 (in 2004 an amendment act, No.17 of 2004, repealed a provision in the 1995 Act that had provided for deprivation of citizenship on use of another passport).*

[170] *Section 11A of the Citizenship Act, No. 18 of 1994, inserted by Act 11 of 2013.*

[171] *Constitution of Seychelles, 1993, as amended, art.13.*

Loss and deprivation of nationality acquired by naturalisation

Almost all African countries provide for deprivation of citizenship acquired by naturalisation under some circumstances, such as a conviction on charges of treason or a similar crime against the state; conviction on charges of ordinary, but still serious, crimes; or a finding that citizenship was acquired by fraud.

In Malawi, for example, which has provisions that were typical for the Commonwealth states but have by now been reformed in many other countries, the grounds are very broad and the decision highly discretionary. Citizenship can be revoked where the minister "is satisfied" that the person "has shown himself by act or speech to be disloyal or disaffected towards the Government of Malawi"; when he has traded or associated with or assisted an enemy during war; when within five years of receiving citizenship he is sentenced to a prison term exceeding 12 months; when he resides outside Malawi for a continuous period of seven years without being in the service of Malawi or an international organization or without registering annually at a Malawian consulate his intention to retain his citizenship; or when Malawian citizenship was obtained through fraud, misrepresentation, or concealment of any material fact.[172] At the other end of the scale, Zambia only permits deprivation of citizenship if it has been acquired by fraud and on no other grounds.[173]

The South African Citizenship Act provided from 1995 for deprivation of a citizen by naturalisation in case of fraud or sentenced to more than one year's imprisonment, or if the minister "is satisfied that it is in the public interest"; in 2010, the act was amended to introduce a further – apparently unconstitutional – ground for automatic loss of nationality of a naturalised citizen, if he or she "engages, under the flag of another country, in a war that the Republic does not support."[174]

In Commonwealth countries, many laws provide for an individual to lose naturalised citizenship automatically if he or she stays outside the country for seven years without notifying the authorities of an intention to retain citizenship. The only countries in Southern Africa where this is not the case are Angola, Comoros, DRC, Madagascar, Mozambique, South Africa, and Zambia. This rule, despite being permitted in international law (Article 7 of the 1961 Convention), effectively means that a naturalised citizen without dual citizenship cannot move to another country without risking statelessness. Namibia and Zimbabwe allow naturalised citizens to lose their citizenship after a shorter period of time than the one allowed by the 1961 Convention (two and five years, respectively).

Quite a large number of countries in Africa — including Lesotho in southern Africa — allow nationality by naturalisation to be revoked only during a fixed period after it has been acquired, and not indefinitely. This provides greater protection against disproportionate and arbitrary use of the law, especially in case of minor irregularities discovered long after the fact and should be regarded as best practice.

[172] *Malawi Citizenship Act 1966, as amended, sec. 25.*

[173] *Constitution of Zambia, art. 40; Zambia Citizenship Act secs. 27-28.*

[174] *South Africa Citizenship Act 1995, sec. 8; South Africa Citizenship Amendment Act, No.17 of 2010, adding subsection 6(3) to the principal act. This amendment came into force on 1 January 2013. See further Submission on the South African Citizenship Amendment Bill, B 17 – 2010, Citizenship Rights in Africa Initiative, 6 August 2010.*

Protection against statelessness

The constitutions of both Lesotho and Zimbabwe provides an absolute prohibition on deprivation of nationality if the person would become stateless: the Lesotho constitution gives power to parliament to provide for deprivation from a naturalised citizen "unless he would thereby become stateless";[175] while the article of the Zimbabwe constitution of 2013 dealing with revocation states that "Zimbabwean citizenship must not be revoked … if the person would be rendered stateless."[176] The Mauritius Citizenship Act similarly states that "The Minister shall not deprive any person of his citizenship if it appears to him that the person would become stateless".[177]

There are several countries that provide partial protection. Namibia appears at first sight to prohibit deprivation of nationality from a person who would thereby become stateless, but then states that this is "unless the minister is satisfied that it is not conducive to the public interest that the person should continue to be a Namibian citizen".[178] Eswatini includes a statement only that the decision to deprive nationality "shall endeavour not to render the person stateless".[179] Seychelles provides protection against statelessness only in case of deprivation on grounds related to treason, terrorism and disloyalty (introduced in 2013), but not in case of fraud.[180] However, those in groups at risk of statelessness are most likely to be those who have had to acquire documents fraudulently – even if they are legally entitled to them – rendering the protection against statelessness perhaps especially important in these cases.

In South Africa and Zimbabwe, the constitution and the law conflict on this point. As already noted, the Citizenship Act in South Africa provides for deprivation of citizenship despite a constitutional prohibition to the contrary; the Act includes protections against statelessness within its deprivation provisions, except in the case of naturalised citizens who fight "in a war the Republic does not support", or where naturalisation was obtained by fraud.[181] Zimbabwe's constitution prohibits deprivation in case of statelessness, and the law also includes a provision on avoiding statelessness; but the law's next subsection removes the protection by stating that the minister can still revoke naturalised citizenship if "he is satisfied that it is not conducive to the public good that the person should continue to be a citizen of Zimbabwe."[182]

Amongst the most problematic provisions are those permitting deprivation of nationality of children if a parent is deprived, potentially punishing the child for the fault of the parent and leaving the child at great risk of statelessness. This is the case in Namibia (if the child is a citizen by registration or naturalisation); South Africa (for children born outside the country, and "with due respect to the Children's Act"), and

[175] *Constitution of Lesotho 1993, as amended, art. 42*

[176] *Constitution of Zimbabwe 2013, art.39*

[177] *Mauritius Citizenship Act 1968, as amended, sec.11(3)(b) and 11(4)(b).*

[178] *Namibian Citizenship Act, 1990, sec. 9(4). The Namibian courts have affirmed that the provision in Article 4(8)(b) of the Namibian constitution allowing government to enact legislation depriving people serving in foreign forces of their citizenship was subject to the specific proviso in the constitution that a citizen by birth cannot be deprived of citizenship. See summary of Alberts v Government of Namibia & Another, 1993 NR 85 (HC) available at http://www.hrcr.org/safrica/citizenship/alberts_gov.html and references at footnote 129.*

[179] *Constitution of Swaziland 2005, art. 49(5).*

[180] *Seychelles Citizenship Act 1994, as amended, sec. 11A(6).*

[181] *South African Citizenship Act 1995, as amended, secs. 6 and 8; Zimbabwe Citizenship Act 1984, as amended, sec. 12.*

[182] *Citizenship of Zimbabwe Act 1984, as amended, sec. 11(3).*

Zimbabwe (if the child is a citizen by registration).[183] Namibia also provides for loss of citizenship by a child if one parent renounces it, and the other parent does not remain a citizen,[184] while Comoros and Madagascar provide for the withdrawal of nationality of a child if one parent acquires another nationality and the other does not remain a national (in Madagascar, with gender discrimination within the provision.[185] In Eswatini, the Citizenship Act provides that loss or deprivation of citizenship shall not automatically affect a spouse or child, but does not exclude the possibility of extension of the measure.[186] In other cases, the law is silent on this point (Angola, Botswana, DRC, Malawi, Mauritius, Mozambique, and Seychelles). Such provisions or decisions should always be subject to the tests of proportionality and the best interests of the child.

[183] *Namibian Citizenship Act, 1990, sec. 10(1); Citizenship of South Africa Act 1995, as amended, sec. 10; Citizenship of Zimbabwe Act 1984, as amended, sec.12; see also UN Committee on the Rights of the Child, Concluding observations on the second periodic report of South Africa, CRC/C/ZAF/CO/2, 27 October 2016.*

[184] *Namibian Citizenship Act, 1990, sec. 8(3).*

[185] *Loi No.79-12 du 12 décembre 1979 portant Code de la nationalité comorienne, art.55; Ordonnance n° 60 - 064 du 22 juillet 1960 portant Code de la nationalité malgache (tel que modifié), art. 48.*

[186] *Constitution of Swaziland 2005, art.52(2); Swaziland Citizenship Act 1992, sec.13(2).*

Table 7: Loss or deprivation of citizenship

COUNTRY	CITIZENSHIP FROM BIRTH				CITIZENSHIP BY NATURALISATION						PROTECTION AGAINST STATELESSNESS	LEGAL PROVISIONS (DATE OF LATEST AMENDMENT IN PARENTHESES)
	Acquires / retains	Work foreign state	Crime vs state	Permit required to	Fraud	crime vs state	ordinary crime	disloyal behaviour	Work for foreign	res. out of country		
ANGOLA !!		x			x	x			x			C2010ART9 L2016ART17
BOTSWANA	x			x	x	x		x		x		L1998(2004)ART16&18
COMOROS	x	x		x[MS]	x	x	x	x		10 yrs		C2001(2018)ART5 L1979ARTS51-59, 68
DR CONGO	x				x		x					L2004ART1S27-29
ESWATINI					x					x	partial	C2005ART49&50 L1992ART10&11
LESOTHO					x		x	x		x	Yes	C1993(2018)ART42(2) L1971(1993)ART23
MADAGASCAR	x	x			x	x	x	x		10 yrs		L1960(2017)ART42-54&63
MALAWI				x	x	x	x	x		x		C1994ART47 L1966(2019)ART23-26
MAURITIUS				x	x	x	x	x	x		Yes	L1968(1995)ARTS11&14
MOZAMBIQUE !!		x							x			C2004ART31(A) L1975ART14
NAMIBIA !!	x				x	x	x	x		x	partial	C1990(2010)ART4(7)&(8) L1990ART7-9
SEYCHELLES		x	x		x	x	x	x			partial	C1993(2011)ART13(1)(B) L1994(2013)ARTS10-11&11A
S. AFRICA !!	(x)	x			x	x	x				partial	C1996(2013)ART20 L1995(2010)ART6-8
TANZANIA	x				x	x	x	x	x			L1995ARTS7,13-17
ZAMBIA					x							C2016ART40 L2016ARTS27-31
ZIMBABWE !!	x			x[MS]	x	x	x	x		x	partial	C2013ART39 L1984(2003)ART11

shaded: citizenship from birth cannot be revoked

(x) dual nationality allowed only with permission

!! Constitution and law conflict

x provision in the law is unconstitutional

MS permission required to renounce nationality only during period for which may be called for military service

Renunciation of nationality

In case of voluntary renunciation of nationality, it is important that the law and administrative procedures include a check that the person has acquired or will acquire another nationality, and the possibility of reinstatement of nationality if a new nationality is in fact not acquired.

All SADC states allow renunciation of nationality (though some require permission of the authorities). Only Zimbabwe does not provide explicitly that its citizenship may not be renounced if the person would not become citizen of another country. In the case of Namibia, the law states that a person who has not become a citizen of any foreign country within one year from the date of registration of his or her declaration of renunciation, shall be deemed to have remained a Namibian citizen.[187] Similarly, in Malawi and Zambia if the person does not in fact acquire another citizenship within three months or six months (respectively) following renunciation, Malawian or Zambian citizenship is deemed retained (subject to taking the oath of allegiance).[188]

Reacquisition

In those states which currently or previously provided for automatic loss of nationality on voluntary acquisition of another, or failure to renounce another on majority, there are usually provisions for reacquisition of nationality on application – with no other conditions unless dual nationality is still not permitted, in which case the other must be renounced. This rule applies in Botswana, Lesotho, Malawi, Namibia, Zambia and Zimbabwe (although in Malawi the 2019 amendment act to permit dual nationality left previous provisions on reacquisition unamended, creating a confusion in the law).[189] Similar rules apply in South Africa, if the reasons for loss or deprivation no longer apply. In most cases, reacquisition is only possible if nationality was lost by operation of law, and not if a decision was taken to deprive a person (for example on the grounds of fraudulent acquisition or crimes against the state). A more discretionary procedure applies in Angola, Comoros, DRC, Madagascar, and Mozambique. There is no provision for reacquisition in Eswatini, Seychelles, and in the case of Mauritius and Tanzania only in case of a person who lost nationality on marriage. These gaps potentially leave individuals at risk of statelessness.

[187] *Citizenship Act 1990, sec. 8(5).*

[188] *Malawi Citizenship Act, 1966, as amended, sec. 23(1); Citizenship of Zambia Act 2016, sec. 32.*

[189] *Malawi Citizenship Act, 1966, as amended, secs. 7(5) and 27.*

Table 8: Renunciation and reacquisition

COUNTRY	RENUNCIATION		REACQUISITION	RELEVANT LEGAL PROVISIONS
	Conditions applied	**Protection vs statelessness**		
ANGOLA	By declaration (*manifestarem a pretensão*)	Yes	After 1 year's residence and within 3 years of majority if renounced on child's behalf by parents After 5 yrs residence, if deprived, and Nat. Ass. must authorise; reacquisition may be opposed on grounds similar to those for deprivation	L2016Art17-19
BOTSWANA	By registration, minister may withhold if resident in Botswana	Yes	Only if lost for dual nationality & is resident in Botswana	L1998(2004)Arts16,17
COMOROS	If auth by decree	Yes	By decree after inquiry, must be resident	L1979Arts37-41&51-52
DRC	No provision	-	By decree if naturalised & must fulfil same conditions as for naturalisation; by declaration if of origin & must have maintained links to DRC	L2004Arts30-33
ESWATINI	By declaration	Yes	No provision	C2005Art50 L1992Art11
LESOTHO !!	By registration, minister may withhold if not conducive to public good or during a war	Yes	Automatic reacquisition if renounced because of dual nationality (law not updated to reflect constitutional amendment 2018)	C1993(2018)Art41A L1971(1993)Arts22&25
MADAGASCAR	If auth by decree	Yes	By decree after inquiry, must be resident, not if deprived	L1960Arts30-34&45
MALAWI !!	By registration, may be withheld if during a war or if contrary to public policy	Yes	If lost because of dual nationality (but section 27 of the law not amended in light of new section 7)	L1966(2019)Arts7(5), 23&27
MAURITIUS	By registration, minister may withhold	Yes	In case of marriage, if marriage ends	L1968(1995)Art14
MOZAMBIQUE	By declaration	Yes	Must be domiciled in Mozambique and satisfy conditions relating to integration	C2004Arts31-32 L1975(1987)Arts14&16
NAMIBIA	By registration, may be withheld if during a war	Yes	If lost because of dual nationality or some forms of deprivation, not if is a citizen of another country	L1990Arts8&13

SEYCHELLES	By registration, may be withheld if gains nationality of country with which at war	Yes	No provision	L1994(2013)Art10
SOUTH AFRICA	By registration, no conditions	No	If reasons for loss or deprivation no longer exist or are of no consequence	L1995(2010)Arts7&13
TANZANIA	By registration, minister may withhold if during war or contrary to public policy	No	No provision, unless woman who lost other citizenship	L1995Art13(3)
ZAMBIA	By declaration, Board may withhold if during war	Yes	If lost because of dual nationality	C2016Arts39&40 L2016Arts26&32
ZIMBABWE	By registration, may be withheld if is a national of a country with which at war	No	If deprived, or if lost because of dual nationality or absence from Zimbabwe, subject to conditions	L1984(2003)Arts10-14

!! laws conflict
Many rules on reacquisition have exemptions for “exceptional circumstances”, which are not noted here.

Nationality administration in practice

The systems for proof of nationality are in practice often as important as the provisions of the law for the avoidance of statelessness. If there are onerous requirements or costs attached to proof of nationality, or discrimination in practice means that proof is not obtainable, then the fact that a person actually fulfils the conditions laid down in law may be unrecognised.

A particular challenge is created when different laws conflict: especially when the constitution and the nationality law establish different rules – for example in relation to gender discrimination, or dual nationality. This is the case in Zimbabwe, where the 2013 constitution establishes new rules, but the Citizenship Act was last updated in 2003 (see above: Dual nationality). In principle, the constitution is a superior source of law, in practice, however, administrative procedures tend to follow the outlines established in the law and its regulations. While a person with resources and access to lawyers may be able to challenge the application of the law as unconstitutional, and get a decision overturned, such remedies are inaccessible to most people.

It is even more challenging when two laws of equal status conflict: when there are differences between the nationality code and, for example, the civil registration law; or laws on children's rights, marriage or the family; or establishing a national identity card; or providing for passports. In these circumstances, it can be the case, for example, that the nationality law provides for equal rights of men and women to transmit nationality to their children; but the civil registration law discriminates on the basis of gender in relation to the rights to register a child; or the family law establishes rules on recognition of children born out of wedlock that create obstacles in practice to recognition of nationality; or the law on the national identity card establishes evidential requirements for proof of nationality that are not justified in the nationality law.

In practice, moreover, officials rely on the regulations implementing the laws to establish the specific requirements in relation to documents that must be produced, or conditions that must be satisfied before an identity document recognising nationality can be issued. In some cases, these regulations have not been updated to reflect new laws, or, even if they have been, continue to apply rules that are no longer authorised by the primary legislation. This is the case in Zambia for example (see above: Dual nationality; Adopted children; and Acquisition of nationality by naturalisation or registration) .

These legal confusions create, in practice, a large degree of discretion in the application of the law by the executive branch. Even though a person may appear to be a national based on interpretation of the constitutional or primary legislation, the law may be significantly adjusted in its application in fact. Determining whether any particular individual is stateless may require multiple attempts to obtain recognition of what appears to be a straightforward right to a document recognising nationality, whether in one or more countries.

Weaknesses in nationality administration

Weak civil registration systems

Birth registration is the foundation for nationality administration, but six of the 16 SADC countries have birth registration rates of less than 50% of those under five years old, while the percentage holding birth certificates is generally lower. Older children and adults tend to have even lower rates of registration.

The vital need for due process, including both administrative and judicial review and appeal

Documents attesting to nationality are ever more important for individuals to access their other rights. It is critical that decisions made by officials to deny or refuse to renew a document are subject to review and appeal not only by other officials, but also by the courts. As affirmed by the African Court on Human and Peoples' Rights in the *Anudo* judgment (see heading below: The African Court on Human and Peoples' Rights), when a person has previously been treated as a national, including holding documents attesting nationality, the burden of proof should fall on the state to prove that the person is not entitled to hold that document.

The lack, in some countries, of a document that is conclusive proof of nationality

Only in Madagascar among the SADC states does a person have the right to obtain from a court a certificate of nationality that is proof of that status unless overturned by another court. Without such a possibility, a person from a group facing discrimination may be required to prove entitlement to nationality each time an application is made for identity documents, even in case of renewal.

Discriminatory vetting procedures can exclude legitimate applicants

All states have procedures to verify a person's entitlement to nationality. However, where higher standards of proof are applied to certain communities – including requirements to produce documents that many cannot be expected to hold – then members of that community without connections or access to lawyers and other assistance may be excluded from recognition of nationality, even if they fulfil all the conditions in fact.

Naturalisation is only available to a very few

The discretionary nature, high costs, and heavy procedural requirements attached to naturalisation means that regular naturalisation procedures is only accessible to a small elite. The exceptional programmes initiated by Tanzania for certain Burundian refugees, and by Namibia for long-term residents, should be replicated for other groups whose only meaningful ties are to the country of residence.

Costs can obstruct access to nationality documentation

While official fees for birth registration, identity documents and nationality certification are mostly reasonable, they can still create barriers for the poorest people. The fees charged by intermediaries who facilitate applications, transport costs, and the many hours of lost time waiting for documents to be issued put them out of reach for many more.

Birth registration

In principle, recognition of nationality should start immediately after birth, with registration of the birth itself.[190] Birth registration establishes in legal terms the place of birth and parental affiliation, which in turn serves as documentary proof underpinning acquisition of the parents' nationality (*jus sanguinis*), or the nationality of the state where the child is born (*jus soli*). Birth registration (while not itself conferring citizenship) is usually fundamental to the recognition of nationality, and thus of many other rights: lack of birth certificates can prevent citizens from registering to vote, putting their children in school or entering them for public exams, accessing health care, or obtaining identity cards, passports, and other important documents.

Angola, Mozambique, Madagascar, and DRC follow the standard civil law rule that civil status events – births, marriages, divorces, adoptions, deaths – are only legally valid if they are recorded in the civil register. In Mozambique, both the constitution and the nationality law explicitly provide that the civil register is proof of all facts relating to nationality.[191] In the Commonwealth states, birth registration is not usually a legal prerequisite for citizenship to be recognised, even though it may be so in practice. However, there are exceptions. For example, legal protections against statelessness based on birth in South Africa depend on birth registration (which is not required for citizenship acquired from a parent).[192]

There is a similar variation in relation to the status of a birth certificate as proof of citizenship. In both Angola and Mozambique nationality of origin is proved by a birth certificate unless there is mention to the contrary.[193] In the Commonwealth states, by contrast, a birth certificate is not usually proof of citizenship (though it is commonly stated to be prima facie evidence of the particulars it sets out[194]), but again there are exceptions. According to the Botswana Children's Act, a birth certificate issued under the Births and Deaths Registration Act, shall be the proof of the citizenship of the child.[195] Zambia's 2016 Citizenship Act provides that "A person who is a citizen by birth shall be registered at birth in accordance with the Births and Deaths Registration Act", and issued a national registration card upon majority, the implication being that birth registration will serve as proof of citizenship (although the Births and Deaths Registration Act does not contain a similar provision).[196]

Given the importance of birth registration for recognition of citizenship, every child should have the right to registration of birth, free of charge, in accordance with the requirements of the Convention on the Rights of

[190] *"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents." Convention in the Rights of the Child, 20 November 1989, Art. 7(1). The African Charter on the Rights and Welfare of the Child repeats this provision in its Article 6(2).*

[191] *Mozambique Constitution 2004 art. 34; Lei de 20 de Junho de 1975 (alterada pela Lei no.2.82 de 06 de Abril & pela Lei No. 16/87 de 21 de Dezembro), art. 19.*

[192] *South African Citizenship Act No.88 of 1995 (as amended), sec. 2, comparing subsections (1), (2) and (3).*

[193] *Angola : Lei No.2/2016 de 15 de Abril, art. 26 ; Mozambique Decreto 3/75 da lei da nacionalidade, alterado pelo Decreto No. 5/88, art. 4(1).*

[194] *For example, in Lesotho, section 13 of the Registration of Births and Deaths Act No.22 of 1973, provides in standard wording that "a copy of an entry in any register certified under the hand of the registrar to be a correct copy shall be prima facie evidence in all courts of the dates and facts therein stated".*

[195] *Botswana Children's Act No.8 of 2009, sec. 12(3).*

[196] *Citizenship of Zambia Act 2016, sec. 15.*

the Child and the African Charter on the Rights and Welfare of the Child. During the colonial era, birth registration was frequently discriminatory, required in law only for those not of African origin. In Malawi, birth registration only became compulsory for all children with the entry into force of the National Registration Act of 2010.[197] Most SADC states now provide that birth registration shall be compulsory for all children born in the territory, and place an obligation on one or both parents to register the child. At least Lesotho and Zimbabwe among SADC states both provide for a *right* to birth registration for all children.[198] The absence of a similar provision can make it more difficult for those who have been unable to access birth registration for a child to challenge that refusal.

Registration of birth should happen as soon as possible after birth, although late registration procedures should be accessible for those who do not register within the standard time limit. As stated by the African Committee of Experts on the Rights and Welfare of the Child, even if the obligation is on the parents to register the birth, the state shares the responsibility to make this possible in a timely manner:

> *The Charter provides for registration of every child immediately after birth. The Committee interprets "immediately" to mean as soon as possible, with due regard to cultural and local practice related to maternity and infant rearing. The Committee is of the view that by "immediately" after birth the drafters of the African Children's Charter intended to make birth registration occur within a few days or weeks after birth and not months or years later. The Committee wishes particularly to bring to the attention of States parties that" immediately after birth" should not be interpreted to mean "within a reasonable period of time after birth".*[199]

In relation to late registration, the Committee recommends:

> *States parties must, in all circumstances, provide for late registration where children's birth has not been registered immediately. The Committee encourages States parties to provide for a short time limit after birth within which a birth should be registered. Late registration should be allowed to occur free of charge within a grace period of one year after birth. Late or delayed registration should, if not free, be able to be effected at a nominal fee.*[200]

Most countries provide for initial registration to be an obligation of either or both parents, and to take place within the first few weeks of life.

- Angola: initial registration period within 30 days, and late registration possible, but becomes more difficult more than one year after birth;[201]
- Botswana: initial registration period within 60 days, and late registration possible on payment of a fee, subject to proof of the "material facts relating to such birth".[202]
- Comoros: initial registration within 15 days, and late registration is possible on the basis of a court order.[203]

[197] *National Registration Act No.13 of 2010, sec. 22.*

[198] *Constitution of Zimbabwe 2013, arts. 35(3) and 81(1)(c); Lesotho: Children's Protection and Welfare Act No 7 of 2011, sec.8.*

[199] *African Committee of Experts on the Rights and Welfare of the Child, General Comment No.2: Article 6 of the African Charter on the Rights and Welfare of the Child, 2014, para.79.*

[200] *Ibid., para. 81.*

[201] *Decreto-Lei n.º 47 678, de 5 de Maio de 1967 - Código do Registo Civil, arts.119-125.*

[202] *Births and Deaths Registration Act, No.48 of 1968, as amended, Laws of Botswana, Chapter 30:01, secs.6 & 11.*

[203] *Loi n°84-10 du 15 mai 1984 relative à l'état civil, arts.31 & 32.*

- DRC: initial registration within 90 days, after which possible on the basis of a court order.[204]
- Eswatini: initial registration period 60 days, after which written authorisation is required.[205]
- Lesotho: initial registration within 14 days in urban areas and 7 days in rural areas, with no specific provision for late registration.[206]
- Madagascar: initial registration within 30 days, and late registration is possible on the basis of a court order.[207]
- Malawi: initial registration within six weeks of the birth, late registration subject to a fee.[208]
- Mauritius: initial registration within 45 days, after which an order of a district magistrate or of the Registrar of Civil Status is required, and after three months a magistrate also requires the conclusions of the Ministère Public.[209]
- Mozambique: initial registration within 20 days; late registration is possible and if attempted more than one year after birth can be supported by testimony .[210]
- Namibia: initial registration within 14 days, after one year from the date of birth written authorisation is required.[211]
- Seychelles: initial registration within 30 days, after which an order of a judge is required and a fine must be paid, which increases after three months[212]
- South Africa: the act provides that initial registration is within seven days, after which reasons may be demanded and fingerprints taken of the person giving notice; however, the regulations provide an initial period of 30 days, after which a fee is payable, and further obligations apply after one year.[213]
- Tanzania: initial registration within three months; after three months the district registrar must be satisfied of the correctness of the information and a fee is payable, and after ten years, the approval of the Registrar-General is required.[214]
- Zambia: initial registration with one month, after which a fee is payable, and after one year from the date of birth written authorisation is required.[215]
- Zimbabwe: initial registration within 42 days, and after one year from the date of birth, written authorisation is required.[216]

In most countries, timely birth registration itself is free, although late registration may attract a fee, or the parents may be subject to a fine for not registering in time. However, even if registration is free, the issue of a birth certificate may have a charge attached which prevents access. This is the case in Zimbabwe, for example, and although fees were reduced in late 2018 the perception of cost remained. Transport and accommodation costs for witnesses may also create barriers if registration centres are not accessible.[217]

[204] *Loi n° 87-010 du 1er aout 1987 portant Code de la famille, as amended, arts. 106 & 116.*

[205] *Births, Marriages and Deaths Registration Act,1983, secs. 7 & 15.*

[206] *Births and Deaths Registration Act 1973, secs. 31 & 39*

[207] *Loi n°2018-027 relative à l'état civil, arts. 45 & 111.*

[208] *National Registration Act No.13 of 2010, secs. 24 & 25.*

[209] *Civil Status Act No.23 of 1981, sec.12.*

[210] *Lei no.12/2004 de 8 de dezembro do Código de registo civil, arts.118-123.*

[211] *Births, Marriages and Deaths Registration Act No.81 of 1963 (RSA), as amended, secs.7 & 19.*

[212] *Civil Status Act 4 of 1893, as amended, Chapter 34, Laws of Seychelles, sec.31.*

[213] *Births and Deaths Registration Act No.51 of 1992, as amended, sec.9 ; Regulations on the Registration of Births and Deaths, 2014, regs.3 – 4.*

[214] *Births and Deaths Registration Act 1920, as amended, Chapter 108, Laws of Tanzania, secs. 11 & 19.*

[215] *Births and Deaths Registration Act No.21 of 1973, as amended, Chapter 51 of the Laws of Zambia, secs.14, 23 & 24.*

[216] *Births and Deaths Registration Act No.11 of 1986, as amended, Chapter 5:02 of the Laws of Zimbabwe, sec.25.*

[217] *"Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents" (Parliamentary Portfolio Committee on Defence, Home Affairs and Security, Zimbabwe, 27 August 2019), https://parlzim.gov.zw/national-assembly-hansard/national-assembly-hansard-27-*

Gender discrimination in the rules for registration of births is an important barrier to universal birth registration. In Eswatini, Namibia and Seychelles a mother can legally register a child only when the father is dead, absent, or incapable.[218] In case of a child born out of wedlock, it is usually the case that the father must recognise the child – or be ordered to do so by a court – for his name to be entered on the birth register. This is the case for example in Lesotho, Madagascar, Malawi, Tanzania, Zambia, and Zimbabwe.[219]

In these cases, even though in principle either the mother or father may declare a birth, fathers may sometimes not be able to register the birth of a child if born out of wedlock, even if they wish to recognise it. In South Africa, the law on birth registration differentiates between children born within and outside of marriage, and regulations provide that a child born out of wedlock can only be registered by the mother.[220] The regulations also distinguish between the children of South African citizens and the children of foreigners.[221] The Public Protector has found that the Department of Home Affairs' failure to register a the birth of a child with a South African father and non-South African mother was "procedurally and substantively flawed" and in violation of the constitution.[222] The High Court has heard a number of cases challenging these rules, ordering that the details of the South African father be entered on the birth certificate for a child born out of wedlock to a non-South African mother and the child declared to be a South African citizen;[223] and that a single father be permitted to register a birth.[224] In May 2020, the full bench of the High Court confirmed this position on appeal, ruling that Section 10 of the Births and Death Registration Act was invalid and inconsistent with the Constitution.[225] Lawyers for Human Rights and the Centre for Child Law filed an application for the Constitutional Court to confirm this judgment.[226]

In 2018, the Botswana Ministry of Nationality, Immigration and Gender Affairs finally agreed to a consent order approved by the High Court to register within seven days the birth of a child born seventeen years

august-2019-vol-45-no-80; Zimbabwe Human Rights Commission, "Report on National Inquiry on Access to Documentation in Zimbabwe" (Harare, Zimbabwe, April 2020), http://www.zhrc.org.zw/wp-content/uploads/2020/10/National-Inquiry-on-Access-to-Documentation-Report-compressed.pdf.

[218] *Eswatini: Births, Marriages and Deaths Registration Act 1983, sec. 15; Namibia: Births, Marriages and Deaths Registration Act No.81 of 1963, as amended, sec. 19; Seychelles: Civil Status Act 4 of 1893, as amended (Chapter 34, Laws of Seychelles), sec.31.*

[219] *Lesotho: Births and Deaths Registration Act 1973, sec. 19; Madagascar: Loi n°2018-027 relative à l'état civil, art. 71; Malawi: National Registration Act No.13 of 2010, sec. 24(3); Tanzania: Births and Deaths Registration Act 1920, as amended, sec.12; Zambia: Births and Deaths Registration Act No.21 of 1973, as amended, sec.15; Zimbabwe: Births and Deaths Registration Act No. 11 of 1986, as amended, sec. 12.*

[220] *Births and Deaths Registration Act, 1992, as amended, secs. 9 & 10; Regulations on the Registration of Births and Deaths, 2014, reg. 12. See Towards Universal Birth Registration in South Africa: A Briefing Paper, Lawyers for Human Rights, Pretoria, 2011; Shadow Report to the South Africa State report to the African Commission on Human and Peoples' Rights (ACHPR), Coalition of South African NGOs, 31 March 2016.*

[221] *Regulations on the Registration of Births and Deaths, 2014, regs. 7 & 8*

[222] *Report on an investigation into allegations of failure to register the birth of a child and the naturalisation of the mother by the Northern Cape Department of Home Affairs, Report No.38 of 2011, Public Protector of South Africa.*

[223] *Steven Sikhumbuzo Moyo and another v. Minister Home Affairs, North Gauteng High Court, Case Number 44424/09, 6 June 2011.*

[224] *N and Others v Director General: Department of Home Affairs and Another (4996/2016) [2018] ZAECGHC 90; [2018] 3 All SA 802 (ECG) (27 June 2018); see "Centre for Child Law and Lawyers for Human Rights ask High Court to ensure birth registration for children of unmarried fathers", Press Release, 16 August 2018 http://www.lhr.org.za/news/2018/press-release-centre-child-law-and-lawyers-human-rights-ask-high-court-ensure-birth-regist; "South Africa: Landmark victory for single dads", The Herald (Nelson Mandela Bay), 9 July 2018.*

[225] *Centre for Child Law v Director-General, Department of Home Affairs and Others (CA 319/2018), High Court of South Africa, Eastern Cape Division (Grahamstown), Judgment of 19 May 2020; "High Court rules unmarried fathers can register children's births", Lawyers for Human Rights, 24 May 2020.*

[226] *"Fighting For Fatherhood In South Africa: Constitutional Court To Consider The Child's Right To A Name And A Nationality", Lawyers for Human Rights, 10 June 2020. The case was heard on 1 September 2020, but judgment had not been issued as this report was finalized; Constitutional Court record (Case Number: CCT101/20) available at https://collections.concourt.org.za/handle/20.500.12144/36654.*

earlier to a Botswanan father and a Zimbabwean mother who had abandoned the child at one year old.[227] The Botswanan authorities eventually agreed to register the child. However, the litigation only assisted the particular child concerned, because the case was settled out of court and the state would not agree to a declaratory order setting out general principles. In Zimbabwe, similarly, it is reported that birth registration has been refused to single fathers, and that children left in the care of their grandparents or other relatives face challenges in getting late registration if the birth was not registered immediately after birth.[228]

In other contexts, the absence of a father may also create difficulties for the mother to register the birth. In Tanzania, single mothers in Zanzibar have to have to declare before a sheikh that the child was conceived out of wedlock before they can register the birth.[229] Other barriers may also exist in Mozambique, for example, a legacy of the colonial era is that the civil registry office can refuse to register "African" names.[230]

Gender discrimination in birth registration in South Africa

L.G. was born in South Africa to a South African father and an undocumented foreign mother. Home Affairs refuses to register her because her mother has no form of identification. This is in spite of the fact that her father is present, willing to register his child and has a South African ID document. The Births and Deaths Registration Act allows either parent to register a child's birth. However, when a child is born out of wedlock, in order to register the child in the father's surname – for example, in the case where the mother has no identity documents and thus cannot register the child in her own surname – the mother must be present and willing to sign consent to acknowledgement of paternity. But in practice, mothers are not permitted to sign such consent if they are not themselves documented. As a result, their children remain undocumented regardless of whether the father is a South African citizen. Such children are effectively in the same position as if both parents were foreigners. The Children's Act allows fathers to obtain court orders confirming paternity in such cases, but this is not well known or advertised.

Case study from: "Promoting Citizenship and Preventing Statelessness in South Africa: A Practitioner's Guide", Lawyers for Human Rights, 2014

[227] *"Botswana court recognises a child's right to a name and nationality and compels authorities to issue a birth certificate 17 years after the birth of the child", Southern Africa Litigation Centre, 15 August 2018.*

[228] *Daniel Nemukuyu, "Mudede Birth Row Spills Into High Court", The Herald (Harare), 5 April 2018; "Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents", Parliamentary Portfolio Committee on Defence, Home Affairs and Security, Zimbabwe, 27 August 2019; Zimbabwe Human Rights Commission, "Access to Documentation in Zimbabwe".*

[229] *Zanzibar Civil Status Registration Agency Act, 2017, secs. 23(2) (b) and (c).*

[230] *Jerónimo, "Report on Citizenship Law: Mozambique", 3.*

Colonial borders and gender discrimination combine to create barriers to birth registration and identity documents

Grace Phiri is from a village near Chipata, North-eastern Province (bordering Malawi), she is a national of Zambia. She obtained a Zambian identity card in 2015 during mobile registration. Her husband Enock is from Malawi. They met and married in Zambia and their eldest son was born in 1991 in Zambia. They then moved to Malawi where eight additional children were born. They returned to Zambia in 2012. None of the children's births have been registered in Malawi or Zambia. The eldest son married a Zambian woman, and they have three children born in Zambia. Another son also married in Zambia, to a Zambian woman who recently delivered their first child. In the absence of birth registration and documentary evidence establishing place of birth and parentage, traditional chiefs provide testimony to support one's claim for birth registration and an identity card. But in the case of this family, the traditional chief will not provide any support documents. Because Enock Phiri is not a national of Zambia, the traditional chief considers that none of his children are nationals of Zambia, even though Grace Phiri is Zambian and according to the law her children are Zambian. In Ngoni tradition, children belong to the father.

Case study from UNHCR Zambia bureau; names have been changed

Safeguards against statelessness for children of unknown parents must be supported by procedures to ensure that the births of those children are registered, if they are to be effective and enable later access to citizenship documents. These procedures are not always in place, and there can be official resistance to ensuring that these children are registered in practice. In South Africa, despite provisions for the registration of abandoned children, it has been necessary for the courts to order the Department of Home Affairs to issue birth certificates to abandoned children, in the face of obstacles placed in the way of their registration.[231]

A number of states have made important efforts to improve the timely registration of births, especially for those births occurring in health facilities. In Namibia, birth registration facilities were scaled up in hospitals and sub-regional offices, resulting in a significant improvement in timely registration over the five years to 2012.[232] In Angola, there has been a major effort to improve birth registration, although many barriers remain.[233] Amongst other reforms, law on simplification of birth registration adopted in 2015 provides for health staff to ensure that birth registration takes place within 72 hours of birth in a health facility, and for efforts to improve registration of births at home also.[234]

Nonetheless, birth registration rates remain disappointing in southern Africa. In a mid-term update on the achievement of the Sustainable Development Goals published in late 2019, UNICEF regretted that eastern and southern Africa had overall seen no significant progress in birth registration in the first two decades of

[231] *Births and Deaths Registration Act No.51 of 1992, as amended, sec. 12; "DHA finally gives abandoned child a birth certificate", Lawyers for Human Rights, 24 July 2018; "Press Release: Abandoned Children Finally Registered by Home Affairs", Lawyers for Human Rights and Abba Specialist Adoption and Social Services, 26 March 2019.*

[232] *Matthew Dalling and Gopalan Balagopal, "A Rapid Overview of Birth Registration Systems in Namibia: Taking Stock" (Geneva: UNICEF and Ministry of Home Affairs and Immigration, 2012), https://www.unicef.org/namibia/na.UNICEF_Birth_Registration_Field_Assessment_2012.pdf.*

[233] *Michael Offermann, "Statelessness and risks of statelessness in Angola and for Angolans", forthcoming report for UNHCR, draft June 2020.*

[234] *Lei No.6/15 da 8 de Maio da Simplificação do Registo de Nascimento, arts.4 & 5.*

the 21st century, even though there had been strong progress in some countries.[235] For those states covered by this report, the average rate is 58 percent birth registration for children under five; but the average conceals huge variation, from 100 percent registration claimed in Mauritius, to only 11 percent in Zambia (See Table 9).

South Africa has the highest rates of registration on the continental mainland, after a major drive to improve registration rates led to an increase from less than 25% of under-fives in 1998 to 72% in 2005, and 95% by 2012.[236] However, more than 10 percent of births are still registered late; while the overall rate of registration has been declining, estimated at just under 90 percent of all births in 2018.[237]

In Zimbabwe, the birth registration rate has declined more seriously: according to the Demographic and Health Surveys, 74 percent of children's births were registered in 2005-06, but this dropped to 49 percent in 2010-11, and 44 percent in 2015.[238] In Zambia only an average of 14 percent of children under five had been registered as of 2018 (the same level as 2007, despite the adoption of a strategic action plan) – and only six percent of children had a birth certificate.[239] In DRC the birth registration rate is also declining, from an estimated 34 percent of children under five in 2001 to 25 percent in 2014.[240]

While there is progress in several countries, the existing low base and slow improvement means that rates remain low: in Tanzania birth registration of under-fives increased from 16% of children under five in 2010 to 26% in 2016, and 49 percent in 2019; in Mozambique birth registration rates increased from 36 percent in 2006 to 48 percent in 2011, where the estimate remained in 2017.[241] But even where registration rates are improving, the number of children with a birth certificate often remains low, making it difficult to exercise in practice the rights theoretically ensured by registration. In Malawi, the reported rate of birth registration rose from a low base of less than ten percent in the early 2000s, to 58 percent of under-fives in 2013, and 67 percent in 2015, but it was still the case that only 17 percent of Malawian children had birth certificates.[242] Many other countries report similar discrepancies.

[235] *UNICEF, "Birth Registration for Every Child by 2030: Are We on Track?" (Geneva: United Nations, December 2019), https://data.unicef.org/resources/birth-registration-for-every-child-by-2030/. For birth registration statistics for individual countries, see the UN Children's Fund (UNICEF) page on data for birth registration: https://data.unicef.org/topic/child-protection/birth-registration/. See also concluding observations of the UN Committee on the Rights of the Rights for the relevant countries, available at http://www.unhchr.ch/tbs/doc.nsf, in which concern at low birth registration rates is frequently expressed.*

[236] *The coverage and quality of birth registration data in South Africa: 1998–2005, Report no. 06-03-01 (2007), Statistics South Africa, 2007; "Reaching the Hard to Reach: A Case Study of Birth Registration in South Africa", Munk School of Global Affairs, University of Toronto, 23 November 2016.*

[237] *"P0305 - Recorded live births, 2018", Statistics South Africa, 26 September 2019 http://www.statssa.gov.za/?page_id=1854&PPN=P0305*

[238] *Zimbabwe Demographic and Health Survey 2015, chapter 2.7 https://www.dhsprogram.com/pubs/pdf/FR322/FR322.pdf*

[239] *Zambia Demographic and Health Survey 2018, chapter 2.4 & table 2.11 https://www.zamstats.gov.zm/index.php/publications/category/8-demorgraphy?download=364:zambia-demographic-and-health-survey-2018; National Strategic Action Plan For Reforming And Improving Civil Registration And Vital Statistics: Implementation Period 2014 –2019, Zambia Ministry of Home Affairs, Department of National Registration, Passports and Citizenship http://www.crvs-dgb.org/wp-content/uploads/2015/11/Zambia-National-Strategic-Action-Plan-for-CRVS.pdf.*

[240] *"Enquête nationale sur la situation des enfants et des femmes", MICS Survey 2001, chapter 9.3 https://mics.unicef.org/surveys; Democratic Republic of Congo Demographic and Health Survey 2013-14 chapter 19.1.1 https://www.dhsprogram.com/pubs/pdf/FR300/FR300.pdf.*

[241] *UNICEF, "Every Child's Birth Right: Inequities and Trends in Birth Registration" (Geneva: United Nations, December 2013). Figures for 2017 from latest UNICEF dataset on birth registration, available at https://data.unicef.org/topic/child-protection/birth-registration/.*

[242] *Malawi Multiple Indicator Cluster Survey 2013-2014, UNICEF, chapter XI, available at http://mics.unicef.org/surveys; Malawi Demographic and Health Survey 2015-16, chapter 2.7, and table 2.10.1 https://www.dhsprogram.com/publications/publication-FR319-DHS-Final-Reports.cfm.*

In all countries, orphans, children born in deep rural and frontier areas, children of refugees and recent migrants, and children of the poorest families are at greatest risk of not being registered and of facing problems in proving their nationality as a result. Among those who are most likely not to be registered are children whose parents cannot produce a currently valid passport or national identity card. In South Africa, the most recent regulations require that a foreign passport also contains a valid visa, meaning that people with irregular immigration status cannot register the births of their children.[243] The UN Committee on the Rights of the Child frequently expresses concern about problems in accessing birth registration. In 2018 and 2019, the Committee regretted the practical obstacles to birth registration in Angola "for children born to foreigners, including refugees and asylum seekers, are prevalent owing to a lack of clear guidance provided to birth registration officials, a situation that may render such children stateless"[244]; and the significant number of children who are not registered in Botswana, "particularly children in remote areas, refugee and asylum-seeking children and abandoned children".[245] Conflict zones are worst affected: in eastern DRC birth registration is less than ten percent; UNHCR reported in December 2019 that 95% of children aged 0 to 4 being accommodated in UNHCR-coordinated sites for internally displaced people did not have birth certificates.[246]

A parliamentary committee in Zimbabwe also expressed its concern about low rates of registration in rural areas. Orphans, vulnerable children, and children with single parents faced particular difficulties.[247] Zimbabwe, like other countries, also has particular challenges to register births that take place outside of health facilities.[248] Moreover, if neither parent is a citizen (or cannot produce the long list of documents required by the registrar general to prove it) a birth certificate for a child born in Zimbabwe costs US$10.[249] The Zimbabwe Human Rights Commission launched a National Inquiry on Access to Documentation in Zimbabwe in 2019, holding hearings throughout the country, which highlighted many of these problems.[250] There is a major initiative at African level to improve civil registration and vital statistics (CRVS) systems, launched in 2010, when African ministers responsible for civil registration endorsed landmark resolutions that urged all member States to take appropriate political and policy measures to reform and improve CRVS systems in their respective countries. Subsequent ministerial and expert meetings have taken this agenda forward.[251] However, while there are encouraging signs of recognition of this problem through action at national level, much more remains to be done.

[243] *Regulations on the Registration of Births and Deaths, 26 February 2014.*

[244] *UN Committee on the Rights of the Child, Concluding observations on the combined fifth to seventh periodic reports of Angola, CRC/C/AGO/CO/5-7, 27 June 2018.*

[245] *UN Committee on the Rights of the Child, "Concluding observations on the combined second and third reports of Botswana", CRC/C/BWA/CO/2-3, 26 June 2019.*

[246] *UNHCR: Weekly Emergency Update: Ituri and North Kivu Provinces, Democratic Republic of the Congo, 2-8 December 2019, https://reliefweb.int/report/democratic-republic-congo/unhcr-weekly-emergency-update-ituri-and-north-kivu-provinces-11.*

[247] *"Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents".*

[248] *Paidamoyo Chipunza, "Home Delivered Babies in Birth Registration Dilemma", The Herald (Harare),*

20 November 2019.

[249] *Requirements and fees posted at the office of the Registrar General at http://www.rg.gov.zw/index.php/services/birth-and-death-certificates.*

[250] *Zimbabwe Human Rights Commission Statement on the Launch of the National Inquiry into Issues around Access to Documentation in Zimbabwe, 20 March 2019, http://www.zhrc.org.zw/zimbabwe-human-rights-commission-statement-on-the-launch-of-the-national-inquiry-into-issues-around-access-to-documents-in-zimbabwe-20-march-2019/. The Commission's report was published on 30 September 2020, as this report was being finalised: Zimbabwe Human Rights Commission, "Access to Documentation in Zimbabwe".*

[251] *See information on UNECA website, at http://ecastats.uneca.org/acsweb/en-us/focusareas/crvs.aspx.*

Table 9: Birth registration rates in SADC states

COUNTRY	% BIRTH REGISTRATION CHILDREN <5		SOURCE
	BR	BC	
ANGOLA	25	13	DHS 2015-2016
BOTSWANA	87.5	-	Demographic Survey 2017, Statistics Botswana
COMOROS	87	76	DHS 2012
DRC	25	14	DHS 2013-2014
ESWATINI	54	37	MICS 2014
LESOTHO	43	18	DHS 2014
MADAGASCAR	78	15	MICS 2018
MALAWI	67	17	DHS 2015-16
MAURITIUS	100	-	Registrar of Civil Status Division, Office of the Prime Minister[252]
MOZAMBIQUE	55	38	AIS 2015
NAMIBIA	87	63	DHS 2013
SEYCHELLES	-	-	No statistics available online
SOUTH AFRICA	88.6	-	StatsSA[253]
TANZANIA	49	-	Tanzania Registration Insolvency and Trusteeship Agency, 2019[254]
ZAMBIA	14	6	DHS 2018
ZIMBABWE	44	33	DHS 2015

- No information available

BR: birth registration reported

BC: birth certificate held by family

DHS: Demographic and Health Survey (available at https://dhsprogram.com/Where-We-Work/Country-List.cfm)

AIS: AIDS Indicator Survey (available at https://dhsprogram.com/Where-We-Work/Country-List.cfm)

MICS: Multiple Indicator Cluster Survey (available at http://mics.unicef.org/surveys)

Consular registration

If there is no right for a child of foreign parents to acquire the nationality of the state in which the child is born, then for statelessness to be avoided it is critical that the parents of the child have access to consular services. In several countries consular registration of a birth is a legal requirement for a child to acquire the nationality of a parent (see above: Children born outside the country), and it will very often be a practical necessity. It is often unclear what procedure will be followed to provide civil status documentation, including

[252] *Registrar of Civil Status Division, Office of the Prime Minister, Presentation at ID4Africa Conference, Johannesburg, June 2019 https://www.id4africa.com/2019_event/presentations/InF5/3-William-Ayelou-Mauritius.pdf*

[253] *Section 2.2 in "Statistical release P0305: Recorded live births 2018", Stats SA, September 2019 (completeness of birth registration, not restricted to under five years old) http://www.statssa.gov.za/publications/P0305/P03052018.pdf.*

[254] *"A brief note on the computation of the birth certification rate for under-five children in mainland Tanzania, 2019", Registration Insolvency and Trusteeship Agency, available at https://www.rita.go.tz/files/news/Birth%20Certification%20Rate-Notes_FINAL%20VESION.pdf. The document does not clearly distinguish registration and certification. The rates reported in the DHS 2015-2016 were 26 percent registered, 14 percent issued birth certificates.*

recognition of nationality, if a birth was not registered in another country and the parents and/or child then return to their state of nationality.

The usual rule is that consular registration depends on the child's birth first being registered in the country of birth, and the information in that birth certificate is then transcribed into the records of the country of origin of the parent(s); in some cases only consular registration is needed. The requirements may not always be apparent on a simple reading of the nationality law. In Angola, although the constitution and law provide that a child of an Angolan is automatically attributed nationality at birth whether born in or outside of Angola (with an option to renounce at majority if born outside), the regulations establish that this is dependent on registration of the birth in the country of birth or with the consular authorities, and that at least one of the parents must present an identity card.[255]

Requirements for consular registration place immediate challenges in the path of those whose parents were refugees at the time of their birth, and who could jeopardise their refugee status by approaching the embassy. Even in case of those who have not formally sought asylum, the embassy may be completely inaccessible for cost or other reasons, especially for those who have no regular status in the country of residence (and whose access to a birth certificate from the country of birth may therefore also be difficult). At the most basic level, there may be no consulate for the state of the parent(s)' nationality in the country of the child's birth, meaning that travel to another country would be required, with costs and other challenges that may be insurmountable (especially if the parent has no valid identity document). Conflicts of law create other challenges: depending on the law in effect in either country in relation to attribution of nationality at birth, children may be left stateless or with a nationality they do not want. In case of refugees, UNHCR advises that refugee children and their parents be given the possibility to decide for themselves which nationality they wish to retain.[256]

There is very little research available about the impact of these rules in African states, but difficulties in accessing consular services to renew parental identity documents and transcribe the birth certificate of a child by the country of birth into the records in the country of origin, or separately carry out such registration (for states where this is possible), clearly creates risks of future statelessness.[257] These difficulties are greatest for those children whose parents are in irregular migration status in the country of birth; and it is these births that are also least likely to be registered by the country of birth.

In southern Africa, the UN treaty bodies have noted these problems in recent years. The Committee on the Rights of Migrant Workers expressed its concern to Lesotho in 2016 that, "as the number of Basotho migrant workers migrating to South Africa increases, children born to these migrant workers are at risk of statelessness as there is no mechanism to ensure systematic consular birth registration."[258] Similarly, the

[255] *Angola Constitution 2010, art. 9; Lei 2/2016, art. 9; Regulamento 152/17 de 4 de julho, art. 4. See also Jerónimo, "Report on Citizenship Law: Angola", 23.*

[256] *UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04, 21 December 2012, paras.27-28*

[257] *For comparative information for migrants in North Africa, see Bronwen Manby, "Preventing Statelessness among Migrants and Refugees: Birth Registration and Consular Assistance in Egypt and Morocco" (London: LSE Middle East Centre, July 2019), http://eprints.lse.ac.uk/101091/.*

[258] *Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families,*

Concluding observations on the initial report of Lesotho, CMW/C/LSO/CO/1, 23 May 2016, paragraph 37.

Committee on the Rights of the Child expressed concern in 2017 about children born to Malawian parents outside of the country.[259]

Access to consular services for birth registration and issue of identity documents has been of particular concern in Zimbabwe: not only, as noted above, for children born in Zimbabwe of foreign parents (or parents deemed to be foreign), but also for children born outside the country of Zimbabwean parents. Thanks to this history, the 2013 Constitution is one of the rare constitutions globally that provides for a right to consular assistance.[260] Access to consular birth registration for Zimbabweans abroad, critical for citizenship to be acquired by children born outside the country, was relaxed in late 2018, permitting issue of birth certificates by consulates rather than requiring the parents to travel to Zimbabwe.[261] Yet difficulties remain. The website of the registrar general notes a processing time of 6 months for travel documents to be issued to those outside the country.[262] Lack of currently valid identity documents is one of the main obstacles to registration of births in a country of birth. In mid-2019, a parliamentary committee noted that there are many children born outside Zimbabwe of Zimbabwean parents who neither had birth records nor any witnesses to confirm their births and recommended that passports and IDs should be issued by embassies, not in Zimbabwe.[263]

There have been some efforts to address these challenges. For example, in 2009, the Mozambican authorities devised a plan to register Mozambicans in neighbouring states, estimating that around 45,000 persons of Mozambican origin lived in other countries in the region without a recognised nationality.[264] For very long term refugees and migrants, however, this solution may not be the one desired: in Zanzibar and southern Tanzania, for example, the solution wished by people of Mozambican descent is rather for recognition of Tanzanian nationality: Mozambican consular approaches rather complicated than helped to resolve their status.[265]

In general, it seems that consular authorities make little effort to reach out to their nationals to ensure consular registration of children born abroad. Such outreach is an essential role for consular authorities to undertake; even though care should be taken not to jeopardise access to the nationality of the state of birth and residence. Without documented nationality and legal status, parents of children born in another country may struggle to register the births of their children. They may also be unable to approach the consular authorities of their state(s) of origin in order to complete the formalities enabling the children to claim the nationality of one or both of their parents.

[259] *UN Committee on the Rights of the Child, Concluding Observations: Malawi, 2017, CRC/C/MWI/CO/3-5, 6 March 2017.*

[260] *Constitution of Zimbabwe 2013, Art. 35(3) provides: "All Zimbabwean citizens are entitled to the following rights and benefits, in addition to any others granted to them by law – (a) to the protection of the State wherever they may be…".*

[261] *"Zimbabwe: RG relaxes birth certificates issuance to Diasporans", The Herald (Harare) 20 December 2018.*

[262] *Website of the Registrar General of Zimbabwe, "Zimbabweans Living Abroad", http://www.rg.gov.zw/index.php/services/zimbabweans-living-abroad.*

[263] *"Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents".*

[264] *UNHCR Fact-sheet "Fighting Statelessness" (no date; approx. late 2011 / early 2012), available at http://citizenshiprightsafrica.org/wpcontent/uploads/2016/07/UNHCR-Mozambique-Statelessness-Project.pdf and discussion in Jerónimo, "Report on Citizenship Law: Mozambique".*

[265] *Manby, "Citizenship and Statelessness in the East African Community".*

National identity cards

While only a minority of African countries had a national identity card at independence, almost all countries had adopted a requirement for adults to hold one by 2019; including all in the SADC except for DRC.[266]

In the former Portuguese and Belgian territories, national identity cards were introduced immediately after independence, following the model of the colonial power, and are issued by the ministry of the interior. In the former British territories, national identity cards were generally already in place before independence or majority rule in those countries where "pass laws" had regulated freedom of movement of "natives". In Southern Africa, this was the case in South Africa, South West Africa (Namibia), and Rhodesia (Zimbabwe).[267] A national identity card was introduced immediately after independence in Zambia, in Botswana in 1988, and in Eswatini in 1998.[268]

The last SADC states to introduce a national identity card were Tanzania and Malawi. Although Tanzania adopted legislation to allow for the issue of ID cards in 1986[269], and a specific Zanzibar identity document has been in place since 1985, the government only took action to implement a general requirement to hold a national identity card with the establishment of the National Identification Authority (NIDA) in 2008 and the launch of a mass registration process for a new biometric ID in 2011.[270] In Malawi, the National Registration Act 2010 provided for the establishment of a national population register for the first time,[271] and a mass registration campaign was launched in 2017.[272] In DRC, a voter registration card has been used as a provisional identity document, including proof of nationality, pending its replacement by a national ID.[273]

Possession of an identity card is increasingly key to accessing all sorts of other rights, including not only voting and other rights formally restricted to citizens, but also health care and education, as well as participation in the formal economy. Though it may not be legally described as such, the system for obtaining this documentation is often the main system for obtaining confirmation of nationality. In practice, there are often major problems of state capacity and discrimination at low-level administrative offices in issuing identity cards.

Despite this importance, the laws requiring residents to carry an identity card rarely provide within their bill of rights for citizens to have the *right* to be issued identity documents. Zambia and Zimbabwe are among

[266] *For the situation in 2004, see Jonathan Klaaren and Bonaventure Rutinwa, Towards the Harmonization of Immigration and Refugee Law in SADC, MIDSA Report 1 (Cape Town: Idasa, 2004) chapter 2, Population registration and identification.*

[267] *For the very particular and influential history of South Africa, see Keith Breckenridge, Biometric State: The Global Politics of Identification and Surveillance in South Africa, 1850 to the Present (Cambridge: Cambridge University Press, 2014), https://doi.org/10.1017/CBO9781139939546.*

[268] *Zambia National Registration Act No 19 of 1964; Botswana National Registration Act No. 26 of 1986 (implemented 1988); Swaziland Identification Act 1998. According to the World Bank, Eswatini previously "had a paper-based ID that had been issued free of charge since 1971". World Bank, "The State of Identification Systems in Africa: A Synthesis of Country Assessments" (Washington, D.C.: World Bank, 2017), 52.*

[269] *Registration and Identification of Persons Act No. 11 of 1986.*

[270] *Manby, "Citizenship and Statelessness in the East African Community".*

[271] *Malawi National Registration Act No.13 of 2010.*

[272] *"Malawi: 9.19 million registered for national IDs, cards distribution underway", UN Office in Malawi, 1 December 2017.*

[273] *Exposé des motifs, Loi n° 04/28 du 24 décembre 2004 portant identification et enrôlement des électeurs (telle que modifiée et completée par la Loi n° 16/007 du 29 juin 2016): "Par ailleurs, la carte d'électeur pourra servir dans un premier temps de carte d'identité. Son émission et sa remise donneront un double avantage au citoyen de s'inscrire à l'identification et à l'enrôlement: bénéficier d'un document officiel servant à voter lors des élections et à prouver son identité."*

the exceptions in the SADC states, providing that all citizens have the right to a national identity document.[274] It is striking that in most countries national identity systems are administered and issued by the executive branch of government. This is by contrast to voter identification, where African citizens have struggled for many years to wrest election administration from the executive to place it under the supervision or control of independent electoral commissions. Electoral laws have generally allowed for a wide range of evidence, including testimony from community leaders, as evidence of a person's entitlement to vote, in recognition of the low rates of existing documentation among African citizens. National identity card administration is often more restrictive. As voter registration becomes increasingly tied to the presentation of a national identity card, especially in those states that have not previously had a national population register, lack of a national ID may also disenfranchise those who are in fact citizens of the country. However, there are no independent identity commissions yet established in Africa to oversee the issue of identity documents. Access to courts may also be limited through barriers of cost or lack of access to legal assistance, and in some cases excluded by law (see below: Judicial and other oversight of administrative decisions).

Questions of proof of qualification for identity documents are particularly challenging in states with historically low rates of birth registration and newly introduced requirements to carry a national identity document: in southern Africa, these include especially Malawi and Tanzania; though Zambia also faces challenges despite a long-standing identity card, because of its continued very low rates of birth registration. Accordingly, the legislation usually establishes alternative means of proof of identity. In Botswana, for example, the law provides that "The registrar may require any person applying for registration under this Act to provide such documentary information as shall in the opinion of the registrar be necessary to establish the truth of the information stated in the application form"; registration may be refused if the information is not provided.[275] The main document that must be supplied is a birth certificate; however, alternative evidence includes an affidavit relating to the birth, and evidence of connection to Botswana (e.g. school transcripts).[276] In Namibia, the Identification Act states that a person seeking an identity document may be required to produce "such documentary or other proof of the correctness of such particulars as is within the power of such person to furnish", while an investigation may be ordered into the truth of these particulars.[277] While such provisions are necessary to accommodate those with no documents, in the absence of independent oversight they leave a great deal of discretion to the authorities responsible for national identity cards to decide what evidence may serve to prove nationality and entitlement to an identity document.

In Malawi, neither the Act nor the implementing regulations issued in 2015 set out the evidence that must be submitted to prove that a person is a Malawian citizen.[278] However, during the mass registration process in 2017, staff needed further guidance on what evidence to accept. A public statement from the Ministry of Home Affairs and Internal Security stated that proof of citizenship could be provided in three different ways: through documentary evidence; through village registers supported by testimony of the village head or local leaders; or through the testimony of two community witnesses. Existing identity documents were each given

[274] *Constitution of Zambia Amendment Act No.2 of 2016, Art. 42(b); Constitution of Zimbabwe 2013, Art. 35(3).*

[275] *National Registration Act No.26 of 1986, sec. 7; as amended by National Registration (Amendment) Act No.11 of 2017.*

[276] *Ministry of Labour & Home Affairs (MLHA), "National Identity Card (Omang)" http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Labour--Home-Affairs-MLHA/Tools--Services/Services--Forms/National-identity-application/, webpage accessed 05 December 2019; see also World Bank, "ID4D Country Diagnostic: Botswana", Identification for Development Initiative (Washington, D.C.: World Bank, 2016).*

[277] *Identification Act No.21 of 1996 sec. 9.*

[278] *Malawi National Registration Regulations, 2015,*

a different percentage weight, with the total needing to add up to 100 percent. In the context of a lack of existing documentation, this was perhaps a practical solution, although the logic of the weightings is not very clear: even a passport or a naturalisation certificate were not sufficient in themselves as proof of Malawian citizenship (amounting to only 40 or 60 percent of the required total, respectively), while some supporting documents had no bearing on citizenship (such as payslips).[279] In practice, additional pieces of evidence were given scores, including whether a traditional authority or village head could act as a witness to verify a person's citizenship. An adjudication committee, made up of members from the National Registration Bureau, police and immigration department – but no independent membership – was created to investigate and make determinations for approximately 3,400 doubtful cases.[280] Malawians of Asian descent complained of discrimination during the mass registration process.[281]

Coverage of national identity documents remains variable. According to estimates published by the World Bank, the percentage of adults (or in some states, those over 16) holding a national identity document in SADC states as of 2016 varied from less than 10 percent in Malawi and Tanzania to 99 percent in South Africa. Mass enrolment efforts have since increased enrolment rates in Malawi and Tanzania to an estimated 98 and 75 percent of adults – although in Tanzania many of those enrolled had yet to receive a physical identity card (see Table 10). DRC has no national identity card, with a voter registration card substituting as an identity document. Lack of identity documents has a gender dimension in many countries, including in southern Africa. Mozambique is among the bottom ten countries globally for the gap between men and women in holding identity documents, according a survey by the World Bank, with a 14 percent gap between men (of whom 65% have an ID document) and women (of whom only 52% have an ID). Madagascar is only slightly more equal, with a 10 percent gap between men (91%) and women (81%).[282] Transgender persons are generally not provided for in national legislation. Botswana, however, has permitted transgender citizens to change the gender marker on their identity document in at least two cases, following litigation.[283]

[279] *The weightings given were as follows:*

Diplomatic/Service passport	*70%*	*Birth certificate – issued by Dept of Registrar General*	*30%*
Ordinary passport	*40%*	*Birth certificate – issued by NRB*	*60%*
Voter ID	*40%*	*Citizenship or naturalized certificate*	*60%*
Driving Licence	*30%*	*Marriage certificate*	*10%*
Payslip	*30%*	*Other official documents*	*10%*
Employment ID	*10%*		

Source: Public Statement: Mass Registration of Malawian Citizens for National Identity Cards, National Registration Bureau, Ministry of Home Affairs and Internal Security, Lilongwe, 25 April 2017.

[280] *Tariq Malik, "Malawi's Journey Towards Transformation: Lessons from Its National ID Project" (Washington, D.C.: Center for Global Development, August 2018), https://www.cgdev.org/publication/malawis-journey-towards-transformation-lessons-its-national-id-project (updated August 2020).*

[281] *"Malawians of Asian origin take NRB to task for infringing their rights", Maravi Post, 8 August 2017; "National ID program in Malawi raises questions, fears", Anadolu Agency (Turkey), 11 June 2017.*

282 Lucia Hanmer and Maria Elefante, "Achieving Universal Access to ID: Gender-Based Legal Barriers Against Women and Good Practice Reforms" (Washington, D.C.: World Bank, 2019), https://openknowledge.worldbank.org/handle/10986/32474; World Bank, "Identification for Development (ID4D) 2018 Annual Report" (Washington, D.C.: World Bank, 2019), https://id4d.worldbank.org/sites/id4d.worldbank.org/files/2018_ID4D_Annual_Report.pdf.

283 "News release: Botswana registrar changes transgender man's identity document from female to male", Southern Africa Litigation Centre, 8 Jan 2018 https://www.southernafricalitigationcentre.org/2018/01/08/news-release-botswana-registrar-changes-transgender-mans-identity-document-from-female-to-male/.

Table 10: Rate of enrolment in national ID systems in SADC states[284]

COUNTRY	TOTAL %	F%	M%	COUNTRY	TOTAL %	F%	M%
ANGOLA	28	-	-	Mauritius	90	-	**-**
BOTSWANA	96.8	97.2	96.4	Mozambique	58.2	51.5	**65.3**
COMOROS	90	-	-	Namibia	91.9	93.4	**90.1**
DRC	0	-	-	Seychelles	90	-	**-**
ESWATINI	-	-	-	South Africa	92.4	91.0	**93.9**
LESOTHO	70.9	69.1	72.7	Tanzania [285]	75	-	**-**
MADAGASCAR	85.4	80.5	90.9	Zambia	89.0	87.2	**90.9**
MALAWI [286]	98	-	-	Zimbabwe	86.2	84.9	**87.7**

- no data available

Passports

The other common form of proof of nationality is a passport: essential for travel, but often used domestically also. Deprivation or refusal to renew passports has been a fairly common political tool, in southern Africa as in other parts of the world.[287]

At the time of independence of African states, British law regarded the grant of passports as being within the "crown prerogative", a privilege and not a right (though this position has evolved in recent years); French law, by contrast, had already developed to view passports as a form of state guarantee of personal legal identity.[288]

Law and jurisprudence in the African Commonwealth countries initially, and regrettably, often followed the tradition of state discretion in the issue of passports. But litigation in some countries and new laws in others

[284] *Source (except as otherwise footnoted): World Bank, "Global ID Coverage, Barriers, and Use by the Numbers: An In-Depth Look at the 2017 ID4D-Findex Survey", Identification for Development Initiative (Washington, D.C.: World Bank, 2019), http://documents.worldbank.org/curated/en/727021583506631652/pdf/Global-ID-Coverage-Barriers-and-Use-by-the-Numbers-An-In-Depth-Look-at-the-2017-ID4D-Findex-Survey.pdf, Annex 1. Information for Mauritius and Seychelles from previous surveys, by email from ID4D team at World Bank April 2020.*

[285] *According to a statement by the Minister of Home Affairs, the National Identification Agency had issued a total of 21,823,026 National Identity Numbers by the end of March 2020 (although only 6,103,225 physical IDs had been issued): "Hotuba ya bajeti ya wizara ya mambo ya ndani ya nchi 2020/2021" (Budget Speech of the Ministry of Home Affairs), at heading "Mamlaka ya vitambulisho vya taifa (NIDA)" (National Identification Authority), 24 April 2020, available at http://nida.go.tz/swahili/index.php/2020/04/24/hotuba-ya-bajeti-ya-wizara-ya-mambo-ya-ndani-ya-nchi-2020-2021/; Felister Peter, "TCRA registered 37,297,930 SIM cards through biometric registration", The Guardian / IPPMedia (Dar es Salaam), 24 April 2020; Tanzania's estimated 2020 population is 59.7 million, of whom 29.7 million are adults: World Population Prospects 2019, UN Department of Economic and Social Affairs, https://population.un.org/wpp/Download/Standard/Population/.*

[286] *At the end of the mass enrolment exercise in 2017, 9,186,689 adults had been registered: "Malawi: 9.19 million registered for national IDs, cards distribution underway", UN Office in Malawi, 1 December 2017. According to information supplied by the World Bank Identification for Development Initiative (email 30 April 2020), based on information from the Malawi National Registration Bureau, as at March 2019, 9,897,902 people age 16 and above had been registered, of whom 9.2 million had been issued with an ID card. Malawi's estimated 2020 population is 19 million, of whom 10.4 million are over the age of 16: World Population Prospects 2019, UN Department of Economic and Social Affairs, https://population.un.org/wpp/Download/Standard/Population/.*

[287] *Beth Elise Whitaker, "Citizens and Foreigners: Democratization and the Politics of Exclusion in Africa", African Studies Review 48, no. 1 (April 2005): 109–26; Manby, Citizenship in Africa, chap. 5.5.*

[288] *Paul F. Scott, "Passports, the Right to Travel, and National Security in the Commonwealth", International & Comparative Law Quarterly 69, no. 2 (2020): 365–95, https://doi.org/10.1017/S0020589320000093; Gérard Noiriel, "Surveiller les déplacements ou identifier les personnes ? Contribution à l'histoire du passeport en France de la Ie à la IIIe République", Genèses 30, no. 1 (1998): 77–100, https://doi.org/10.3406/genes.1998.1497.*

have created stronger legal frameworks: the courts in Zambia, for example, ruled that a citizen is entitled to a passport, even though this was not at the time provided for in legislation.[289] Zambia, together with South Africa and Zimbabwe among the SADC states, now provides explicitly for citizens to have a right to a passport – as does Angola, among the lusophone countries.[290]

In Lesotho, by contrast, the law states that "Passports shall be issued in the name of the King and remain the property of the Government"[291]; in 2000, the High Court ruled that the requirement to provide a statement from a chief attesting the applicant's citizenship for renewal of a passport was legitimate, and that possession of a current passport did not automatically qualify an applicant for a new passport.[292] In 2014, however, the High Court reversed this position, stating that "although our Constitution does not explicitly give citizens the right to a passport, it explicitly guarantees them a right to freedom of movement" which, "by necessary implication, means that our citizens have a concomitant right to a passport".[293] The Passports and Travel Documents Act was repealed and replaced in 2018; the new version did not, however, explicitly affirm the right to a passport.[294]

As in the case of national identity cards, gender discrimination can make it more difficult to obtain a passport: a World Bank report noted that women cannot apply for a passport in the same way as married men in Botswana, Madagascar, Malawi, and Seychelles.[295]

Naturalisation

Naturalisation is rare in most states in Africa. The conditions a person must fulfil in order to naturalise vary, but often leave a high level of discretion to the authorities, which may allow for arbitrary decision-making and discrimination. The conditions often exclude those individuals most in need of access to naturalisation, including stateless persons and refugees.

It is indicative of the difficulty of naturalisation that there are few published statistics about the numbers naturalised. While the civil law states commonly publish the names of those naturalised in the official journal, the annual totals are not published; in the common law states there may be press releases when naturalisations are conducted, but the names or statistics are not required to be published. Those statistics that are available reveal that the numbers of naturalised persons vary hugely across countries, but are generally low.[296] In response to questions posed for this report, Mozambique responded that the total

[289] *Cuthbert Mambwe Nyirongo v Attorney-General (1990-1992) ZR 82 (SC). See also from Kenya, Deepak Chamanlal Kamani v. Principal Immigration Officer and 2 Others [2007] eKLR, and for Nigeria, Obiora Chinedu Okafor, "The Fundamental Right to a Passport under Nigerian Law: An Integrated Viewpoint", Journal of African Law 40, no. 1 (1996): 53–61.*

[290] *Zambia Passport Act No.28 of 2916, sec. 5(1); Constitution of the Republic of South Africa 1996, art. 21(4); Constitution of Zimbabwe 2013, Art. 35(3); Angola Decreto n.º 3/2000, de 14 de Janeiro, art.4.*

[291] *Lesotho Passport and Travel Documents Act No.15 of 1998, sec. 4.*

[292] *Moeketsi Kutlo Seotsanyana v. Attorney General and Minister for Passport Control, High Court of Lesotho, Judgment of 13 July 2000.*

[293] *Zwelakhe Mda v Minister of Home Affairs and Others (Constitutional Case No.4 of 2014) [2014] LSHC 30 (24 September 2014).*

[294] *Lesotho Passport and Travel Documents Act No.5 of 2018.*

[295] *Hanmer and Elefante, "Achieving Universal Access to ID". Zambia information updated to reflect 2016 Passport Act. In Madagascar, the discrimination is based on the law combatting trafficking in persons: Loi N° 2014 -040 sur la lutte contre la traite des êtres humains; see also Elise Nandrasanela, "Voyage à l'extérieur – Restriction de sortie pour les femmes", L'Express (Antananarivo), 5 October 2019.*

[296] *For comparative statistics for the European Union, see "Acquisition of citizenship statistics", Eurostat, March 2020 https://ec.europa.eu/eurostat/statistics-explained/index.php/Acquisition_of_citizenship_statistics.*

number of spouses acquiring nationality through marriage in the five years from 2015 was 940; the number acquiring nationality based on long residence totalled 31.[297] Lesotho stated that a total of 57 people had acquired citizenship based on marriage from 2015 to 2019, while 277 people had naturalised based on long residence over the same period (and four people acquired Lesotho citizenship in 2019 as they were at the risk of being stateless).[298] In the DRC, only 230 applications for naturalisation have been formally accepted since 1984, of which only 22 were granted.[299] In Angola, a total of 937 people acquired nationality between 2012 and April 2020, among whom 536 were based on marriage, 399 on residence, and two granted by parliament for services to the country.[300] According to information supplied for a previous report, 195 people acquired Tanzanian citizenship through ordinary naturalisation in 2014, and 463 in 2015; 87 were reported to have naturalised in 2019-20.[301] It has also been reported that 118 people acquired the citizenship of Seychelles from 2012 to May 2017.[302]

The difficulty in naturalising is partly a matter of law but even more a matter of practice. Although the conditions established by law may appear relatively straightforward to fulfil, procedural requirements and high fees can make access difficult. Even if explicit fees are relatively low, the barriers to naturalisation may be high, given the multiple documents, many of them from another country, that need to be assembled for an application.

One of the most difficult conditions to fulfil can be proof of the person's other nationality: a requirement inherited from the days when it was expected that the person would have to renounce that nationality, but often still in place even where dual nationality is allowed. Many of those who would most want to seek to naturalise in African states are those who are not recognised as having obtained nationality of the state of birth, but have no documents recognising another nationality, or evidence of the facts that would enable them to claim it. Even for a person whose original nationality is uncontested, an application for naturalisation may depend on the possession of a valid passport from that other country, and a valid residence permit – which may be out of reach for many, considering that passport and visa fees are typically the equivalent of several hundred dollars.

The Tanzanian naturalisation procedure is especially elaborate, involving multiple stages of approval and a total official cost of US$5,000, including an initial non-refundable fee of US$1,500 (although a lower fee totalling approximately US$870 applies to those who would have qualified to register for citizenship at independence, and their descendants born in Tanzania).[303] The minister makes the final decision, and may disregard or overrule recommendations made by lower levels of government, or simply not respond. Children of the person naturalising are not automatically included and must make a separate application

[297] *Ministry of Justice Mozambique, response to request for information from UNHCR, May 2020: acquisition based on marriage: 2015 – 135; 2016 – 137; 2017 – 202; 2018 – 260; 2019 – 206; acquisition by naturalisation: 2015 – 28; 2016 – 02; 2017 – 00; 2018 – 01 (figure for 2019 not given).*

[298] *Ministry of Home Affairs Lesotho, response to request for information from UNHCR, May 2020: acquisition based on marriage: 2015 – 19; 2016 – 21; 2017 – 12; 2018 – 00; 2019- 05; acquisition based on long residence: 2015 – 81; 2016 – 95; 2017 – 67; 2018 – 02; 2019 – 32.*

[299] *Information provided by the Ministry of Justice to the UNHCR Kinshasa office, May 2020.*

[300] *Michael Offermann, "Statelessness and risks of statelessness in Angola and for Angolans", forthcoming report for UNHCR, draft June 2020.*

[301] *Manby, "Citizenship and Statelessness in the East African Community", 35. "TCRA registered 37,297,930 SIM cards through biometric registration", The Guardian (Dar es Salaam), 24 April 2020.*

[302] *"Dreaming of citizenship in Seychelles? Here's how to do it", Seychelles News Agency, 24 August 2017.*

[303] *Interviews, Immigration Services Department, Dar es Salaam, 16 July 2016; most recent fees established by the Tanzania Citizenship (Amendments) Regulations G.N. 427 of 13 October 2017; instructions available on the Immigration Department website at http://www.immigration.go.tz/.*

with a separate fee.[304] Reduced fees apply to those who have a long-term connection to Tanzania, but still total nearly US$900.[305] Even where there are no such rules on paper, cultural criteria may be applied. In Eswatini, for example, persons who are not of Swazi ethnic origin often find it very difficult to obtain citizenship.[306]

Among the SADC states, South Africa was the only country where decisions had been made at an administrative rather than political level and statistics published, totalling many thousands each year. However, the numbers naturalised reduced dramatically from 2011, when processing of applications was centralised, and ceased to be published in the annual reports of the Department of Home Affairs.[307] Regulations adopted in 2012 purported to increase the period for naturalisation to ten years, from the five years provided in the primary legislation; a decision ruled invalid by the High Court in 2018 (and confirmed by the Constitutional Court).[308] A new official policy then stated that access to naturalisation should be "exceptional" only, requiring an "executive decision of the minister … contrary to the current administrative decision making process"; in order to achieve "strategic goals or to build the nation". Under the new policy "the number of years spent in the country will not carry much weight when compared with the value-add and security factors associated with the applicant."[309] Executive discretion was in the meantime highlighted by the controversy over the naturalisation of members of the Gupta family advising President Jacob Zuma.[310] Zambia's 2016 constitution, however, moved in the opposite direction, towards a more administrative procedure. Applications for citizenship by registration are considered by a Citizenship Board, which must publish reasons if the application is rejected, and decisions by the Board are subject to appeal to the High Court.[311]

[304] *For more detail see Manby, "Citizenship and Statelessness in the East African Community", 36–37.*

[305] *One million Tanzanian shillings on application and the same payable on grant of the certificate of naturalisation. Tanzania Citizenship (Amendments) Regulations 2017, Government Notice GN 427, 13 October 2017.*

[306] *See, for example, annual human rights reports of the U.S. Department of State.*

[307] *According to figures published in the Department of Home Affairs Annual Reports, and in response to a parliamentary question in 2014, total annual naturalisations from 2001 to 2013 were:*

2001 / 02	2003 / 04	2004 / 05	2005 / 06	2006 / 07	2007 / 08	2008 / 09	2009 / 10	2010 / 11	2011 / 12	2012 / 13
14,108	20,648	18,107	19,888	24,671	9,346	32,627	37,522	6,102	1,603	732

The 2002/03 Annual Report is not on the website (nor are earlier years) and annual reports after 2011 do not contain this statistic. DHA annual reports available at http://www.dha.gov.za/index.php/about-us/annual-reports; see also "Home Affairs: Questions to the Minister, Question 346", South African Parliament, 14 March 2014, available at https://pmg.org.za/question_reply/491/. A response to a parliamentary question in 2019 gave statistics for naturalisations of people originating from SADC states (only) for the calendar years 2017 and 2018, totalling 420 and 543 respectively: "Question NW90 to the Minister of Home Affairs", South African Parliament, 29 February 2019, available at https://pmg.org.za/committee-question/10970/. See also "Gigaba hosts naturalisation ceremony, over 200 receive citizenship", Independent Online, 17 August 2018.

[308] *Mulowayi and Others v Minister of Home Affairs and Another, Constitutional Court of South Africa, Case Number CCT249/18, judgment of 29 January 2019 [2019] ZACC 1. For commentary, see Venkov, "Case Note: Mulowayi v Minister of Home Affairs".*

[309] *South Africa Department of Home Affairs, "White Paper on International Migration" (Republic of South Africa, July 2017), http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf.*

[310] *Extensively reported: see for example, "Home affairs committee calls for action on Gupta naturalisation fraud", Daily Maverick (South Africa), 18 March 2019.*

[311] *Citizenship of Zambia Act 2016, secs. 21 and 30; Citizenship of Zambia Regulations 2017, regulation 6.*

Naturalisation of long-term migrants and their descendants

Some countries in southern Africa have made positive efforts to integrate pre-independence migrant communities that were not integrated in the application of the rules governing state succession. The newly democratic government of South Africa undertook an exercise to regularise the status of long-term migrants and refugees established in the country at that time. In 1996, the South African government agreed a series of amnesties for nationals of SADC countries resident in the country and, separately, to mineworkers and long-term refugees. Although it was expected that about one million might qualify, only around 175,000 applications were eventually granted during the period allowed.[312] The status granted was permanent residence rather than citizenship but it provided a route to naturalisation, while the children of permanent residents born in South Africa were (until 2010) automatically citizens at birth.

Namibia has more recently undertaken an exercise to register undocumented long-term residents at risk of statelessness, including in its border regions, pursuant to a cabinet decision of 2010 aiming to address statelessness in Namibia. Responding to a parliamentary question in 2018, the Home Affairs Minister stated that a total of 3,012 people who could show they were living in the country before 1977 had been registered as Namibian nationals under this programme by the end of 2016.[313] Most of those registered were of Angolan origin; but among them were also around 200 people of Nama and Damara heritage removed in the 1970s by the South African government from the Riemvasmaak area of the Northern Cape to what was then South West Africa.[314]

Naturalisation or recovery of nationality by long-term refugees and their descendants

Some other countries have made efforts to provide access to citizenship for long-term or former refugees. By far the most substantial grant of citizenship to long-term migrants or refugees in the SADC region has been by Tanzania. Tanzania has undertaken facilitated naturalisation procedures on several occasions, including for several thousand Rwandese in the 1980s, as well as a number of Somalis of Bantu ethnicity.[315] In 2007, Tanzania offered naturalisation to Burundian refugees resident in the country since 1972 and their descendants; of those eligible, 80 percent, or 172,000 people, expressed their desire to remain in Tanzania, and the remaining 20 percent were to receive assistance with repatriation. As a prelude to the implementation of the Tanzania Comprehensive Solutions Strategy (TANCOSS), the Government of Tanzania, in collaboration with UNHCR, carried out a census of the 1972 refugee population between July and September 2007, registering 218,234 Burundian refugees established in the country since 1972. By the end of 2009, approximately 53,000 persons had been voluntarily repatriated, and the naturalisation process

[312] *A series of immigration amnesties were offered to particular groups of foreigners from the region: contract mine workers (1995); a broader category of people from the SADC region who had lived in South Africa for at least five years and had economic or family ties in the country (1996); and finally Mozambicans displaced by the civil war in that country who had been refused refugee status by the apartheid government (1999). An estimated 1 to 1.5 million people became eligible for South African citizenship in this way, though only 51,000 applications were received from miners, and just over 200,000 for others from the SADC region. See discussions in Bronwyn Harris, "A Foreign Experience: Violence, Crime and Xenophobia during South Africa's Transition", Violence and Transition Series (Johannesburg: Centre for the Study of Violence and Reconciliation, August 2001); Jonathan Crush and Vincent Williams, eds., The New South Africans? Immigration Amnesties and Their Aftermath (Cape Town: IDASA, 1999); Human Rights Watch, "Prohibited Persons: Abuse of Undocumented Migrants, Asylum-Seekers, and Refugees in South Africa" (New York, 1998).*

[313] *Okeri Ngutjinazo, "Citizenship granted to 3 000 foreigners", The Namibian (Windhoek), 12 March 2018.*

[314] *Information provided at the UNHCR regional statelessness meeting 1-3 November 2011.*

[315] *Charles P. Gasarasi, "The Mass Naturalization and Further Integration of Rwandese Refugees in Tanzania: Process, Problems and Prospects", Journal of Refugee Studies 3, no. 2 (1990): 88–109; UNHCR, "Finding a Home on Ancestral Land: Somali Bantu Refugees Gaining Citizenship in Tanzania" (Dar es Salaam: United Nations, 2010).*

commenced for the others. Applications for naturalisation were accepted on the basis of reduced fees of US$50, paid by UNHCR (compared to $800 for regular naturalisation at that time).[316] The process faced numerous delays, but as of April 2016, 162,156 applications had been approved, and 151,019 naturalization certificates distributed, while 11,000 individuals had not collected their certificates (among them 3,000 reported as deceased).[317] Aurther verification process was undertaken in 2017/18, and found that a total of 69,369 long term Burundian refugees in Tanzania remained without a "durable solution" to their situation.[318] This large residual figure is an indication of how even such attempted "comprehensive solutions" can still leave eligible individuals without a solution in their case unless there is persistent follow up and satisfactory appeal and review processes.

Other countries that have taken steps in this direction include Zambia. Following the cessation of refugee status for Angolans in 2012 and Rwandans in mid-2013, Zambia agreed to the local integration of an estimated 10,000 Angolans and 4,000 Rwandans. However, despite residence in the country over some decades (and effective integration within rural populations[319]) this status would only create eligibility for naturalisation after another ten years.[320] Under the new constitution adopted in 2016, children of refugees born in Zambia would have the right to apply for citizenship at majority.[321] A strategic plan on civil registration also included a focus on the children of refugees.[322] In Lesotho, the fees for acquiring citizenship are reduced for refugees (in line with the provisions of the Refugee Act, noted above): an application for naturalisation costs M2,000 (approx. US$115), with a further M70,000 (approx. US$4,000) to pay on acquisition of citizenship; refugees, however, only have to pay the initial application fee.[323]

Recovery of nationality by those who left the country as refugees may also be a challenge. The most deliberate effort to restore citizenship has been conducted by Namibia, which in 1991, just one year after independence, supplemented its Citizenship Act with specific legislation offering Namibian citizenship to those who would have been Namibian citizens if they or their ancestors had not fled persecution before 1915.[324] These people, largely Herero who had fled the German genocide of their people from 1904 to 1907,

[316] *Government Notice (G.N.) No.262 of 3 August 2012 increased the cost of naturalisation to $5000.*

[317] *UNHCR, Tanzania: Mpanda Operational Update, Special Edition for April 2016. These processes have been quite extensively documented: see discussions in Manby, "Citizenship and Statelessness in the East African Community"; Manby, Citizenship in Africa, chap. 9.2.*

[318] *There was a total of 17,072 outstanding cases connected to the naturalisation applications of 2009/10, and an additional group of 52,297 people never captured in the original process. The 17,062 outstanding cases were made up of: (a) 2,152 applications that were refused; (b) 6,620 children born after the parents had applied for naturalisation and before naturalisation was granted; (c) 8,300 who had not collected their naturalisation certificates. Among these, UNHCR partners assisted those whose application had been refused to appeal the decision, and submitted applications on behalf of the children. For the 52,297 newly listed individuals, the government of Tanzania accepted that 40,455 qualified for a "local solution", but 11,843 were disqualified for not being linked to the 1972 refugee group. Information from UNHCR Representation in Dar es Salaam, updated February 2020.*

[319] *Oliver Bakewell, "Repatriation and Self-Settled Refugees in Zambia: Bringing Solutions to the Wrong Problems", Journal of Refugee Studies 13, no. 4 (2000): 356–73, https://doi.org/10.1093/jrs/13.4.356.*

[320] *"Zambia says won't give Angolan refugees citizenship because it's not their right", Zambian Watchdog, 22 June 2012. Strategic Framework for the Local Integration of Former Refugees in Zambia, January 2014; "Field evaluation of local integration of former refugees in Zambia" U.S. Department of State, April 2014; "Zambia, UNHRC launch local integration strategy framework", PANA, 30 April 2014; Arthur Simuchoba, "How Did Zambia Become the Continent-Leader in Refugee Integration?", African Arguments, 17 June 2014 <http://africanarguments.org/2014/06/17/zambia-continent-leader-in-refugee-integration-by-arthur-simuchoba/>.*

[321] *Constitution of Zambia, 2016, art. 37.*

[322] *National Strategic Action Plan For Reforming And Improving Civil Registration And Vital Statistics: Implementation Period 2014 –2019, Zambia Ministry of Home Affairs, Department of National Registration, Passports and Citizenship http://www.crvs-dgb.org/wp-content/uploads/2015/11/Zambia-National-Strategic-Action-Plan-for-CRVS.pdf*

[323] *Ministry of Home Affairs Lesotho, response to request for information from UNHCR, May 2020.*

[324] *Namibian Citizenship Special Conferment Act, No.14 1991.*

were given a five year period during which they could opt for Namibian citizenship. The possibility of registering as a Namibian citizen was revived in 2015 for an additional ten years, subject to renunciation of any other citizenship.[325] The Namibian government has reached out to those who had not applied within the earlier time limits.[326]

Economic citizenship' in Comoros

A controversial "Law on Economic Citizenship" promulgated by Comoros in 2008 provided for the possibility of acquiring citizenship by "economic partners" of the government.[327] The law has been invoked mainly for the grant of Comoros passports to stateless persons, known as Bidoon (from *bidoon jinsiyya*, "without nationality"), resident in the United Arab Emirates (UAE) and Kuwait, whose governments paid for them to take up this option.[328]

According to the parliamentary commission of inquiry into this procedure, the objective of the agreement with the UAE was the naturalisation of around 4,000 Bidoon families over two years, for which the Comorian state would receive US$200 million, as well as various investments in infrastructure projects – while former President Ahmed Abdallah Mohamed Sambi was alleged to have received US$105 million, and the broker of this deal, Bashar Kiwan, USD$29 million.[329] Under this agreement, a team of officials was sent to Abu Dhabi to enrol stateless Bidoon, many of them former soldiers, but including children; those registered were chosen by the Emirati authorities. A total of 41,604 people were listed in naturalisation decrees granting "economic citizenship" signed by President Sambi from January 2009 to May 2011, and by his successor President Ikililou Dhoinine from 2011 to 2016.[330] It seems likely that none of these beneficiaries had any actual or potential status as an investor. An additional 6,039 ordinary passports were issued by the Belgian company SEMLEX responsible for their supply, without formal naturalisation decrees.[331] The vast majority of passports were issued to Bidoon from UAE, but 560 were issued to Bidoon from Kuwait – though reportedly Kuwait wished to obtain Comorian passports for 110,000 Bidoon resident within its territory.[332] A further 102 diplomatic passports were issued to those involved in the economic citizenship programme (including Bashar Kiwan), "fiscal refugees", Iranians affected by US sanctions, and various businessmen sought by Interpol or the authorities of their own country.[333]

Leaving aside the obvious concerns over corruption highlighted by the Comorian parliamentary inquiry, which recommended the cancellation of all passports issued under the scheme, it is clear that – unlike the

[325] *Namibian Citizenship (Second) Special Conferment Act, No.6 of 2015.*

[326] *Esther Mmolai, "Official Explains Citizenship Renunciation Procedures", Botswana Daily News, 24 September 2019.*

[327] *Loi n°08-014/AU relative à la citoyenneté économique en Union des Comores, promulgué par le Décret n°08-138/PR du 13/12/2008.*

[328] *Atossa Araxia Abrahamian, "The Bizarre Scheme to Transform a Remote Island into the New Dubai", The Guardian, 11 November 2015; David Lewis and Philippe Engels, "Special Report: How to make millions selling passports to Africa", Reuters, 22 December 2017; Atossa Araxia Abrahamian, Cosmopolites: What It Is like to Be a Citizen of the World (New York: Columbia Global Reports, 2015).*

[329] *"Rapport de la Commission d'enquête parlementaire sur la loi relative à la citoyenneté économique", Parlement des Comores, December 2017, pp.9, 13.*

[330] *Ibid., pp.37-40.*

[331] *Ibid., p.44.*

[332] *Ibid., p.53.*

[333] *Ibid., pp.44-46; see also "As US Sanctions Bit, Iranian Executives Bought African Passports", Reuters, 29 June 2018.*

other group naturalisations considered above – "naturalisations" of this type do nothing to resolve the status of stateless persons in another country. It seems that there was no intention that the passports would provide the right to enter and reside in the Comoros, and that they would serve simply as a form of identification document in the UAE or Kuwait, enabling the authorities there to avoid the obligation to resolve their status as nationals.

Proof of nationality

Although national identity cards and passports are the most commonly used documents to prove nationality for day-to-day purposes, they are often stated not to form legal proof of that status. In some countries, the burden of proof is reversed if a person holds such a document, meaning that it is for the person or institution (including the government) that asserts that the person is not a national to prove that it was issued in error.[334] However, the burden of proof falls on the person asserting that he or she is a citizen to prove that is the case to the satisfaction of the authorities, even if there is only an application to renew a national ID card or passport. The African Court of Justice on Human and Peoples' Rights, however, has ruled in two cases that if a person has shown a prima facie case that he or she is a national, notably by holding documents issued by the state to that effect, it then falls on the state to disprove this claim (see heading The African Court on Human and Peoples' Rights).

Many countries provide for an individual to obtain a "certificate of nationality" in case of any doubt around their status, a document that is legal proof of nationality. This is a useful protection where a person belongs to a minority that faces discrimination in the issue of identity cards, leading to a risk of arbitrary rejection on application for an identity document and consequent risk of statelessness if this refusal cannot be overturned. Among the SADC countries, Angola, Botswana, DRC, Eswatini, Lesotho, Malawi, Mauritius, Namibia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe all have such a provision.[335] However, in these cases, the issue of the certificate is not a right but at the administrative discretion of the authorities, and not provided through a process that is subject to sufficient due process guarantees. In practice, a certificate of nationality is rarely issued in these countries other than to a person who has naturalised.[336]

Ideally, a person should be able to go to a court with relevant documentation and testimony, to obtain a legal ruling on whether he or she is a national: this is the system in Madagascar, in line with other former French territories, where the civil tribunal may issue a certificate of nationality which serves as proof of nationality, unless overturned by another court on the basis of new evidence.[337] Madagascar also incorporates the civil law concept of *possession d'état,* or apparent status: a person's nationality can be

[334] *For example, the Zambia National Registration Act, No. 19 of 1964, sec. 12, provides that a national identity card is prima facie evidence of the facts stated therein (including citizenship); in Botswana both a birth certificate and National ID card are prima facie proof of facts they state (Births and Deaths Registration Act No.48 of 1968, as amended (Cap.30:01), sec. 10(2); National Registration Act No.26 of 1986 as amended (Cap.01:02), sec. 13). In the Seotsanyana case from Lesotho (see footnote 292), the High Court stated that the authenticity of an existing passport may be challenged, "but only on legitimate grounds and by following recognized legal procedures and processes".*

[335] *Angola Lei No.2/16, sec. 29; Botswana Citizenship Act 1998, sec. 21; DRC Loi No.04/024 du 12 novembre 2004 relative à la nationalité congolaise, arts.42, 43 & 47; Lesotho Citizenship Order 1971, sec. 24; Malawi Citizenship Act 1966, sec. 30; Mauritius Citizenship Act 1968, as amended, sec. 16; Namibia Citizenship Act 1990, sec. 15; Seychelles Citizenship Act 1994, sec. 13; South Africa Citizenship Act 1995, sec. 16; Swaziland Constitution 2005, art. 54; Tanzania Citizenship Act 1995, sec. 21; Zimbabwe Citizenship Act 1984, sec. 18.*

[336] *In Lesotho, the procedure has been used to provide certificates to two women who were married to Basotho men, whose husbands died before the naturalisation process had been completed. Ministry of Home Affairs Lesotho, response to request for information from UNHCR, May 2020.*

[337] *Ordonnance n° 60 - 064 du 22 juillet 1960 portant Code de la nationalité malgache (tel que modifié), arts. 79 & 87-89.*

treated as established, and a nationality certificate issued by a court, if they have always been treated as a national, in the absence of proof to the contrary.[338]

Judicial and other oversight of administrative decisions

Among the most important protections against statelessness is the right of an individual to appeal decisions relating to the right to a nationality and the issue of identity documents, through both administrative and judicial channels. For judicial oversight to be meaningful, it is necessary that administrative decisions rejecting an application be reasoned.[339] This applies both to recognition of nationality (for example the issue or denial of an identity card, passport or voter registration) and deprivation of nationality (the positive decision to withdraw a person's citizenship, but also potentially in case of an administrative decision to refuse to renew any of the above documents).

Some SADC states provide clear access to the courts in this regard. In many cases, however, these decisions are made in law by the minister, and in practice by officials of the relevant ministry, some at the lowest level. It is also the case that, whereas independent electoral commissions have been established to conduct voter registration, there are no independent identity commissions to supervise the issue of identity documents – while voter registration increasingly depends on possession of a national identity card.

The civil law countries usually provide an automatic right to challenge an administrative decision of this type in the courts, and the nationality law explicitly establishes which courts have jurisdiction. This is the case in Comoros[340] and in Madagascar.[341] Angola's 2016 nationality law moved the competence to hear such cases from the Supreme Court to the civil and administrative chamber of the *Tribunal da relação*[342], a second instance tribunal established by law the same year[343], to create easier access to justice (due to start operating in 2019; it is planned to have one such court in Luanda and one in Benguela). Angola also established an inter-ministerial committee (*Comissão de Acompanhamento dos Processos de Atribuição da Nacionalidade*), coordinated by the Ministry of Justice, to consider deprivation of nationality and requests for naturalisation or reacquisition.[344] In Mozambique, by contrast, where the nationality law has not been updated to reflect the provisions of the 2004 constitution, the nationality law and regulation do not establish which courts may hear cases relating to nationality; the constitution, however, provides in detail for administrative review of executive decisions.[345]

[338] *Ibid., art. 81 "Lorsque la nationalité malgache ne peut avoir sa source que dans la filiation, elle est tenue pour établir, sauf la preuve contraire, si l'intéressé et l'auteur qui a été susceptible de la lui transmettre ont joui d'une façon constante de la possession d'état de Malgache."*

[339] *See UNHCR, "Guidelines on Statelessness No. 5: Loss and Deprivation of Nationality under Articles 5-9 of the 1961 Convention on the Reduction of Statelessness" (Geneva: United Nations, May 2020).*

[340] *Loi No.79-12 du 12 décembre 1979 portant Code de la nationalité comorienne, titre V: du contentieux de la nationalité*

[341] *Ordonnance n° 60-064 du 22 juillet 1960 portant Code de la nationalité malgache, modifiée 2016, titre V: du contentieux de la nationalité*

[342] *Lei No.2/16 de 15 de Abril, art.31.*

[343] *Lei No.1/16 de 10 de Fevereiro.*

[344] *Decreto presidencial No.152/17 de 4 de Julho regulamento da lei da nacionalidade, arts. 23-30. See discussion of these steps in Jerónimo, "Report on Citizenship Law: Angola".*

[345] *Lei de 20 de Junho de 1975 alterada pela Lei No.16/87 de 21 de Dezembro, art.15 ; Decreto no.3/75 de 16 de Agosto, alterada pelo Decreto no.5/88 de 8 de Abril, art.21-23; Constitution, 2004, Título IX: Tribunais. See discussion in Jerónimo, "Report on Citizenship Law: Mozambique".*

In the common law system, the rules are often deficient in relation to effective due process, even though recent constitutions have strengthened these protections. In Botswana, Lesotho, Malawi, Mauritius, Seychelles, Tanzania, and Zimbabwe the legislation contains "ouster clauses" stating that the minister is not required to give reasons for any decision authorised by the law and/or that the decision of the minister cannot be reviewed in court.[346] Vetting procedures determining eligibility for nationality identity documents are thus entirely within the decision of the executive branch.

Constitutional provisions may in principle override these exclusions: for example, in the case of Malawi, the ouster clause violates a prohibition in the 1994 Constitution on arbitrary deprivation or denial of citizenship;[347] while in Zimbabwe the 2013 Constitution provides for all to have the right to administrative justice and a fair hearing.[348] However, they provide support for a degree of executive discretion that undermines the rule of law and is not in conformity with human rights standards. Both the African Commission and the African Court on Human and Peoples' Rights have issued judgments in several cases indicating that such exclusions are in violation of the African Charter (see heading International and African law). In South Africa and Zambia, by contrast, the law specifically provides for review of decisions by the High Court.[349]

One area of nationality administration where executive discretion is especially pronounced is in case of naturalisation, where a person who fulfils all the criteria established by the law may nonetheless be refused grant of citizenship, effectively on any arbitrary ground. Some states, including Comoros and Namibia, specify that no legal challenge can be made to a denial of naturalisation.[350] In DRC, an initial decision to reject an application for naturalisation can be challenged before the Supreme Court, but then becomes a political decision: if admitted, a decree is then approved by the Council of Ministers, and the naturalisation does not enter into effect until voted on by the National Assembly (following the Belgian model).[351] Even if no specific provision states that naturalisation is absolutely discretionary, this is the case in practice, based on the discretionary language of the substantive provisions (for example, that the minister 'may' grant naturalisation). Zambia's 2016 Citizenship Act provides one of the few exceptions to this rule among the common law states, requiring reasons to be given in writing if application for registration as a citizen is rejected.[352]

Botswana, Eswatini, and Zambia establish an administrative procedure by which the decision to grant or deprive citizenship is made by a citizenship board or committee appointed by the relevant minister or the

[346] *Botswana Citizenship Act 1998, sec. 22; Lesotho Citizenship Order 1971 sec. 26; Malawi Citizenship Act 1966 sec. 29; Mauritius Citizenship Act 1968 sec. 17; Seychelles Citizenship Act 1994 sec. 14; Tanzania Citizenship Act 1995 sec. 23; Zimbabwe Citizenship Act 1984 sec. 16.*

[347] *Constitution of Malawi 1994, art. 47.*

[348] *Constitution of Zimbabwe 2012, arts. 68 and 69.*

[349] *South Africa Citizenship Act 1995, sec. 25; Citizenship of Zambia Act 2016, sec. 30.*

[350] *In the case of Comoros, a decision not to accept an application for naturalisation request must be reasoned, but the final decision is subject to no appeal: Loi No.79-12 du 12 décembre 1979 portant Code de la nationalité comorienne, art.72. The Namibian Citizenship Act, sec. 5(8), provides: "The grant of a certificate of naturalisation shall, subject to the provisions of subsection (7), be in the absolute discretion of the Minister and he or she may, without assigning any reason, grant or refuse such certificate as he or she deems most conducive to the public good, and no appeal shall lie from the Minister's decision."*

[351] *Loi No.04/024 du 12 novembre 2004 relative à la nationalité congolaise, arts. 36 and 38.*

[352] *Citizenship of Zambia Act 2016, sec. 21(3); Citizenship of Zambia Regulations 2017, reg. 6(3).*

president, with the right for the person affected to make representations.[353] Though providing a measure of protection from abuse, such administrative bodies should not justify the exclusion of review by the normal courts (as noted, Zambia's Citizenship Act specifically provides for an appeal to the High Court).[354] There is no explicit exclusion of court review in Eswatini, although the legislation provides that the minister may refuse to accept a recommendation of the committee.[355] But in Botswana the Citizenship Committee has only an advisory role in naturalisation, and no role in deprivation, while court review is excluded.[356] Zimbabwe's 2013 Constitution provided for a similar body to be established by parliament, but the law had not yet been amended to do so by the end of 2019.[357]

In relation to deprivation specifically, the legislation in Lesotho, Malawi, Namibia, and Zimbabwe provides for initial review of a decision to deprive nationality by an "enquiry" conducted by persons appointed by the minister.[358] The Namibian Citizenship Act also provides for an administrative review of deprivation of nationality.[359] In DRC, a decision to deprive a person of nationality is taken by the Council of Ministers, but only takes effect after approval by the National Assembly.[360] In each case, the person affected might arguably have the right to challenge the decision under the constitutional protections for a fair hearing (even where ouster clauses are in effect); but in practice no court review is likely to be possible.

Court oversight is equally important in decisions impacting on recognition of nationality but undertaken under different legislation – including especially family law and civil registration. A decision on recognition of a child by a parent or on the details to be recorded in a birth or death certificate can in effect grant or deprive nationality. Courts in Zimbabwe and Lesotho have ruled that cancellation of an entry in the register of births and deaths, in many cases prima facie evidence of citizenship, was unlawful without an order of court.[361] The right to nationality and the documents that confirm it have been subject to litigation in many countries in southern Africa, especially in Botswana, Lesotho, Namibia, South Africa, Zambia, and Zimbabwe.[362] However important, a court application is likely to be costly, and will require legal assistance. Alternative and more accessible routes to overturn administrative decisions are also needed: in South Africa, for example, the Public Protector (established by the 1996 constitution) has made findings against the government in cases where birth registration has been denied or revoked, depriving a child of citizenship.[363]

[353] *Botswana Citizenship Act 1998, as amended, sec. 3; Constitution of Swaziland 2005, art.54; Constitution of Zambia 2016, art.41; Citizenship of Zambia Act 2016, Part II (secs. 3-14).*

[354] *Citizenship of Zambia Act 2016, sec. 30.*

[355] *Swaziland Citizenship and Immigration Act 1992 sec. 15(7).*

[356] *Botswana Citizenship Act 1998, sec. 22.*

[357] *Constitution of Zimbabwe 2013, art. 41.*

[358] *Lesotho Citizenship Order 1971, sec. 23(5); Malawi Citizenship Act, sec. 25(4); Zimbabwe Citizenship Act sec. 11(4).*

[359] *Namibian Citizenship Act, secs. 5(8), 9(5) and 17.*

[360] *Loi No.04/024 du 12 novembre 2004 relative à la nationalité congolaise, art.29.*

[361] *T v Registrar General of Births and Deaths (135/07) ((135/07)) [2008] ZWSC 26, Supreme Court judgment of 20 October 2008; Zwelakhe Mda v Minister of Home Affairs and Others (Constitutional Case No.4 of 2014) [2014] LSHC 30, High Court of Lesotho, judgment of 24 September 2014.*

[362] *See resources at http://citizenshiprightsafrica.org/region/southern-africa/?fwp_media_type=national-courts.*

[363] *Report No.38 of 2011: Report on an investigation into allegations of failure to register the birth of a child and the naturalisation of the mother by the Northern Cape Department of Home Affairs, Public Protector of South Africa, March 2011; Report no 27 of 2019/20: Report on an investigation into allegations of maladministration by the Department of Home Affairs in respect of the alleged improper revocation of a minor child's birth certificate and consequently his South African citizenship, Public Protector of South Africa, 7 June 2019.*

Groups at risk of statelessness

The categories of people at risk of statelessness are similar across the African continent, and indeed across the world. This section outlines these common categories. It is not possible to provide statistics on how many are stateless: statelessness is often only a situation that becomes apparent over an extended period of time, after repeated efforts to obtain documents from the authorities of one or more countries. It is, in the end, an individual and not a group condition, and different members of a group sharing some characteristics may succeed or fail in obtaining recognition of nationality because of their different circumstances. Thus, the categories here are of people "at risk of" statelessness: not all those fitting the description of each group will in fact be stateless, and the level of risk may vary. The categories highlighted below are the following:

- Foundlings, orphans and other vulnerable children
- People of mixed parentage
- Border populations
- Descendants of pre-independence or very long-term migrants
- Children of more recent migrants
- Internally displaced persons
- Refugees, former refugees and returnees

When is lack of identity documentation evidence of statelessness?[364]

Lack of documentation is in part just one symptom of more general weaknesses in the state. A very large number of people in Member States of SADC have no documents because they don't see the point of having documents, and because they are costly in time and money to obtain. The first point of need is often when a child should enter school or needs to take an exam, but if schools are inaccessible or of poor quality (either objectively or as a matter of opinion), then what need for birth registration? If you remain entirely in the informal sector, a peasant farmer or transhumant pastoralist, then identity documents are not required; if the police demand money when you cross a border or an internal checkpoint whether or not you have the right documents, then a passport or identity card does not serve even its most basic use of proving your right to be present or to travel. If, in addition, obtaining documentation requires a journey to the nearest administrative centre; a long wait to be seen; a mixture of official and unofficial fees, and at least a day's lost income, the cost-benefit analysis looks untempting.

It is not the case that all these people are necessarily stateless as a result: but those who are in this situation and are in addition members of a social group generally regarded as marginal – including those described in this study – are certainly at risk of statelessness. It is only in the effort of seeking documents that statelessness will become apparent.

[364] *Lightly modified version of text included in the reports Manby, "Migration, Nationality and Statelessness in West Africa"; Manby, "Citizenship and Statelessness in the East African Community".*

UNHCR has published a Handbook on Protection of Stateless Persons which considers the definition of a stateless person.[365] The definition in international law appears in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, as follows:

For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

In its guidelines on this definition, UNHCR notes that "establishing whether an individual is not considered as a national under the operation of its law [...] is a mixed question of fact and law", thus:
[E]xamining an individual's position in practice may lead to a different conclusion than one derived from a purely objective analysis of the application of nationality laws of a country to an individual's case. A State may not in practice follow the letter of the law, even going so far as to ignore its substance. The reference to "law" in the definition of statelessness in Article 1(1) therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.[366]

The guidelines go on to emphasise that in many states it is not one single authority that determines whether a person has the nationality of that state, but rather a combination of many different agencies responsible for issuing different documents and making different decisions for different purposes. It may therefore be a cumulative rejection of applications for documents rather than one single one that shows that a person is not regarded as a national. Where a person acquires nationality automatically, by operation of law – as is usually the case for attribution of nationality at birth (whether the nationality of the parents or of the state in which birth takes place) – documents are not usually issued at that time. But it is later, when documentary proof of nationality is sought, that it may become apparent that the state concerned does not regard the person as its national. In particular:

Where the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national.[367]

For very many people in the groups highlighted as being at risk of statelessness in this study it is not exactly clear if they are stateless or not: they exist in a blurred zone between clearly having a nationality and clearly being stateless. It may be the case that some members of a community have some (but not all) documents related to nationality (just a birth certificate, just a national identity card, just an electoral card – but were rejected or never applied for a nationality certificate or passport), whereas others were never registered at birth and applications for all other documents have been rejected; others may have obtained documents by paying bribes to intermediaries, and others may have travelled to a different "home" country to obtain documents there because they cannot get them where they currently live (or because they prefer to keep that affiliation). Each person has his or her own narrative, and his or her own particular circumstances (of parentage, place of birth and childhood, marriage partner, habitual residence, autonomy of social status, access to connections and money) that will explain these outcomes – but among the groups highlighted in this study are certainly people who fulfil the definition of stateless person under international law.

[365] *UNHCR, "Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons" (Geneva: United Nations, 2014).*

[366] *Handbook, para. 24.*

[367] *Handbook, para. 37.*

Foundlings, orphans, and other vulnerable children

In 2008, SADC adopted a comprehensive strategy on orphans and vulnerable children and youth, which estimated that there were close to 17 million orphans in SADC states, noting that "these figures are a gross underestimate of the total number of all vulnerable children and youth in the region, largely because these groups often go unnoticed making their numbers more difficult to quantify".[368] The number has no doubt increased since then, though this report could not find an up-to-date estimate. The strategy also noted the risk of statelessness for children in this group without birth registration.[369]

Among these orphans will be many whose parents are not known, or whose parents were of unknown nationality. Among SADC member states, Botswana, Lesotho, Malawi, Namibia, Seychelles, South Africa and Tanzania have no provision in their nationality laws creating a presumption of nationality for children of unknown parents found on the territory; while in Comoros and Mauritius the provisions are unclear, and in any event appear to apply only to abandoned infants (see heading above, Foundlings: children of unknown parents). Only Angola, DRC, Lesotho, Malawi, Mozambique, Namibia and South Africa provide at least some legal protection for "otherwise stateless" children born in their territory, in line with the requirement of the African Charter on the Rights and Welfare of the Child. In the case of Mozambique and Namibia, the general provisions for jus soli provide stronger protection without needing to prove statelessness. Even if these legal protections are in place, however, procedural mechanisms are needed to make the law effective in practice.

In the case of foundlings, these protective mechanisms will usually include late registration of birth, and legal confirmation in accordance with national law that nationality has been acquired of the country where the child was found. In the case of the protection for otherwise stateless children, it may be necessary to inquire into the situation in relation to the other nationalities to which the child may have a claim, followed by confirmation that the child is stateless and therefore acquires the nationality of the country of birth. It is not sufficient simply to assert that the child has another nationality without seeking confirmation that that is the case. Problems with late birth registration contribute to these issues (see above: Birth registration).

An effective system of child protection is also needed to ensure that orphans, children separated from their parents, and other vulnerable children have their nationality confirmed. If at least one of the parents is known to be a national of the country of birth then there must be a system to confirm the nationality of the child. If both parents are known to be nationals of another country, then the obligation is either to ensure confirmation of that nationality or one of those nationalities, through the relevant consular authorities, or to provide the possibility of acquiring the nationality of the country of birth – if the other nationality is not accessible, or if it is in the best interests of the child.

The risk of statelessness are high for children in these categories, even if they are on the face of the law nationals of the country of their birth. Street children everywhere face challenges in obtaining the necessary documentation to survive as they become adults.

[368] *SADC, "Comprehensive Care and Support for Orphans and Vulnerable Children and Youth in the Southern African Development Community: Strategic Framework and Programme of Action 2008-2015" (Gaborone: Southern Africa Development Community, 2008), 6, https://www.sadc.int/files/2113/5293/3505/SADC_Strategic_Framework_and_Programme_of_Action_2008-2015.pdf.*

[369] *SADC, "Comprehensive Care and Support for Orphans and Vulnerable Children and Youth", Annex 2, section 3.0.*

Unaccompanied migrant children who were not born in the country where they now are may be at particular risk. A study by the Scalabrini Centre of Cape Town of more than 300 children of foreign parents in South Africa in the care of Child and Youth Care Centres found that more than half were not accompanied by their parents when they entered South Africa, and one-third had no documents of any kind. Around 70 percent had been in South Africa for more than five years. Family tracing efforts, essential to their future rights to legal identity and a nationality, had been undertaken in less than a third of cases.[370] The authorities of the country of origin equally often fail to provide adequate assistance in these cases (see above: Consular registration).

No birth certificate; no rights; no citizenship

Brian Ngwenya was born to Zimbabwean parents in South Africa 15 years ago, but he was forced to relocate to Zimbabwe after his father died and his mother developed a mental illness.

Ngwenya said he had to come back home because his mother's condition made difficult for her to take care of him.

He was to live under the care of his maternal grandmother in rural Kezi, Matabeleland South.
Ngwenya's grandmother had to beg the headmaster at a local school to allow him to attend classes even though he did not have a birth certificate, one of the required documents when one enrols for formal education in the country.

"My grandson will soon be taking his Grade 7 examinations and I am worried he will face challenges as he has no birth certificate," she said.

"Every time I go to the Registrar [General's] offices I am told I have to bring his parents` documents and they also want Zim$50, which is too much for me."
Case study from: Nomaqhawe Ndlovu, *"Matabeleland region hit hard by lack of access to identity documents", Center for Innovation and Technology (CITE), Bulawayo, 21 March 2019*

People of mixed parentage or dual nationality

Especially in states where dual nationality is not permitted for adults, people with one national parent and one who is a foreigner may find on applying or renewing a citizenship document that they are required to renounce the nationality of the other country, even if they have never held sought recognition of the other state.

Such requirements have been reported above all in Zimbabwe, where, from 2000, the Zimbabwean government applied ever stricter rules on the interpretation of a prohibition on dual nationality which existed under the laws in force at the time, with the effect of excluding from Zimbabwean citizenship anyone with a purported right to claim another nationality.[371] While provisions of the 2013 Constitution should resolve the status of many of those affected, the Citizenship Act had yet to be updated by mid-2020 (see above: Dual

[370] *Lotte Manicom, "Foreign Children in Care: A Comparative Report of Foreign Children Placed in Child and Youth Care Centres in Gauteng, Limpopo and Western Cape Provinces of South Africa" (Cape Town: Scalabrini Centre, July 2019); see also Marilize Ackermann, "Unaccompanied and Separated Foreign Children in the Western Cape, South Africa: Exploring (the Lack of) Durable Solutions for Children in Informal Relations of Care" (Cape Town: Scalabrini Centre, September 2017).*

[371] *Manby, Citizenship in Africa, chap. 7.1.*

nationality). In Botswana, the introduction of a new computerised passport system in 2011 found some who had previously been recognised as Botswanan suddenly denied the right to renew their passports unless they renounced another nationality that they had never claimed.[372] Bazezuru descendants of followers of a religious sect who came to Botswana from Zimbabwe in the 1950s, faced what was described as a "citizenship crisis" in their efforts to acquire Botswanan identity cards and passports.[373]

Dual citizenship is not allowed in Botswana, and the authorities administering the identity card system required proof of renunciation of Zimbabwean citizenship before giving them Botswanan documents—though they had never sought Zimbabwean citizenship and, indeed, would have difficulties gaining recognition of Zimbabwean citizenship in order to renounce it. In Botswana, a birth certificate is proof of citizenship[374], which has meant that, though government ministers urged the community to register all births, the Bazezuru struggled to obtain this most basic of documents, preventing their children from accessing education.[375] More often, there is a simple refusal to issue a document on the basis that a person is potentially the citizen of another state, rather than the formal requirement to renounce another potential nationality (which at least provides an administrative route to resolve the situation). The probability of refusal will rise if birth registration rules prevent single parents from registering a birth, meaning that the most authoritative evidence of the connection to a parent who is a national is missing (see above: Birth registration).

Stateless former wife and daughter of a Congolese national

Wang Ying Hui was born in China in 1961 and had Chinese nationality at birth. She trained as a nurse, and she met and married a Congolese (at that time, Zairian) medical doctor working in China. They registered their marriage in China in 1991, but not with the Congolese authorities. In 1993, they had their first and only child, born in China. The relationship broke down, and Ms Wang lost touch with her former husband. The Chinese-registered marriage was dissolved by a court ruling in China in 2016, in the absence of her former husband. Ms Wang never lived in DRC, but in 1993, while visiting Kinshasa, her husband arranged for her to be issued with a Zairian passport. China does not permit dual nationality, and accordingly the Chinese authorities assert that Ms Wang's nationality was lost upon obtaining a Congolese passport. She was thus obliged to obtain a visa as a foreigner whenever she visited China. However, for some years she was able to renew her Zairian/DRC passport at the embassy in China, and travel with it. Since 2009 Ms Wang has been living and working in Japan, with her daughter. She has not, however, been able to renew her last Congolese passport, which expired in 2011. Ms Wang's daughter was issued with a DRC passport by the DRC embassy in China in 2002, but the embassies in China and Japan refused renewal on expiry of her most recent passport in 2011.

Information provided by UNHCR Kinshasa; name has been changed.

[372] *Lawrence Seretse, "Thousands of Batswana become foreigners overnight", Mmegi (Gaborone), 18 November 2011. See also Francis B. Nyamnjoh, "Local Attitudes towards Citizenship and Foreigners in Botswana: An Appraisal of Recent Press Stories", Journal of Southern African Studies 28, no. 4 (2002): 755–75.*

[373] *Members of the same church faced similar problems in Kenya; see Manby, "Citizenship and Statelessness in the East African Community".*

[374] *Children's Act No.8 of 2009, sec. 12(3): "A birth certificate issued by the Registrar of Births under [the Births and Deaths Registration Act] shall be proof of the nationality of the child." Births and Deaths Registration Act, No.48 of 1968, as amended to 1998, sec. 10(2): "Every such certificate [of birth, still-birth or death] shall, in all courts of law and public offices within Botswana, be prima facie evidence of the particulars set forth therein."*

[375] *"Commissioner urges Bazezuru to register", BOPA, 29 February 2012; Goitsemodimo Williams, "Bazezuru want minister's intervention", Botswana Daily News, 9 January 2013; Sesupo Rantsimako, "Bazezuru still in citizenship predicament", Botswana Gazette, 6 February 2014.*

Border populations

Among the groups placed at risk of statelessness by Africa's borders are those ethnic groups whose traditional territory has been bisected by a new international border. This is a problem that is not at all unique to Africa, but perhaps arises with particular frequency in the African continent. In addition to the confusion caused by the splitting of communities with extended family members on both sides of a border, border regions are often remote, and most likely to have low levels of birth registration and other documentation. Mixed marriages, of a national and a non-national, are of course particularly likely in border regions, and the children of these marriages are at particular risk of statelessness if neither state permits dual nationality. Statelessness among these populations is sometimes being revealed or made more important by new identification systems: these systems create vetting processes to ensure that those who are not entitled do not obtain identity documents confirming nationality from the state of residence; but they have no process in place to ensure that the person is in fact confirmed to be the national of the other country.

Problems of this type were reported to an investigation by the Zimbabwe Human Rights Commission during hearings in 2019, and to the Zimbabwe Parliament, including along the borders with South Africa, Botswana, and Mozambique. Those believed by the authorities to have a potential connection to the other state were required to "renounce" that citizenship even if they had never held or sought such documents.[376] Similar problems exist along Botswana's borders both with Zimbabwe and Angola, where those seeking a national ID are told that they are not eligible because they said to be dual citizens who had not renounced the other citizenship.[377]

Tanzania's mass enrolment of residents for its new national identity population register and identity card has (as in other countries with new population registers) revealed groups whose status is seen as doubtful and may be at risk of statelessness. Examples include the Mkinga and Rombo-Kilimanjaro districts, on the border between Tanzania and Kenya; the Mbeya region, bordering Malawi; and the Kagera region, which shares borders with Uganda, Rwanda, and Burundi.[378] The Prime Minister defended the "stringent" vetting procedures in border regions on the grounds that national security was at stake.[379] However, no procedures were established to determine if those affected in fact held any other nationality.

Some states have undertaken steps to register or confirm the nationality of long term residents and those in border regions, including Namibia (see above: Naturalisation of long-term migrants and their descendants). A joint study by the Mozambican consulate in Malawi, the Malawian Dept of Immigration and UNHCR was conducted in districts along the borders between Malawi and Mozambique in 2012, to assess the risk of statelessness and plan efforts to resolve the status of those resident in Malawi.[380]

[376] *Simbarashe Sithole, "ZHRC engages Mash Central residents on access to documentation", Newsday (Harare) 5 August 2019; Cletus Mushanawani, "ID nightmare for border communities", The Herald (Harare), 13 August 2019; "Acquisition of identity documents still a challenge in Zimbabwe", Zimbabwe Broadcasting Corporation (ZBC), 8 October 2019; "Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents".*

[377] *Thamani Shabani, "Ministry to Investigate Matshelagabedi", Botswana Daily News, 14 October 2019; Portia Ikgopoleng, "Citizenship Appeal Cases Common in Border Villages", Botswana Daily News, 17 October 2019.*

[378] *Information by email from UNHCR and from Dignity Kwanza, Dar es Salaam, April 2020; "Govt Urged to Extend SIM Card Registration Deadline", Tanzania Daily News (Dar es Salaam), 27 December 2019.*

[379] *"Majaliwa: Hakuna mtanzania atakayekosa kitambulisho cha taifa", United Republic of Tanzania Prime Minister's Office, 21 February 2020 available at https://www.pmo.go.tz/index.php/news/pmnews/382-majaliwa-hakuna-mtanzania-atakayekosa-kitambulisho-cha-taifa; "PM: Tight ID card filing in border regions right", The Guardian / IPPMedia (Dar es Salaam), 22 February 2020.*

[380] *Information from UNHCR Southern Africa bureau, April 2020.*

Adjustments to borders can also have a problematic effect on the residents of the areas where the border has changed. This is most obvious where inter-state border disputes have reached the International Court of Justice: the best known case in Africa relates to the Bakassi peninsula, previously administered by Nigeria and awarded to Cameroon by the ICJ.[381] In southern Africa, the ICJ has ruled on a dispute between Namibia and Botswana on the ownership of an island in the Chobe river forming the boundary between the two states along the southern border of the Caprivi Strip—itself one of the more ludicrous examples of colonial-era border determination.[382] The judgment acknowledged that the territory was occupied by members of the Masubia ethnic group originating from the Namibian side of the border, but this aspect was, according to the usual precedents, found by the majority to be irrelevant to the ultimate decision to award the island to Botswana.

Less high-profile cases include a recent exercise to demarcate the border between Malawi and Zambia in 2018. Parts of Mchinji, Mzimba, Kasungu and Rumphi districts administered by Malawi were declared to belong to Zambia. The Malawian government urged the residents not to change their nationalities,[383] but research for this report could not find out what arrangements would be made to enable them to opt and obtain the necessary paperwork to remain Malawian or become Zambian.

Descendants of pre-independence migrants

When sovereignty over a territory changes – as at independence in Africa, or on the dissolution of federations, or the separation of part of a state – the nationality status of people who moved within what was previously a zone of free movement is often problematic. Those placed at risk of statelessness by this process of "state succession" include the descendants of pre-independence migrants who were not recognised and documented as members of the new states. Other very long-term migrants may face similar problems.

For these long-term settled migrants, it is particularly important that the state where they are resident provides the possibility of access to naturalisation without imposing procedural requirements that are impossible to fulfil. In addition, the law should provide for the right to nationality for persons born in the country at the latest if they are still resident there at majority. In neither case can acquisition of nationality be based on proof of legal residence, since by definition these long-term undocumented populations have no proof of identity on which to base an application for residence. Without these minimum rights, there is a risk of creating a large class of persons who are excluded from citizenship, even if they are living in the only country they have ever known and to which they have by far the strongest, or only, connections.

In southern Africa, the risks of statelessness created at independence apply especially to the descendants of those hundreds of thousands of Africans who moved from a territory of origin, often under duress, as a result of the political and economic changes brought by colonisation. The best-known situations relate to the Banyarwanda of eastern DRC, and those who came to Zimbabwe (what was then Rhodesia) from Mozambique, Zambia or Malawi to work on farms or mines owned and operated by white Rhodesians.

[381] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), ICJ Judgment of 10 October 2002.*

[382] *Case concerning Kasikili/Sedudu Island (Botswana/Namibia), ICJ Judgment of 13 December 1999.*

[383] *Wanga Gwede "Some Parts of Malawi Declared to Belong to Zambia: Minister Urges People not to Change Nationality", Nyasa Times, 7 December 2018.*

The DRC, with a population estimated, in the absence of any census for several decades, to be close to 90 million[384], comprises several hundred ethnic groups: it is one of the most diverse countries in Africa. In North and South Kivu, the nationality status of the Banyarwanda, speakers of the language of Rwanda, been particularly problematic, and at the heart of the conflicts that have afflicted the country in recent decades. The origins of the Banyarwanda in DRC, both Hutu and Tutsi (historically cultivators or pastoralists, respectively) are diverse and much argued-over. Part of the territory that is now DRC were prior to colonisation subject to the Rwandan king: the border has changed to leave them separated from their ethnic kin in modern-day Rwanda. Secondly, a sub-group of the Banyarwanda known as the Banyamulenge are descendants of Tutsi pastoralists who migrated mainly in the eighteenth and nineteenth centuries. Thirdly, the Belgian colonial administration used the fact that the German colonies of Rwanda and Burundi were mandated to Belgian control by the League of Nations after World War I to establish a policy of organised transplantation of several hundred thousand people to work on plantations in what are now North and South Kivu in eastern Congo. Others migrated independently of this programme. Since independence, eastern DRC has also received many hundreds of thousands of refugees fleeing violence in Rwanda and Burundi.[385] The weakness of the Congolese state, including very low rates of civil registration, exacerbated by conflict and displacement, have meant that it is very difficult to distinguish among these categories. Despite nationality law reforms enacted after the peace agreements of the early 2000s that should provide a route to acquisition of Congolese nationality, in practice most Banyarwanda are considered foreigners in Congo, and also have no entitlement to Rwandan nationality.

Although the context is in some ways very different, there are some similarities in the profile of those who came to Zimbabwe as migrant workers during the period of white minority rule, and who have faced difficulties in asserting Zimbabwean citizenship since 2000. Until the new Zimbabwean constitution came into effect in 2013, dual citizenship was not permitted for adults. During the first decade of the new century many people born in Zimbabwe of parents with origins in neighbouring countries found themselves unable to claim either Zimbabwean citizenship or the citizenship of a foreign parent, even though they might theoretically have the right to the citizenship of both states. The Zimbabwean Registrar General would require a person to prove renunciation of the citizenship of, for example, Malawi, before issuing an identity document; while the Malawian embassy would say that there was no evidence showing that the person was Malawian, so citizenship could not be renounced or alternatively that the person must first renounce Zimbabwean citizenship to claim Malawian citizenship. The absence of paperwork would leave the person deemed by both states to be a citizen of the other, but by neither to be their own.[386] The provisions in the 2013 Constitution permitting dual citizenship for those who are citizens by birth, and that a person born in Zimbabwe before the new constitution came into force became a citizen by birth if one or both parents was a citizens of a SADC Member State should have resolved the situation for most of those in this situation. However, the provision on acquisition at birth was conditioned on the person being ordinarily resident in Zimbabwe on the date the constitution came into force.[387] Given the large number of people who had left Zimbabwe over the previous decade, their status remains uncertain.

[384] *See World Population Prospects 2019, UN Department of Economic and Social Affairs, https://population.un.org/wpp/Download/Standard/Population/.*

[385] *For a detailed account of this history, see Manby, Citizenship in Africa, chap. 7.5.*

[386] *Rumbidzai Dube, "A Right or a Privilege" (Harare, Zimbabwe: Research and Advocacy Unit, 2008); Rumbidzai Dube, "Identity, Citizenship, and the Registrar General: The Politicking of Identity in Zimbabwe" (Harare, Zimbabwe: Research and Advocacy Unit, 2012); Manby, Citizenship in Africa, chap. 7.1.*

[387] *Constitution of Zimbabwe, 2013, Art. 43(2).*

Similar communities of descendants of long-term migrant workers exist in Tanzania, including those recruited through the Sisal Labour Bureau (SILABU) facilitating recruitment by Britain from the Belgian territories. In addition, there was a small population of Kikuyus suspected of being Mau Mau sympathisers who were forcibly resettled by the British in Tanganyika, and other settlements of Kenyans in tea-growing areas. Several thousand people of Mozambican descent live in Zanzibar, descendants of people who came to Zanzibar in the 1950s and 60s when the Mozambican liberation movement FRELIMO had a presence on the island, who are not regarded as having acquired Tanzanian citizenship. There is also a community of Comorian descent in Zanzibar, whose members have faced difficulties in obtianing recognition of Tanzanian citizenship, despite their legal entitlement; people of Arab descent in Mafia island report similar problems.[388]

In Malawi, the roll-out of a new national identity card has raised concerns and challenges for the community of South Asian descent, the majority of whom are descendants of people who came to Malawi during the colonial era, who have complained of discrimination in the requirements to prove their Malawian citizenship.[389] People of South Asian descent, known as Karana, also make up the majority of around 20,000 stateless people in Madagascar.[390] The discrimination in the nationality law at the time of transition to majority rule means that is difficult for them to obtain Madagascan nationality; and even though the removal of gender discrimination in law in 2018 should assist children of mixed marriages, discrimination remains in practice.

Children of more recent migrants

Recent decades have seen vastly increased unregulated flows of economic migrants from across the continent into southern Africa, especially to South Africa (see above: Migration and nationality since the colonial era). Most recent migrants and refugees are not themselves stateless, but a long-term failure to act to record their legal status, and especially that of their children, creates the risk of multi-generational statelessness of whole communities who have no documented connection to another country and yet are not fully members in the country where they live.

In Malawi, for example, the CEDAW and CRC Committees have both expressed concerns about the risks of statelessness for the children of Malawian nationals who migrated to Zimbabwe, and the children born to Mozambicans in Malawi.[391] UNHCR also notes risks of statelessness for children born abroad to parents of Mozambican origin.[392]

[388] *Manby, "Citizenship and Statelessness in the East African Community". Problems in Mafia island reported by email from Dignity Kwanza, Dar es Salaam.*

[389] *Moses Michael-Phiri, "National ID program in Malawi raises questions, fears", Anadolu Agency (Turkey), 11 June 2017; Ausborn Banda, "Malawians of Asian origin take NRB to task for infringing their rights", Maravi Post (Malawi), 8 August 2017.*

[390] *Caroline McInerney, "Accessing Malagasy Citizenship: The Nationality Code and Its Impact on the Karana", Tilburg Law Review 19 (2014): 182–93; UNHCR, "This Is Our Home: Stateless Minorities and Their Search for Citizenship" (Geneva: United Nations, 2017), https://www.unhcr.org/ibelong/stateless-minorities/.*

[391] *UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the seventh periodic report of Malawi, CEDAW/C/MWI/CO/7, 20/Nov/2015; UN Committee on the Rights of the Child,*

Concluding observations on the combined third to fifth periodic reports of Malawi, CRC/C/MWI/CO/3-5, 6 March 2017.

[392] *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Mozambique, July 2010 https://lib.ohchr.org/HRBodies/UPR/Documents/Session10/MZ/UNHCR_UNHigh%20Commissioner%20for%20Refugees_eng.pdf.*

Amongst the largest migration movements in recent years in Southern Africa has been of Zimbabweans into neighbouring countries, with perhaps one million emigrants, moving especially to South Africa.[393] While perhaps most of these individuals did not formally seek asylum, some were granted refugee status. Among the emigrants were many whose Zimbabwean citizenship had been denied and who were therefore at high risk of statelessness, or in fact stateless (if unable to confirm nationality of another country). In South Africa, the authorities responded to the situation by adopting a twelve-month "special dispensation permit" for Zimbabweans on the basis of the 2002 Immigration Act, granting the right to legally live and work in the country (later extended several times, and in 2017 transformed into "Zimbabwean exemption permits").[394] However, in 2018, only just over 180,000 people were reported to have applied for the new exemption permits after one year in operation, a small minority of the total number of Zimbabweans estimated to be in South Africa, likely leaving many still undocumented.[395] In Botswana, a group of several hundred Zimbabweans were granted refugee status, after fleeing violence associated with the 2008 elections. In 2017 UNHCR agreed with the governments of Zimbabwe and Botswana that it was safe for them to return; but some resisted this decision, leaving them without status in Botswana.[396] In Mozambique, UNHCR identified hundreds of individuals who were mainly returnees from Zimbabwe and who did not have recognition of either Mozambican or Zimbabwean citizenship.[397] These persons have difficulties in accessing basic services and are also reported sometimes to be victims of harassment by authorities, especially the police, due to their lack of documentation.[398] Malawi was willing to restore citizenship if evidence was available, but the process was expensive and difficult to access; an unknown number of diaspora 'returnees' did not have any citizenship documents.[399]

The children of the Zimbabwean diaspora without Zimbabwean identity documents are at high risk of statelessness, because their parents lack the documents needed to access birth registration either in the country of birth or in Zimbabwe. Even if the Zimbabwean citizenship of a parent is later confirmed, the children born outside the country will, in the absence of such documentation, need assistance to establish their own right to citizenship.

[393] *IOM, "World Migration Report 2020".*

[394] *Tara Polzer, "Regularising Zimbabwean Migration to South Africa", Migration Policy Brief (Johannesburg: Forced Migration Studies Program University of the Witwatersrand and Consortium for Refugees and Migrants in South Africa, May 2009); Inocent Moyo, "Zimbabwean Dispensation, Special and Exemption Permits in South Africa: On Humanitarian Logic, Depoliticisation and Invisibilisation of Migrants", Journal of Asian and African Studies 53, no. 8 (2018): 1141–57, https://doi.org/10.1177/0021909618776413.*

[395] *"Home Affairs on Zimbabwean exemption permits, South African Department of Home Affairs", 15 November 2018 https://www.gov.za/speeches/media-statement-extension-closing-date-fordispatching-zimbabwean-exemption-permits-zep-15.*

[396] *"Zimbabwe Refugees Lose Fight to Remain in Botswana", Voice of America, 6 February 2020*

[397] *"Mozambique: UNHCR to Support Registration of Stateless People", UNHCR, 5 October 2011.*

[398] *UNHCR, "Fighting Statelessness: Findings In Mozambique", 2011. A pilot project in South Africa is already under way, with other exercises planned in Zimbabwe and Malawi.*

[399] *According to information provided at a UNHCR regional statelessness meeting, 1-3 November 2011, Malawi restored citizenship to 85 persons during the period 2008 to 2011.*

Separated children unable to obtain recognition of any nationality

Thembi arrived with her sister and mother in South Africa in 2002. Thembi is thought to have been born in Kenya. The reasons for her mother's migration to South Africa are not known. Her mother was financially and psychologically unstable and was unable to care for the children. Found living in a car, the children were removed and placed in a Child and Youth Care Centre (CYCC), after which their mother disappeared. The Kenyan authorities in South Africa could not recognize them as Kenyan nationals without required documentation. The children are at risk of statelessness and have no documentation options in South Africa. They have been residing at the CYCC for seven years.

Case study from: Foreign Children in Care: South Africa, Scalabrini Centre of Cape Town, 2019

J.S. migrated from Zimbabwe to South Africa with his mother when he was around 10 years old. Due to not having a birth certificate, J.S. was unable to enrol in school in South Africa. As a teenager, his mother abandoned him. J.S. survived through the kindness of friends and eventually learned how to weld. He never knew his father.

Around 2008, J.S. returned to Zimbabwe to try to obtain documentation. However, no record of his birth or identity could be traced. He was further told by government officials that due to his mother having been Malawian, his father being unknown, combined with lack of any relatives and his long absence from Zimbabwe, J.S. would not qualify for Zimbabwean citizenship.

Home Affairs in South Africa also turned him away and instructed him to get help from Zimbabwean authorities. J.S. does not qualify for citizenship in Malawi either, given that J.S. has no documentation to show that his mother was Malawian and he is over the legal age limit to apply.

J.S. remains undocumented in South Africa, although he has lived here for nearly twenty years. He is married and has two children, but he cannot register his marriage or his children's births due to his lack of documentation.

"Citizenship means having rights. I am not safe because I don't have papers … I know that if I talk too much I will have problems because I don't have papers, so even when things happen to me which I know are not right … I'm quiet."

Case study from: "Promoting Citizenship and Preventing Statelessness in South Africa: A Practitioner's Guide", Lawyers for Human Rights, 2014

Internally displaced persons (IDPs)

The largest population of people displaced inside the borders of their own country within the SADC states are found in DRC, where, as of early 2020, there were an estimated five million IDPs – in addition to almost one million refugees.[400] There were also over 180,000 IDPs in Mozambique and 270,000 in Zimbabwe.[401]

Among the many difficulties of those affected by conflict, whether or not they cross an international border, are the loss or destruction both of personal documents and of government archives recording their issue. Those who do not cross an international border may in some ways be even worse affected by lack of documents, since they are much less likely to be registered by an international or national agency at the time of displacement, but equally likely to be affected by loss or destruction of their existing documents and the dispersal of community leaders who could vouch for a person's identity. Displaced children separated from their parents are the most vulnerable of all.

Those internally displaced by the Angolan civil war who never left the country have faced problems similar to those of refugees in re-establishing their identity.[402] Similarly, there are still people affected by the Gukurahundi conflict of the early 1980s in Matabeleland, Zimbabwe, who are unable to obtain identity documents because their family members were killed and documents destroyed at that time.[403]

Natural disasters may also cause problems. The hearings conducted by the Zimbabwe Human Rights Commission during 2019 found that large numbers of citizens were left without any form of identification after tropical Cyclone Idai ravaged eastern parts of Manicaland province earlier that year.[404] Without these documents statelessness becomes a risk, if records are not sufficient to re-establish identity, and additional requirements for proof of identity are imposed upon those whose nationality is caused into question.

[400] *The UN High Commissioner for Refugees reported more than 600,000 refugees from DRC in neighbouring countries in 1996, reducing to 200,000 by 2005 (2005 UNHCR Statistical Yearbook Country Data Sheet: Dem. Rep. of the Congo); as of December 2019, UNHCR reported 902,816 refugees from DRC in other African states, and five million internally displaced: "UNHCR DR Congo Factsheet - January 2020", 30 January 2020 https://data2.unhcr.org/fr/documents/details/73669. See also UNHCR, Refugees and asylum seekers from DRC, DRC Situation Update, 31 March 2020 https://data2.unhcr.org/en/situations/drc.*

[401] *UNHCR, Southern Africa Region Fact Sheet, March 2020 http://reporting.unhcr.org/sites/default/files/UNHCR%20RBSA%20fact%20sheet-March%202020_0.pdf.*

[402] *Human Rights Watch, "Struggling through Peace: Return and Resettlement in Angola", August 2003.*

[403] *Brenna Matendere and Jairos Saunyama "Lack of IDs a human right violation", Newsday (Harare), 11 September 2019; Nqobile Tshili, "Human Rights Commission concludes Mat'land documents hearing", The Chronicle (Harare), 26 October 2019; Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents, Parliamentary Portfolio Committee on Defence, Home Affairs and Security, Zimbabwe, 27 August 2019.*

[404] *"Cyclone Idai, large number of citizens lost documentation – ZHRC", NewZimbabwe.com, 9 October 2019; Zimbabwe Human Rights Commission, "Access to Documentation in Zimbabwe", 41.*

Refugees, former refugees and returnees

At no point between 1967 and 2011 did the number of refugees in Southern Africa drop below 400,000.[405] There were large outflows of refugees from Angola and Mozambique during their civil wars, as well as from DRC into countries further south. Although most of these refugees have now been able to return home, some have remained in the neighbouring countries where they sought refuge.

Today, the major refugee-generating situation affecting southern Africa is in the DRC, with almost one million refugees from DRC registered by UNHCR as at the end of March 2020, of which more than a quarter of a million were in other SADC states -- the largest numbers in Tanzania, South Africa, Zambia and Malawi.[406] While there were new outflows of refugees from DRC, and some had returned, a substantial minority of those registered with UNHCR had been resident in their host countries for many years: UNHCR estimates that around 5 percent of refugees had, by 2020, been outside of DRC since before 2000, and almost another 10 percent since before 2010.[407] Tanzania hosted 167,000 refugees from Burundi, and there were also 7,800 Burundian refugees in Mozambique, 8,300 in Malawi, 9,200 in South Africa and 6,000 in Zambia.[408] Central African Republic, Rwanda, and the Horn of Africa were the other main countries of origin for refugees in the region.[409]

Long-term refugees, and especially their children, may be at risk of statelessness, especially if they have never registered with UNHCR or claimed refugee status through a national process. They cannot obtain the nationality of the country where they have now established their lives and families, while at the same time they have lost all connection to their country of origin, both in fact and as a matter of legal documentation. Among such groups are the Zigua population of Somali Bantu origin in Tanzania, some of whom have been formally naturalised, but others remain undocumented.[410] The lack of clarity about their nationality status creates perceptions of security risks for the state authorities concerned, while also ensuring that the members of these groups do not feel secure in their place of residence. It may also hinder repatriation efforts: for example, agreements to repatriate Congolese from Rwanda to DRC have consistently been hindered by the impossibility of clearly identifying those who are entitled to return.[411]

At particular risk of statelessness are former refugees from countries where the "ceased circumstances" clause of the UN Refugee Convention has been invoked, meaning that the presumption is that it is safe for them to return home. Unless an application for exemption from this rule and continuing protection as a refugee is approved, the former refugee will need recognition from the country of origin that he or she is a national, or naturalisation in the country of residence, if statelessness is not to result. In Southern Africa the

[405] *Crush and Chikanda, "Forced Migration in Southern Africa".*

[406] *DRC refugees in SADC States, March 2020: Tanzania - 76,428; South Africa - 59,675; Zambia - 47,356; Malawi - 28,227; Angola - 23,120; Zimbabwe - 11,322; Mozambique - 9,854; Namibia - 4,582; Eswatini – 2,774; Botswana – 220; Lesotho – 191; Madagascar – 13. UNHCR, Refugees and asylum seekers from DRC, DRC Situation Update, 31 March 2020 https://data2.unhcr.org/en/situations/drc, accessed 24 April 2020.*

[407] *Communication from UNHCR Southern Africa bureau, 21 April 2020.*

[408] *Burundi Situation Update, 31 March 2020, https://data2.unhcr.org/en/situations/burundi, accessed 24 April 2020*

[409] *UNHCR, Southern Africa Region Fact Sheet, March 2020 http://reporting.unhcr.org/sites/default/files/UNHCR%20RBSA%20fact%20sheet-March%202020_0.pdf*

[410] *See above: Naturalisation or recovery of nationality by long-term refugees and their descendants; additional information from Dignity Kwanza, Dar es Salaam.*

[411] *International Crisis Group, "Eastern Congo: Why Stabilisation Failed" (Brussels, October 2012).*

ceased circumstances clause has been invoked for refugees from Mozambique in 1996,[412] from Namibia's Caprivi Strip in 2002,[413] from Angola in 2012,[414] and Rwanda in 2013.[415] When this happens, UNHCR facilitates a tripartite agreement with the host and sending countries, and the return of refugees, or the regularisation of their status in host countries for those who preferred to remain.

Naturalisations of former refugees remain rare (with the exception of the naturalisation of Burundians in Tanzania; see above: Naturalisation or recovery of nationality by long-term refugees and their descendants). While the laws of many countries in principle allow for the naturalisation of refugees and stateless persons on the same or similar terms as other foreigners (see above: Acquisition of nationality by naturalisation or registration), naturalisation can be very difficult to access in practice. Their children born in the country of refuge are at very high risk of statelessness, unless there are effective rights to acquire nationality based on birth in the territory.

Refugees from Mozambique's civil war still remain in neighbouring countries, and 3,000 living in long-term camps in Malawi are still awaiting repatriation.[416] In other countries, however, the Mozambicans were not encamped, and the refugees are often hard to distinguish from other migrants. Mozambique supplied many thousands of workers to South Africa during the apartheid era, and to Tanzania and Kenya while they were under British rule. While the newly democratic South African government that took office in 1994 provided a series of amnesties by which migrant workers and refugees could obtain permanent residence in South Africa many remain without citizenship[417]; in Tanzania many regarded themselves as having become Tanzanian citizens by the public pronouncements of President Julius Nyerere, their current status is not certain.[418] In 2011, UNHCR identified a group of several hundred people of Mozambican origin "returned" from Zimbabwe who were stateless, with neither nationality recognised, and launched a project to assist the Mozambican authorities in an exercise to identify and provide documentation to Mozambican migrants and their children in South Africa and other neighbouring countries.[419]

Former Angolan refugees in South Africa have struggled to secure anything more than short-term residence permits. Approximately 3,000 registered Angolan refugees were living in South Africa on cessation of their refugee status in April 2013 (out of more than 16,000 total Angolans in the country).[420] Many had been

[412] *UNHCR, Applicability of the Cessation Clauses to Refugees from the Republics of Malawi and Mozambique, 31 December 1996, available at: https://www.refworld.org/docid/4165775d4.html.*

[413] *Delphine Marie, "UNHCR starts repatriating Namibian refugees in Botswana", UNHCR, 13 August 2002.*

[414] *UNHCR, Implementation of the Comprehensive Strategy for the Angolan Refugee Situation, including UNHCR's recommendations on the applicability of the "ceased circumstances" cessation clauses, 15 January 2012, available at: https://www.refworld.org/docid/4f3395972.html.*

[415] *The Rwandan decision was controversial. See: "Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the 'ceased circumstances' Cessation Clauses", UNHCR, 31 December 2011; Rwanda: Cessation of Refugee Status is Unwarranted: Memorandum of Fact and Law, FAHAMU, 22 September 2011; Barbara Harrell-Bond and Guillaume Cliche-Rivard, "Rwandan refugees face no choice but repatriation", OpenDemocracy.Net. 10 May 2012; "No consensus on implementation of cessation clause for Rwandan refugees" IRIN, 12 July 2013. See also, Lindsey N Kingston, "Bringing Rwandan Refugees "Home": The Cessation Clause, Statelessness, and Forced Repatriation", International Journal of Refugee Law 29, no. 3 (2017): 417–37, https://doi.org/10.1093/ijrl/eex030.*

[416] *UNHCR country page on Malawi, https://www.unhcr.org/uk/malawi.html (as last updated 18 June 2018; accessed 21 January 2020).*

[417] *Manby, Citizenship in Africa, chap. 9.3. See also above: Naturalisation or recovery of nationality by long-term refugees and their descendants.*

[418] *Manby, "Citizenship and Statelessness in the East African Community"; Manby, Citizenship in Africa, chap. 7.3 & 9.3.*

[419] *UNHCR, "Fighting Statelessness: Findings in Mozambique", 2011.*

[420] *Sergio Carciotto, "Angolan Refugees in South Africa: Alternatives to Permanent Repatriation?", African Human Mobility Review 2, no. 1 (2016): 362–82.*

resident for close to two decades, with children born in South Africa and a significant level of integration in the local economy and society, using South African languages at home.[421] The Department of Home Affairs did not, however, offer naturalisation, at first issuing two-year temporary residence permits to around 2,200 applicants.[422] When these expired in 2015, a year of negotiations and litigation by the Scalabrini Centre of Cape Town culminated in a court order that the Department of Home Affairs should consider applications for permanent residence from the former refugees.[423] In July 2017, Home Affairs announced that an "Angolan Special Permit" would grant rights equivalent to permanent residence for a period of four years, and permits began to be issued in 2018, reaching some 1,200 of the ex-refugees (just over 70 percent of those who applied). However, the permits expire in 2021, and were stated to be non-renewable, with no clarity about access to permanent residence or citizenship on expiry, or the status of those whose applications were unsuccessful.[424] When the cessation clause was adopted there was an agreement that the Angolan embassy would issue passports to former refugees, but the embassy will not now renew the passports issued under this exceptional procedure. Many of the former refugees thus lack an Angolan passport in which a residence permit can be stamped.

Botswana's national legislation, the 1967 Refugee (Recognition and Control) Act, specifically provides that a refugee is not regarded as being "ordinarily resident" in Botswana – and thus excludes refugees in Botswana from normal naturalisation procedures.[425] As a limited exception, however, the 2003 tripartite agreement for the repatriation of Angolan refugees provided for 850 recognised refugees not wishing to return to Angola to have the right to apply for citizenship, though only 183 were reported to have been naturalised as a result of this offer in 2006.[426] In 2019, Botswana's Court of Appeal delivered a decision on 709 former Namibian refugees who fled violence in the Caprivi strip in the late 1990s, living in the Dukwi refugee camp, close to the border with Zimbabwe. It was agreed between Botswana, Namibia and UNHCR in 2015 that the refugee status of this population no longer existed, and it was safe for them to return. In September 2019, Botswana's Court of Appeal ruled that they could be deported.[427] Amnesty International expressed its concern about the nationality status of the children born in Botswana, who are not recognised as Botswanan citizens, but could be exposed to statelessness if Namibian citizenship is not confirmed.[428] Meanwhile, many of those who fled from Angola to Namibia and have lived in Namibia for decades may not be recognised as citizens of either country.[429] A consultation mission led by the Namibian government in

[421] *Lotte Manicom, "'Angola Is Just a Picture in My Mind': Research on the Integration and Future Plans of Angolans Affected by the Cessation" (Cape Town: Scalabrini Centre, 15 April 2015); Julia Sloth-Nielsen and Denise Ackermann, "Foreign Children in Care in the Western Cape Province" (Cape Town: Scalabrini Centre, September 2015).*

[422] *"Loss of refugee status leaves many Angolans undocumented in South Africa", IRIN, 10 September 2013; "Angolan Refugee Cessation: A cauldron of special circumstances", Legal Resources Centre, 12 September 2013; "Statement on the Angolan cessation clause: former refugees from Angola face deportation as temporary permits expire", Lawyers for Human Rights, 17 September 2015.*

[423] *"Angolan Cessation Press Release" Scalabrini Centre, 17 November 2016 ; "Angolan ex-refugees given chance to apply for residency in South Africa", Legal Resources Centre, 21 November 2016.*

[424] *"Home Affairs grants residency to majority of Angolan former refugees", Scalabrini Centre, 10 July 2017; "A mixture of relief and fear as Angolan former refugees are issued new permits", Scalabrini Centre, 29 May 2018.*

[425] *Refugees (Recognition and Control) Act, 1968, Laws of Botswana, chapter 25:01, sec. 13.*

[426] *"Botswana/Angola sign repatriation deal", Mmegi, 6 June 2003; "183 Angolan refugees get citizenship," Government of Botswana Daily News Online, 2 November 2006.*

[427] *Carmel Rickard "Concern over impact of Botswana's appeal decision on 'refugees'", blog, 14 September 2019 http://carmelrickard.co.za/concern-over-impact-of-botswanas-appeal-decision-on-refugees/*

[428] *"Botswana: Caprivi refugees should not be forced to return home", Amnesty International, 11 July 2018.*

[429] *Michael Liswaniso, "Some Opuwo Residents Stateless", New Era, 9 April 2009.*

2019 generally identified statelessness as a risk in many border areas, including among refugees (recognised or unrecognised), where lack of identity documents prevented birth registration over multiple generations.[430]

Even those refugees returning to Angola, as well as the internally displaced, have had difficulties getting recognition of their Angolan nationality in the absence of any existing documents.[431] Refugees returning from DRC, and their children born in DRC, have in some cases found it difficult to have their nationality recognised.[432] The internally displaced who never left the country have faced problems in establishing their identity.[433] The Angolan Government established "11 Commitments for Children", which include birth registration[434], though there are still many difficulties in practice, including for returned refugees and their children. Some returnees remained without any documentation, most importantly the *cedula pessoal*, or "personal record", equivalent to a birth certificate, that ensures access to schooling for children, and other rights, and is the basis for issue of a passport or identity card.

Both Angola and Mozambique also host refugees, mostly from the Democratic Republic of Congo (DRC): just under 70,000 in Angola, and 25,000 in Mozambique.[435] UNHCR has advocated for the naturalisation in Angola of a group of up to 15,000 refugees from Katanga Province of the DRC who have lived in Angola for more than three decades.[436] In Mozambique, the 1991 Refugee Act provides for naturalisation of refugees on the same terms as other foreigners.[437] There has been no effort to facilitate naturalisation for refugees in Mozambique in practice; however, children of refugees are eligible for Mozambican nationality based on birth in Mozambique, in line with the general nationality law (see above: Jus soli, double jus soli, and birth + residence).[438]

UNHCR has sought to promote legal solutions for children born in the DRC of Angolan parents, or of mixed Angolan and Congolese parentage who have been denied recognition as Congolese nationals despite nationality legislation granting citizenship of the DRC to a child with one Congolese parent. A verification exercise conducted by UNHCR with the Congolese and Angolan governments in 2014 recorded more than 56,000 Angolan former refugees in DRC, of whom eighteen thousand opted for local integration and the remainder to return to Angola. An Angolan government registration team sent to DRC to provide the former

[430] *Ministry of Home Affairs and Immigration, Report of the Regional Consultative Meetings on Statelessness from the 3rd June to 26th July 2019.*

[431] *Human Rights Watch, Struggling through Peace: Return and Resettlement in Angola, August 2003; Jerónimo, "Report on Citizenship Law: Angola".*

[432] *See Evaluation of UNHCR's returnee reintegration programme in Angola, August 2008.*

[433] *Human Rights Watch, "Struggling through Peace"; Jeff Crisp, José Riera, and Raquel Freitas, "Evaluation of UNHCR's Returnee Reintegration Programme in Angola" (UNHCR, August 2008).*

[434] *Steve Felton, "With free birth registration, Angola promotes a child's right to legal identity", UNICEF, 10 August 2010, available at http://www.unicef.org/infobycountry/angola_55501.htmlhttp://www.unicef.org/infobycountry/angola_55501.html accessed 29 September 2011.*

[435] *See UNHCR Operational Portal at https://data2.unhcr.org/en/countries/.*

[436] *Jack Redden, Harriet Martin, "Thirty years on, UNHCR seeks full integration for Congolese refugees in Angola", UNHCR, 21 March 2006; UNHCR, Regional Operations Profile for Southern Africa, 2011; quoted in Manby, "Statelessness in Southern Africa".*

[437] *Lei nº. 21/91 de 31 de Dezembro, art. 12.*

[438] *UNHCR Regional Bureau for Southern Africa reports that the right under the law of children of refugees born in Mozambique to Mozambican nationality has been recognized by issue of national identity cards.*

refugees with Angolan documentation was suspended while many thousand people were still without ID documents.[439]

Stateless Angolan-Congolese asylum seekers

Silvano Kimata was born in DRC. His father was an Angolan refugee and his mother was Congolese; Silvano was registered as an Angolan refugee by the Congolese *Commission Nationale de Refugiés* and by UNHCR DRC. He grew up, studied and worked in DRC. He married a woman also born in Congo of a Congolese mother and Angolan father, but with no documentation as a refugee or Congolese national. They had three children born in DRC.
In 2015, the family decided to take up the offer of assistance from UNHCR to leave DRC and move to Angola, after they were harassed by other Congolese to return to their country of origin. They completed the necessary formalities, which registered them both as Angolan nationals, and arrived in Malanje (Angola) in September 2015.

However, they were not able to speak Portuguese nor the local language (Kimbundu), although Silvano's father had been Mbundu. Local people told them to go back to DRC, saying they were Congolese and not Angolans. Silvano applied for recognition of Angolan nationality, but his application was rejected by the Angolan Ministry of Justice. They remained in Angola for four years, during which time they had another child, but the older children could not attend school. In 2019, Silvano was detained by two immigration officials seeking money; his wife was raped by the officials when they met her to collect the money.
The family decided to leave Angola and seek asylum in Namibia where they arrived in September 2019.

Case study from UNHCR; names have been changed

Separated child of Rwandan refugees

In the late nineties, Anna was less than a year old when her Rwandan parents sought asylum in Mozambique. She grew up in Maputo until 2010, when her mother was arrested for the murder of her father after suffering years of domestic abuse. Anna was brought to South Africa by a relative, who had claimed asylum in the Republic. Anna has no documentary proof of her birth, she has no proof of her residence in Mozambique and she has lost contact with her mother, who is serving a life sentence in a Mozambican jail. Anna cannot derive asylum seeker status from her aunt, as there is not a sufficient link of dependency. She has no recollection of Rwanda, nor does she speak the language. Her paternal family has rejected her and her siblings. To date she has spent 7 of her formative years in South Africa and considers this to be her home. Anna has nowhere to go and there is no clear pathway to documentation or a claim to nationality. Anna is at high risk of statelessness.
Case study from: Marilize Ackermann, Unaccompanied and Separated Foreign Children in the Western Cape, South Africa, Scalabrini Centre of Cape Town, September 2017

[439] *Michael Offermann, "Statelessness and risks of statelessness in Angola and for Angolans", forthcoming report for UNHCR, draft June 2020.*

Impacts of statelessness

Statelessness can have a terrible impact on the lives of individuals. Possession of a nationality, and official recognition of that nationality, is essential for full participation in society and the enjoyment of the full range of human rights. Although international human rights treaties allow for some rights to be limited to nationals, in particular the right to vote and stand for public office, most rights are to be enjoyed by all human beings. In practice, however, many rights of stateless people are violated—they may be detained because they are stateless; they can be denied re-entry to or expelled from the country where they live; and they can be denied access to education and health services or blocked from obtaining employment.

As the African Committee of Experts on the Rights and Welfare of the Child emphasised in the case of children:

> *[T]he African Committee cannot overemphasise the overall negative impact of statelessness on children. While it is always no fault of their own, stateless children often inherit an uncertain future. For instance, they might fail to benefit from protections and constitutional rights granted by the State. These include difficulty to travel freely, difficulty in accessing justice procedures when necessary, as well as the challenge of finding oneself in a legal limbo vulnerable to expulsion from their home country. Statelessness is particularly devastating to children in the realisation of their socio-economic rights such as access to health care, and access to education. In sum, being stateless as a child is generally the antithesis to the best interests of children.*[440]

The impacts of lack of documentation have been most extensively reported in South Africa within the region. A particular focus of has been the impact of lack of birth registration on exclusion from school,[441] including a position paper by the South African Human Rights Commission.[442] In December 2019 the High Court ruled that a government circular requiring the national identity numbers of children to be provided for them to be able to enrol was unconstitutional: denying children access to education on the basis of their documentation status, constituted unfair discrimination under the constitutional right to equality.[443]

Similar impacts are reported in Zimbabwe. During 2019 the Zimbabwe Human Rights Commission (ZHRC) held hearings throughout the country about problems in accessing documentation.[444] The ZHRC report was published as this report was being finalised. Its findings highlighted concerns about discrimination based on gender and marital status in relation to registration of births and that "children born to parents of indeterminate nationality have been denied the right to be registered at birth in Zimbabwe."[445] The

[440] *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v. the Government of Kenya, Communication 02/2009, African Committee of Experts on the Rights and Welfare of the Child, Decision of 22 March 2011.*

[441] *Sandisiwe Shoba, "No papers, no rights: The plight of undocumented foreign children in SA", Daily Maverick, 7 August 2019; Kathryn Cleary, "Landmark education case will have an impact on undocumented learners", Daily Maverick (South Africa), 19 September 2019; Bongekile Macupe "Schools expel children with no IDs" Mail & Guardian, 20 September 2019; Alison Misselhorn, "Children without documentation are denied their basic rights" Mail & Guardian, 27 September 2019.*

[442] *"Position Paper: Access to a Basic Education for Undocumented Learners in South Africa", South African Human Rights Commission, September 2019 https://www.sahrc.org.za/home/21/files/SAHRC%20Position%20Paper%20on%20Access%20to%20a%20Basic%20Education%20for%20Undocumented%20Learners%20in%20South%20Africa%20-%2012092019.pdf.*

[443] *Centre for Child Law and Others v Minister of Basic Education and Others, High Court of South Africa, Eastern Cape Division (Grahamstown), (2840/2017) [2019] ZAECGHC 126, Judgment of 12 December 2019.*

[444] *Statement on the Launch of the National Inquiry into Issues around Access to Documentation in Zimbabwe,*

Zimbabwe Human Rights Commission, 20 March 2019 http://www.zhrc.org.zw/zimbabwe-human-rights-commission-statement-on-the-launch-of-the-national-inquiry-into-issues-around-access-to-documents-in-zimbabwe-20-march-2019/

[445] *Zimbabwe Human Rights Commission, "Access to Documentation in Zimbabwe", 50.*

Commission found that lack of birth registration and other identity documents resulted in denial of numerous rights enumerated in the constitution. Among the rights impacted were the rights to citizenship; to freedom of movement; to vote; to access social welfare, or education; to practice a trade or profession; to hold property; to a fair trial and freedom from arbitrary arrest and detention; to freedom of association; to administrative justice; to equality and non-discrimination; to marry and to be protected against child marriage; and to human dignity. The report stated that "affected people suffer low self-esteem and loss of dignity. They lack a sense of their belonging to Zimbabwe and to their local communities. They feel that they are not equal human beings."[446] The Zimbabwe Parliament has also heard reports about the ways in which lack of access to primary documents deprived citizens of education beyond primary school.[447]

Perhaps the most serious impact of statelessness – and lack of valid identity documents more generally – is the risk of arbitrary expulsion. Within the past decade both Tanzania and Angola have conducted operations to expel *en masse* large numbers of people alleged to be in the country with irregular status. The African Charter on Human and Peoples' Rights explicitly forbids such actions.[448] Several tens of thousands of people were expelled during Tanzania's "Operation Kimbunga" launched in September 2013. Among the concerns about the operations was that the arbitrary and discriminatory way in which people are identified as "foreigners" means that some of those expelled claimed to be citizens of Tanzania, and others were not accepted as nationals by the country to which they were expelled.[449] In Angola, the artisanal mining industry has attracted large numbers of migrants from neighbouring DRC, and it is often unclear if an individual or family is Congolese or Angolan or both (or neither).[450] The African Commission on Human and Peoples' Rights has in the past condemned expulsions of these workers from the country.[451] Nevertheless, during 2019 Angola once again expelled more than 43,000 people from Lunda Nord province, among whom 83% held no document of any kind, making their nationality uncertain. More than 6,000 of these were Congolese refugees or asylum seekers in Angola, or former Angolan refugees in DRC – and more than 2,000 claimed to be Angolan.[452]

[446] *Zimbabwe Human Rights Commission, 43–46.*

[447] *Report on The Gwanda Community Youth Development Trust Petition on Access to Primary Documents, Parliamentary Portfolio Committee on Defence, Home Affairs and Security, Zimbabwe, 27 August 2019.*

[448] *African Charter on Human and Peoples' Rights Art. 12(5).*

[449] *See for example, "Expelled immigrants stranded as 'countries of origin' deny their citizenship", The East African, 21 September 2013; Legal and Human Rights Centre and Zanzibar Legal Services Centre, Tanzania Human Rights Report 2013, March 2014; and discussion in Manby, "Citizenship and Statelessness in the East African Community".*

[450] *Jean-Michel Mabeko-Tali, "« Congolenses », « Congoleses », « Zairenses » : L'immigration centr-africaine et la problématique identitaire angolaise", in Etre étranger et migrant en Afrique au XXe siècle: enjeux identitaires et modes d'insertion, ed. Catherine Coquery-Vidrovitch et al., vol. 1 (Paris: L'Harmattan, 2003), 189–206.*

[451] *Communication No. 159/96, Union Interafricaine des Droits de l'Homme and Others v. Angola (1997); Communication 292/2004, Institute for Human Rights and Development in Africa v. Angola (2008).*

[452] *Michael Offermann, "Statelessness and risks of statelessness in Angola and for Angolans", forthcoming report for UNHCR, draft June 2020; "Résultats du profilage des expulsés d'Angola au 28 juin 2019", UNHCR République Démocratique du Congo, https://data2.unhcr.org/en/documents/download/70691.*

International and African law

The right to a nationality in international law

Some protections against statelessness are amongst the longest standing provisions established by multilateral agreement in international law. The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, adopted in 1930 under the auspices of the League of Nations, was intended to ensure that each person had a nationality (at that time, just one nationality), and was the first to codify the protections against statelessness for children of unknown parents or whose parents were of unknown nationality or stateless.[453]

The Hague Convention, which remains in force, was ratified by the United Kingdom on behalf of Great Britain and Northern Ireland and "and all parts of the British Empire which are not separate members of the League of Nations". Belgium acceded in 1939 "Subject to accession later for the Colony of the Congo and the Mandated Territories". France only signed, as did South Africa, which has not moved from signature to accession. Under international law, a newly independent state is not automatically bound by treaties in force for that territory upon succession of states, but may by "notification of succession, establish its status as a party to any multilateral treaty".[454] In Southern Africa, Eswatini (1970), Lesotho (1975), Mauritius (1969), and Zimbabwe (1998) have all notified the UN of their succession to the obligations of The Hague Convention.[455] There are, however, strong arguments that "clean slate" rule should not apply to human rights treaties.[456] The provisions of The Hague Convention that relate to the prevention of statelessness fall within the scope of what is now recognised as the right to a nationality, and they are therefore arguably applicable to all former British territories.

These principles have been strengthened with the institution of the international human rights regime following the second world war. Article 15 of the 1948 Universal Declaration of Human Rights provides that "(1) Everyone has the right to a nationality", and that "(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." This right has been elaborated upon in subsequent treaties, including the International Covenant on Civil and Political Rights (ICCPR), Article 24,[457] and the Convention on the Rights of the Child (CRC), which provides in Articles 7 and 8 for every child to have the right to birth registration and to acquire a nationality, and for states to ensure the implementation of these rights, in

[453] *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930.*

Article 14: "A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known. A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found."

Article 15: : "Where the nationality of a State is not acquired automatically by reason of birth on its territory, a child born on the territory of that State of parents having no nationality, or of unknown nationality, may obtain the nationality of the said State. The law of that State shall determine the conditions governing the acquisition of its nationality in such cases."

[454] *Vienna Convention on Succession of States in respect of Treaties, 1978, arts. 16 & 17.*

[455] *Status of The Hague Convention, at UN Treaty Collection*

https://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=517&chapter=30&clang=_en#7.

[456] *Menno T. Kamminga, "State Succession in Respect of Human Rights Treaties", European Journal of International Law 7, no. 4 (1996): 469–48.*

[457] *ICCPR Art. 24: 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name.3. Every child has the right to acquire a nationality*

particular where the child would otherwise be stateless.[458] The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) also provides that "Each child of a migrant worker shall have the right to a name, to registration of birth and to a nationality" (Article 29).

In relation to non-discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires that women be granted equal rights with men in respect of transmission of nationality to their spouses and children.[459] The Convention on the Rights of Persons with Disabilities (CRPD) elaborates detailed rules on the rights of persons with disabilities to a nationality, on an equal basis with others.[460]

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires that enjoyment of the right to nationality be guaranteed to everyone "without distinction as to race, colour, or national or ethnic origin".[461] Recognising that some forms of discrimination are in fact the basis of nationality law, CERD also provides that "This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens". It also exempts "legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality".[462] The Committee responsible for monitoring compliance with CERD has adopted a General Recommendation providing guidance on the interpretation of these rules, including that states should "Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and … pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents".[463] In general, the trend in international law is to restrict such discrimination.[464]

[458] *Article 7: 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

Article 8: 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

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

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

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

[462] *CERD, Article 1(1) and 1(2).*

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

[464] *Peter J. Spiro, "A New International Law of Citizenship", American Journal of International Law 105, no. 4 (2011): 694–746, https://doi.org/10.5305/amerjintelaw.105.4.0694.*

The 1961 UN Convention on the Reduction of Statelessness, which entered into force in 1975, makes it a duty of states to prevent statelessness in nationality laws and practices. Article 1 mandates that "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless". Such nationality may be granted either at birth, by operation of law, or upon application, including at a date after birth (for example, at majority). The greatly preferred option, enshrined in Article 6(4) the African Charter on the Rights and Welfare of the Child (see below), is for nationality to be granted at birth by operation of law.

Nationality on Succession of States

State succession, when sovereignty over a territory is transferred from one state to another, creates well-recognised challenges in relation to determination of the legal membership of the successor states. Whether in the context of decolonisation in Africa, the break-up of federal territories, or the secession of a part of a state to form its own new country, the transfer of legal authority creates multiple opportunities for people caught between different rules to find themselves stateless.[465]

The basic presumption in customary international law on nationality in the context of state succession has usually been that nationality should follow habitual residence, "subject to a right in the new State to delimit more particularly who it will regard as its nationals".[466] This presumption is restated and strengthened by the comprehensive Draft Articles on Nationality of Natural Persons in Relation to the Succession of States adopted in 1999 by the International Law Commission.[467]
The Draft Articles state that:

> *Subject to the provisions of the present draft articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession. (Article 5)*

Further articles provide that states must take "all appropriate measures" to prevent statelessness arising from state succession (Article 4), and that persons shall not be denied the right to retain or acquire a nationality through discrimination "on any ground" (Article 15).

The presumption is that the nationality of a successor state will be attributed to persons on the basis of habitual residence in that state. But in addition, states "shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned." In particular, a state shall grant a right to opt for its nationality to persons who have an "appropriate connection" with that state — especially, but not only, if they would otherwise be stateless.[468]

[465] *Paul Weis, Nationality and Statelessness in International Law, 2nd ed. (Leiden: Brill, 1979), chap. 11; Ruth Donner, The Regulation of Nationality in International Law (Irvington-on-Hudson, N.Y: Transnational Publishers Inc., 1994), chap. V; Laura van Waas, Nationality Matters: Statelessness under International Law (Antwerp ; Portland: Intersentia, 2008), chap. VI; Francesco Costamagna, "Statelessness in the Context of State Succession: An Appraisal under International Law", in The Changing Role of Nationality in International Law, ed. Alessandra Annoni and Serena Forlati (Basingstoke: Routledge, 2013); Ineta Ziemele, "State succession and issues of nationality and statelessness", in Nationality and Statelessness under International Law, ed. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014).*

[466] *James Crawford, The Creation of States in International Law, 2. ed (Oxford: Clarendon Press, 2007), 53.*

[467] *International Law Commission, Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries, 1999 (Annex to UNGA Res. 55/153, 12 Dec. 2000).*

[468] *Ibid., Art. 11, commentary paragraph 10; Arts. 23 and 26. These principles also influenced the drafting of the 1997 European Convention on Nationality (Art.18) and the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.*

The General Assembly's 2011 resolution on the ILC Draft Articles, "Emphasized the value of the articles in providing guidance to the States dealing with issues of nationality of natural persons in relation to the succession of States, in particular concerning the avoidance of statelessness".[469] This would apply as much retrospectively, to the situation of those resident on the territory at the departure of the European powers, as to more recent state successions. In many cases, these legal frameworks did not provide protection against statelessness for those resident in the country at independence (see above: Transition to independence and initial frameworks of law).

Loss and deprivation of nationality

Under international law, nationality cannot be lost (by operation of law) or deprived (by executive action) except in restricted circumstances, and in accordance with due process of law. The foundation of these rules is Article 15 of the Universal Declaration of Human Rights, which provides that everyone has the right to a nationality, and that no one may be arbitrarily deprived of nationality.

Well established principles, as expressed in Article 9 of the 1961 Convention on the Reduction of Statelessness, forbid deprivation of nationality on racial, ethnic, religious, political or other discriminatory grounds and require that the individual affected should have the right to challenge such decisions through the regular courts.

The Convention on the Reduction of Statelessness also establishes more detailed rules. Article 8 states as a first principle that "A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless." The Convention does go on to provide some exceptions, including that deprivation of nationality may be permissible in case of misrepresentation or fraud, acts of disloyalty (which entail rendering services to or receiving emoluments from another State and conduct in a manner "seriously prejudicial to the vital interests of the State") and oaths and declarations of allegiance to another State.
Later human rights treaties and interpretations of these exceptions indicate that they should be restrictively interpreted, in particular by the application of rules of proportionality — the harm done by deprivation of citizenship balanced against the seriousness of the transgression alleged — and the requirement of due process. These requirements are summarised and emphasised by UNHCR's Guidelines on Statelessness No.5, on loss and deprivation of nationality, published in 2020.[470]

Only Lesotho and Mauritius provide complete protection in law against statelessness in case of deprivation of nationality, whereas Eswatini, Namibia, Seychelles, South Africa, and Zimbabwe provide partial protection (see above: Table 7: Loss or deprivation of citizenship). Due process protection against deprivation of nationality – or retroactive refusal to recognise nationality – is weak in many countries (see above: Judicial and other oversight of administrative decisions).

[469] *UN General Assembly Resolution 66/92, "Nationality of natural persons in relation to the succession of States", of 9 December 2011, "Decided that, upon the request of any State, it will revert to the question of nationality of natural persons in relation to the succession of States at an appropriate time, in the light of the development of State practice in those matters".*

[470] *UNHCR, "Guidelines on Statelessness No. 5".*

Naturalisation

Although the grant of nationality through naturalisation has historically been within the discretion of states, there have been moves towards reducing discretion. At the regional level, the European Convention requires a state to "provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory" (Article 6(3)), based on a maximum residence period of ten years, and for facilitated naturalisation for a range of categories of people, including spouses, children of people who have or acquire nationality, refugees and stateless persons.[471] In its guidelines on preventing statelessness among children, UNHCR notes that :

> *It follows from the factual character of "habitual residence" that in cases where it is difficult to determine whether an individual is habitually resident in one or another State, for example due to a nomadic way of life, such persons are to be considered as habitual residents in both States.*[472]

Some obligations are placed on states parties to the refugee conventions in relation to facilitating naturalisation of refugees and stateless persons. The 1951 UN Convention Relating to the Status of Refugees provides (Article 34) that states parties "shall as far as possible facilitate the assimilation and naturalisation of refugees", by such measures as expediting proceedings and reducing the costs of naturalisation. Similar provisions are included in the 1954 Convention relating to the Status of Stateless Person.[473] The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa requires (Article II.1) that countries of asylum should use their best endeavours to "secure the settlement" of refugees who are unable to return home. Both conventions require countries of asylum to issue travel documents to refugees. Almost all African countries are parties to the U.N. Refugee Convention,[474] and the great majority to the African Refugee Convention.[475] In line with these provisions, Tanzania has facilitated access to naturalisation for refugees, while Zambia has facilitated access to permanent residence, which would in due course provide for access to citizenship (see above: Naturalisation or recovery of nationality by long-term refugees and their descendants).

[471] *European Convention on Nationality Art. 6(4).*

[472] *UNHCR, Guidelines on Statelessness No. 4, para. 42.*

[473] *Convention relating to the Status of Stateless Persons, 1954, Art. 32.*

[474] *Excluding only Comoros, Eritrea, Libya, and Mauritius. Several countries have entered reservations to Article 34 of the UN Refugee Convention, including Botswana, Malawi, and Mozambique, indicating that they did not accept any obligation to grant more favourable naturalisation rights to refugees than to other foreigners. List of states parties available at the UN Treaty Collection website, together with reservations and declarations https://treaties.un.org/pages/Treaties.aspx?id=5&subid=A&lang=en last accessed 07 February 2020.*

[475] *Excluding Djibouti, Eritrea, Madagascar, Mauritius, Morocco, Namibia, Somalia, and São Tomé & Príncipe, as well as the SADR. All except for Morocco and SADR had signed but not ratified by end 2019. Status of ratifications available on the African Union website http://www.au.int/en/treaties, last accessed 07 February 2020.*

The right to a nationality in the African human rights regime

The African Charter on Human and Peoples' Rights and the jurisprudence of the African Commission

The African Charter on Human and Peoples' Rights has no explicit provision on nationality. However, many other articles are relevant, including the prohibition of discrimination and the right to equality before the law in general.[476] Despite the lack of an explicit provision on nationality in the African Charter, the African Commission has heard many cases that are founded on the denial or deprivation of nationality. Several of these cases have originated in southern Africa.

In these cases, the African Commission has held that Article 5 of the Charter, which provides that "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status", applies specifically to attempts to denationalise individuals and render them stateless, in light of the consequences that flow from statelessness.

In addition, the Commission has held that Article 7(1)(a), with its reference to "the right to an appeal to competent national organs", includes both the initial right to take a matter to court, as well as the right to appeal from a first instance decision to higher tribunals. In several cases relating to deportations or denial of nationality, the Commission has held that the fact that someone is not a citizen "by itself does not justify his deportation"; there must be a right to challenge expulsion on an individual basis.[477]

Founding its decisions on Articles 2 and 7 as well as Article 12, the Commission has ruled against Angola, Guinea and Zambia in cases relating to individual deportations or mass expulsions on the basis of ethnicity, commenting that mass expulsions "constitute a special violation of human rights."[478]

Thus, in the long-running case of John Modise, who spent years confined either to the South African "homeland" of Bophuthatswana or the no-man's land between South Africa and Botswana because of the Botswanan government's refusal to recognise his nationality from birth, the Commission found against the Botswanan government and ruled, among other conclusions, that Modise's "personal suffering and indignity" violated Article 5 of the African Charter.[479] Similarly, in *Amnesty International v. Zambia*, the Commission considered the deportations of William Banda and John Chinula from Zambia to Malawi and found that "[b]y forcing [the complainants] to live as stateless persons under degrading conditions, the

[476] *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in 2003, contains strong anti-discrimination measures, but allows national law to override the non-discrimination presumptions of the treaty in relation to passing citizenship to children, and does not provide for the right of a woman to pass citizenship to her husband. See Art. 6 (g): a woman shall have the right to retain her nationality or to acquire the nationality of her husband; (h) a woman and a man shall have equal rights with respect to the nationality of their children, except where this is contrary to a provision in national legislation or is contrary to national security interests.*

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

[478] *Union Interafricaine des Droits de l'Homme and Others v. Angola, paragraph 16. See also Communication No. 292/2004, Institute for Human Rights and Development in Africa v. Angola (2008); Rencontre Africaine pour la Défense des Droits de l'Homme v. Zambia; Communication No. 249/02, Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea (2004).*

[479] *Modise v. Botswana, Communication No.97/93, African Commission on Human and Peoples' Rights, 2000, para. 91.*

[Zambian] government . . . [had] deprived them of their family and [was] depriving their families of the men's support, and this constitutes a violation of the dignity of a human being, thereby violating Article 5."[480]

In the case of former president Kenneth Kaunda of Zambia, the African Commission found against the Zambian government's constitutional amendment that required anyone who wanted to compete for the presidency to prove that both parents were Zambians from birth, and ruled that the provision violated Articles 2, 3, and 13 (non-discrimination, equality before the law, and participation in public life). The Commission stated, in relation to the status of pre-independence migrants:

> *[T]he movement of people in what had been the Central African Federation (now the States of Malawi, Zambia and Zimbabwe) was free and ... by Zambia's own admission, all such residents were, upon application, granted the citizenship of Zambia at independence. Rights which have been enjoyed for over 30 years cannot be lightly taken away. To suggest that an indigenous Zambian is one who was born and whose parents were born in what came (later) to be known as the sovereign territory of the State of Zambia may be arbitrary and its application of retrospectivity cannot be justifiable according to the Charter.*[481]

More recently, the African Commission considered the provisions in the 2000 constitution of Côte d'Ivoire requiring a candidate for the presidency both to be Ivorian from birth him or herself and for both parents also to be Ivorian from birth. The Commission found the provisions "unreasonable and unjustifiable, and [...] an unnecessary restriction on the right to participate in government" as well as "discriminatory because it applies different standards to the same categories of persons, that is persons born in Côte d'Ivoire, who are now treated based on the places of origin of their parents".[482]

In 2015, in a decision adopted in relation to the Nubian community in Kenya, the Commission reaffirmed that:

> *[N]ationality is intricately linked to an individual's juridical personality and that denial of access to identity documents which entitles an individual to enjoy rights associated with citizenship violates an individual's right to the recognition of his juridical personality. The Commission considers that a claim to citizenship or nationality as a legal status is protected under Article 5 of the Charter.*[483]

In April 2013, the African Commission on Human and Peoples' Rights adopted a resolution which reaffirmed the right to a nationality as implied within Article 5 of the Charter.[484] A year later, the Commission formally approved a study on nationality prepared in accordance with this resolution[485] and decided to draft a protocol to the Charter on the right to a nationality for adoption by heads of state.[486] In July 2015, in accordance with its resolutions of the previous two years, and following expert meetings to draft the text,

[480] *Amnesty International v. Zambia, Communication No. 212/98, African Commission on Human and Peoples' Rights, 1999, para. 50.*

[481] ***Legal Resources Foundation v. Zambia,*** *Communication No.211/98, African Commission on Human and Peoples' Rights,* ***2001,*** *para 71.*

[482] *Mouvement ivoirien des droits humains (MIDH) v. Côte d'Ivoire, Communication No. 246/02, African Commission on Human and Peoples' Rights, 2008.*

[483] *The Nubian Community v. Kenya, Communication No. 317/06, African Commission on Human and Peoples' Rights (2015).*

[484] *Resolution No. 234 on the Right to Nationality, adopted at the 53rd Ordinary Session 9-23 April 2013.*

[485] *The Right to Nationality in Africa, Study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, pursuant to Resolution 234 of April 2013 and approved by the Commission at its 55th Ordinary Session, 28 April – 12 May 2014.*

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

the African Commission on Human and Peoples' Rights adopted the text of a draft Protocol on the Specific Aspects of the Right to Nationality and the Eradication of Statelessness in Africa, for consideration by the other institutions of the African Union. The proposal for a protocol was accepted by the Executive Council of the African Union during the July 2016 AU summit in Kigali, Rwanda;[487] following discussion by state experts, a modified draft text was adopted by the AU's Specialised Technical Committee on Migration, Refugees and Displaced Persons in late 2018.[488]

African Charter on the Rights and Welfare of the Child and the jurisprudence of the African Committee of Experts

The African Charter on the Rights and Welfare of the Child (ACRWC) provides in Article 6, in language similar to the CRC, for every child to have the right to acquire a nationality. Article 6(4) then adds a specific protection against statelessness drawn from the 1961 Convention on the Reduction of Statelessness, providing that:

> *"States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognizes the principles according to which a child shall acquire the nationality of the State in the territory of which he [sic] has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."*[489]

The African Committee of Experts on the Rights and Welfare of the Child has adopted a General Comment on Article 6, providing detailed guidance on the obligations of states in relation to birth registration and the reduction of statelessness.[490]

The very first decision on the merits of a communication to the African Committee of Experts on the Rights and Welfare of the Child, issued in 2011, concerns the nationality of children of Nubian descent born in Kenya. The Committee of Experts found the Kenyan state in violation of its obligations under Article 6 of the African Charter on the Rights and Welfare of the Child, despite the reforms of the new 2010 constitution, since it does not provide that children born in Kenya of stateless parents or who would otherwise be stateless acquire Kenyan nationality at birth.[491]
The Committee held that:

> *[A]s much as possible, children should have a nationality beginning from birth. [...] Moreover, by definition, a child is a person below the age of 18 (Article 2 of the African Children's Charter), and the practice of making children wait until they turn 18 years of*

[487] *Decision on the Report of the Activities of the African Commission on Human and Peoples' Rights (ACHPR), Doc. EX.CL/968(XXIX), 15 July 2016, paragraph 5.*

[488] *Report of the Specialized Technical Committee (STC) on Migration, Refugees and Displaced Persons, submitted to the 34th ordinary session of the AU Executive Council, 7 – 8 February 2019, EX.CL/1107(XXXIV), on an extraordinary session held 2-3 November 2018 in Malabo (Equatorial Guinea) on the theme : "Overcoming the challenges of statelessness, forced displacement and free movement of persons in Africa", African Union, 7 February 2019.*

[489] *African Charter on the Rights and Welfare of the Child, Art. 6.*

[490] *African Committee of Experts on the Rights and Welfare of the Child, "General Comment No. 2: Right to a Name, Birth Registration and a Nationality (Art. 6)" (Addis Ababa: African Union, 2014).*

[491] *Institute for Human Rights and Development in Africa and Open Society Justice Initiative on behalf of Children of Nubian Descent in Kenya, Communication No. 002/2009, African Committee of Expert on the Rights and Welfare of the Child, 2011, paragraph 53 (the "Kenyan Nubian Children's case").*

> *age to apply to acquire a nationality cannot be seen as an effort on the part of the State Party to comply with its children's rights obligations.*[492]

In 2018, the African Committee of Experts issued a decision in a complaint against Sudan on behalf of Iman Hassan Benjamin by the African Centre of Justice and Peace Studies (ACJPS), Kampala and the People's Legal Aid Centre (PLACE), Khartoum. Ms Benjamin was the daughter of parents who were both Sudanese before the secession of South Sudan. She was denied a national identity number (and also entry to university) on the grounds that her father, who died before South Sudan attained independence, would have acquired the nationality of South Sudan when the new state was created. The African Committee of Experts found Sudan in violation of its obligations under article 3 of the African Children's Charter prohibiting discrimination, and articles 6(3) and 6(4) on the right to nationality and prevention of statelessness, as well as article 11 on the right to education.[493]

The African Court on Human and Peoples' Rights

The African Court on Human and People's Rights has affirmed the view of the African Commission that the right to nationality is implied within the protection of legal status under Article 5 of the Charter, and asserted that the prohibition of arbitrary deprivation of nationality under Article 15 of the Universal Declaration of Human Rights is part of customary international law, binding on all states. In both cases, it considered that arbitrary denial of nationality, in case of a person previously recognised as a national, constitutes arbitrary deprivation.

In March 2018, the African Court on Human and Peoples' Rights handed down judgment in the case of *Anudo Ochieng Anudo v. Tanzania*. The Court found Tanzania to be in violation of numerous human rights obligations, especially in relation to the application of due process of law. It ruled that Tanzania had unlawfully rendered Anudo stateless, by confiscating his passport and expelling him to Kenya, and that:

> *[S]ince the Respondent State is contesting the Applicant's nationality held since his birth on the basis of legal documents established by the Respondent State itself, the burden is on the Respondent state to prove the contrary.*[494]

In relation to provisions in the Citizenship Act excluding court review, it decided that:

> *The Court notes further that the Tanzanian Citizenship Act contains gaps in as much as it does not allow citizens by birth to exercise judicial remedy where their nationality is challenged as required by international law. It is the opinion of the Court that the Respondent State has the obligation to fill the said gaps.*[495]

[492] *Kenyan Nubian Children's case, paragraph 42.*

[493] *African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE) v. the Government of Republic of Sudan, Comm. 005/Com/001/2015, African Committee of Experts on the Rights and Welfare of the Child, 2018. See also "ACJPS/PLACE submit complaint to the African Committee of Experts on the Rights and Welfare of the Child (ACEWRC)", International Refugee Rights Initiative and Citizenship Rights in Africa Initiative newsletter, 20 October 2015.*

[494] *Anudo Ochieng Anudo v. United Republic of Tanzania, App. No. 012/2015, African Court of Human and Peoples' Rights, Judgment of 22 March 2018, para. 80. For commentary, see Bronwen Manby, "Case Note: Anudo Ochieng Anudo v Tanzania (Judgment) (African Court on Human and Peoples' Rights, App No 012/2015, 22 March 2018)", Statelessness and Citizenship Review 1, no. 1 (2019): 170–176.*

[495] *Ibid., paras. 115 and 116.*

The Court equally condemned similar provisions in the Immigration Act. Accordingly, the Court: "order[ed] the Respondent State to amend its legislation to provide individuals with judicial remedies in the event of dispute over their citizenship."[496]

In 2019, the Court issued a judgment in another case against Tanzania, brought on behalf of Robert John Penessis, who had been sentenced to two years' imprisonment for "illegal presence" in Tanzania, although he claimed to be Tanzanian and held a Tanzanian passport. The Court confirmed the findings of the Anudo case that the right to nationality established by the Universal Declaration of Human Rights has acquired the status of a rule of customary international law, and that since the right to nationality is a fundamental aspect of the dignity of the human person, the expression "legal status" under Article 5 of the Charter necessarily encompasses the right to nationality. It also confirmed that, once a prima facie case is shown that a person is a national (through possession of identity documents issued by the State), the burden shifts to the State to prove otherwise.[497]

Birth registration and legal identity

The importance of birth registration to the right to a nationality is reflected in the fact that birth registration is included within same articles as the right to a nationality in the treaties listed above.[498] General Comments interpreting the treaties also emphasise the importance of birth registration for the rights of children.[499]

The Convention on the Rights of the Child adds the additional obligation for states to protect the right of a child to "preserve his or her identity, including nationality, name and family relations", and to provide assistance to re-establish a child's identity where it has been illegally deprived.[500] This provision implies within it the obligation for states to establish the nationality of a child where this is unknown – and not, for example, simply to state that the child is not a national of the country of birth.

The African Charter on the Rights and Welfare of the Child also includes the right to birth registration "immediately after birth" within the same article providing for the right to a nationality. The General Comment adopted by the Committee of Experts sets out the obligations of states in detail.[501]

[496] *Ibid., para. 132 (viii).*

[497] *Robert John Penessis v. United Republic of Tanzania, App. No. 013/2015, African Court on Human and Peoples' Rights, Judgment of 28 November 2019. For commentary, see Bronwen Manby and Clement Bernardo Mubanga, "Case Note: Robert John Penessis v United Republic of Tanzania (Judgement) (African Court on Human and Peoples' Rights, App No.013/2015, 28 November 2019)", Statelessness and Citizenship Review 2, no. 1 (2020): 172–178.*

[498] *Convention on the Rights of the Child, art. 7; International Covenant on Civil and Political Rights, art. 24; Convention on the Rights of Migrant Workers and Members of their Families, art. 29; Convention on the Rights of Persons with Disabilities, art. 18.*

[499] *For example: Joint General Comment CMW No. 4 & CRC No.23 (2017): Obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return; General Comment No. 21 (2017): Children in street situations; General Comment No. 7 (2005): implementing child rights in early childhood.*

[500] *Convention on the Rights of the Child, art. 8.*

[501] *African Committee of Experts on the Rights and Welfare of the Child, "General Comment on Article 6".*

Obligations for the issue of identity documents, including birth registration, apply equally to refugees and internally displaced persons, under both international and African law.[502]

The Sustainable Development Goals, endorsed by the UN General Assembly in 2015, included within Goal 16 the commitment in Target 16.9 to "provide legal identity for all, including birth registration" by 2030. While the meaning of "legal identity" has been somewhat unclear, the UN has adopted a definition that links proof of legal identity to a civil registration system.[503]

A series of conferences of African Ministers responsible for civil registration has adopted ministerial declarations confirming the commitment of African states to fulfilling these obligations and achieving universal birth registration.[504]

Regional standards and initiatives

The Southern Africa Development Community (SADC) has not advanced as far some other regions in Africa in committing to end statelessness.[505] However, several SADC members are also members of the International Conference on the Great Lakes Region (ICGLR), which in 2017 adopted a declaration and plan of action on the eradication of statelessness. A number of SADC member states have also made individual commitments in the context of UNHCR's campaign to end statelessness by 2024.

The Southern African Development Community

The SADC Treaty of 1992 establishes that SADC and its Member states shall act in accordance with principles that include "human rights, democracy and the rule of law".[506] The objectives include "to strengthen and consolidate the long-standing historical, social and cultural affinities and links among the people of the Region".[507]

SADC has yet to adopt any binding commitments at ministerial or head of state level for the resolution of statelessness, although they would clearly be encompassed by these principles and objectives. However,

[502] *In addition to the general obligations in human rights law, see UN Convention relating to the Status of Refugees, 1951, arts. 25 and 27; Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, art. 6; Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009, art. 13; UN Guiding Principles on Internal Displacement, 1998, principle 20.*

[503] *"Legal identity is defined as the basic characteristics of an individual's identity. e.g. name, sex, place and date of birth conferred through registration and the issuance of a certificate by an authorized civil registration authority following the occurrence of birth. In the absence of birth registration, legal identity may be conferred by a legally-recognized identification authority; this system should be linked to the civil registration system to ensure a holistic approach to legal identity from birth to death. Legal identity is retired by the issuance of a death certificate by the civil registration authority upon registration of death." United Nations Strategy for Legal Identity for All: Concept note developed by the United Nations Legal Identity Expert Group, June 2019; Introduction of the United Nations Legal Identity Agenda: A holistic approach to civil registration, vital statistics and identity management: Report of the Secretary-General (E/CN.3/2020/15). United Nations Statistical Commission, 18 December 2019.*

[504] *Held in Addis Ababa, Ethiopia, 2010; Durban, South Africa, 2012; Yamoussoukro, Côte d'Ivoire, 2015; Nouakchott, Mauritania, 2017; Lusaka, Zambia, 2019: for details, see website of the Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS) at http://www.apai-crvs.org/.*

[505] *For West Africa, see the Abidjan Declaration of Ministers of ECOWAS Member States on the Eradication of Statelessness, 2015, and the Banjul Plan of Action, 2017.*

[506] *Consolidated text of the Treaty of the Southern African Development Community, 1992, as amended, art. 5.*

[507] *Ibid., art. 6*

several SADC protocols are relevant to the problem, and the region has taken steps towards the establishment of national and regional frameworks to identify and address the problem of statelessness in the region.

The SADC Protocol on the Facilitation of Movement of Persons adopted in 2005 (though not yet in force) necessarily depends on the documentation of SADC residents as nationals – and thus for the resolution of cases of statelessness -- in order for its provisions to be implemented. Without a recognised identity document, free movement will not be enabled. Article 9 of the Protocol provides for each state to create a population register "from which the status of its citizens and permanent residents can be determined accurately".

The Protocol on Gender and Development adopted in 2008 (entry into force 2013) commits SADC Member States to ensuring gender equality in their laws and practices, including repeal of all laws that discriminate on the basis of sex (Article 6), equal rights in relation to marriage and the family (Article 8), and specifically the right to acquire or retain nationality upon marriage (Article 8(5)).

The SADC Migration Dialogue for Southern Africa (MIDSA), which convenes Member States to discuss migration governance, has discussed statelessness in recent years.[508] In 2016, MIDSA adopted recommendations that included ratification and domestication of the African and international treaties on the rights of the child, strengthening birth registration and national identification systems, gender equality in transmission of nationality, and work towards the development and adoption of a SADC Ministerial Declaration and Action Plan on Statelessness. A draft plan was proposed at state expert level in December 2018 and submitted by the SADC Secretariat to its Public Security Sub-Committee in April 2019.

Later that year, the SADC Parliamentary Forum adopted a resolution calling on national governments in the region to resolve statelessness.[509] Some of the proposed measures included: reviewing and renewing legislative frameworks and administrative practices, addressing gaps that lead to discrimination, ensuring gender equality, granting nationality to children otherwise stateless, establishing functional birth and civil registration systems and accede to the 1954 and 1961 conventions.

A regional expert meeting on the eradication of statelessness in the SADC region was convened by UNHCR in South Africa in November 2018. Government representatives debated the causes, consequences and solutions to statelessness in the region, and adopted a draft ministerial declaration and plan of action that could be put forward for debate and adoption by the SADC structures.[510] SADC States have appointed national focal points on statelessness within the context of these discussions, and some states have progressed with the conduct or planning of national studies and national plans of action. During 2019,

[508] *Implementation of the Migration Dialogue for Southern Africa (MIDSA) Recommendations to Address Mixed and Irregular Migration in the SADC Region, Emperors Palace Convention Centre, Johannesburg, South Africa, 30 November to 2 December 2015; Technical Migration Dialogue for Southern Africa, Addressing Mixed Migration in Southern Africa: Linking Protection, Immigration, Border Management and Labour Migration, Gaborone, Botswana: 16 –18 August 2016: Conclusions and Recommendations* https://ropretoria.iom.int/sites/default/files/Final%20MIDSA%202016%20Conclusions%20and%20Recommendations.pdf.

[509] *SADC Parliamentary forum 40th plenary assembly session, November 2016, Harare, Zimbabwe, http://citizenshiprightsafrica.org/wp-content/uploads/2017/01/Resolution-Statelessness_SADCPF-40th-Plenary-Assembly_2016.pdf*

[510] *Regional Expert Meeting on the Eradication of Statelessness in the SADC Region, Hennopsriver Valley, Republic of South Africa, Draft Report, UNHCR, May 2019.*

Madagascar, Malawi, Namibia, and Zambia, formed national task forces to create such plans; while the cabinet of Eswatini adopted a plan in October 2019 developed by a task force led by the Ministry of Interior.[511] Zambia also pledged in 2019 to support the adoption of the draft Regional Action Plan to end statelessness in the SADC region.[512]

Civil society organisations in the region have come together to discuss statelessness within the SADC NGO forum, and have formed a Southern Africa Nationality Network, convened by Lawyers for Human Rights, South Africa.[513]

The International Conference of the Great Lakes Region (ICGLR)

Among SADC Member States, Angola, DRC[514], and Tanzania are also members of the International Conference of the Great Lakes Region, established in 2004 as an effort to resolve the crisis in the Great Lakes region. The ICGLR has recognised from its first meeting the contribution that issues relating to contested nationality have made to conflict. The 2004 Dar es Salaam Declaration that established the Conference committed states to "adopt a common approach for the ratification and implementation of the UN Conventions on Statelessness, harmonise related national laws and standards, and provide refugees and displaced persons with identification documents enabling them to have access to basic services and exercise their rights."[515]

In 2017, ICGLR Member States strengthened these commitments by adopting a Declaration and Regional Action Plan on the Eradication of Statelessness (2017-2019); in April 2019 the plan was expanded with an additional strategic objective, to guarantee access to proof of legal identity, and extended to 2024.[516] The draft consolidated Action Plan of ICGLR on the eradication of statelessness in the Great Lakes Region (2017-2024) is expected to be formally endorsed by the Regional Inter-Ministerial Committee of ICGLR in 2020. The Declaration and Plan of Action commit ICGLR Member States to ratification of the UN conventions on statelessness, reform of nationality laws to bring them into line with international standards on nationality and statelessness, adoption of national action plans to end statelessness, and nomination of government focal points on statelessness.[517]

[511] *Zambia to eradicate statelessness through national plan, SADC News, 6 September 2019; information from UNHCR Southern Africa bureau, April 2020.*

[512] *Results of the High-Level Segment on Statelessness, October 2019 https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/.*

[513] *See information at http://sann.africa/.*

[514] *DRC is also a "Partner State" of the Economic and Monetary Community of Central Africa (CEMAC), which in December 2018 adopted the N'Djamena Initiative on the Eradication of Statelessness in Central Africa.*

[515] *Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, adopted by the First Summit of Heads of State and Government, of the ICGLR, Dar-es-Salaam, 19-20 November 2004, para. 68 http://www.icglr.org/images/Dar_Es_Salaam_Declaration_on_Peace_Security_Democracy_and_Development.pdf*

[516] *Draft Consolidated Action Plan of ICGLR on the eradication of statelessness in the Great Lakes Region (2017-24) https://data2.unhcr.org/en/documents/details/73439.*

[517] *Declaration of the International Conference on the Great Lakes Region (ICGLR) on the Eradication of Statelessness, October 2017 and the Action Plan of the International Conference on the Great Lakes Region (ICGLR) on the Eradication of Statelessness 2017-2019, both endorsed by the ICGLR 7th Ordinary Summit of Heads of State and Government in Brazzaville, Republic of Congo, 19 October 2017; the Plan of Action was updated in 2019 to run to 2024. All available, with updates on progress, at the UNHCR data portal on the Great Lakes region https://data2.unhcr.org/en/situations/statelessgl.*

Pledges by SADC Member States to Address Statelessness

In 2011, UNHCR held a ministerial intergovernmental event on refugees and stateless persons to commemorate the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. At this meeting Madagascar and Zambia pledged to accede to the 1961 Convention; while South Africa and Tanzania pledged to accede to the 1961 Convention and the 1954 Convention relating to the Status of Stateless Persons.[518] In October 2019, UNHCR convened a "High Level Segment on Statelessness" as part of its Executive Committee meeting, convening UN Member States and other stakeholders to highlight achievements in addressing statelessness since UNHCR's #IBelong campaign to eradicate statelessness was launched in November 2014, and to deliver pledges to address statelessness in the remaining five years of the campaign.

Among SADC Member States, Angola, Comoros, DRC, Eswatini, Lesotho, Malawi, Mozambique, Namibia Zambia, Zimbabwe all made pledges at this meeting.[519] Angola, Madagascar, and Namibia also made pledges at the Global Refugee Forum (GRF) held a few weeks later, while South Africa noted efforts it has made in relation to birth registration.[520]

Pledges made for legal reform included amendments to the law to provide protection to foundlings (Comoros, Eswatini, Lesotho, Malawi, Namibia) and to otherwise stateless children (Comoros, Eswatini, Lesotho, Malawi). DRC and Zimbabwe gave a more general commitment to review and revise laws to bring them into line with the international obligations; while Angola promised (both to the High Level Segment and at the GRF) to implement the two (recently ratified) statelessness conventions. Three states specifically pledged to institute stateless determination procedures (Eswatini, Malawi, and Zimbabwe), while Zambia confirmed its policy to issue residence permits to former refugees to facilitate their naturalization, as well as the naturalisation of stateless persons and their children. Eswatini, the only country in the region which does not yet have gender equality in its citizenship law, promised to consult on reforms to give equal rights to men and women.

At the GRF, Madagascar pledged to "resolve all questions related to the problem of nationality", noting that there has been a problem of statelessness and protection of stateless persons since independence. Also at the GRF, Namibia stated its commitment to naturalise persons who came to Namibia between 1930 and 1977, and the development of a comprehensive strategy within its national action plan on statelessness.

Finally, five countries committed to accede to one or both of the conventions on statelessness, if not already parties (Comoros, DRC, Malawi, and Namibia, as well as Zambia, repeating its 2011 pledge), and Zimbabwe promised to consult on accession to the 1961 Convention on the Reduction of Statelessness.

In addition, states pledged to improve rates of birth registration (Comoros, Zambia, Zimbabwe) and data collection, including national studies on statelessness (Mozambique).

[518] *Pledges 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons (Geneva, Palais des Nations, 7-8 December 2011 https://www.unhcr.org/events/commemorations/4ff55a319/pledges-2011-compilation-analysis.html.*

[519] *Results of the High-Level Segment on Statelessness, October 2019, https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/*

[520] *See Global Refugee Forum dashboard on pledges and contributions, at https://globalcompactrefugees.org/channel/pledges-contributions.*

Recommendations

Accessions to and implementation of UN and AU treaties

- SADC Member States should take steps to accede to relevant treaties, in particular the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and to review national law and practice to ensure it is compliant with their requirements, based on UNHCR's Handbook on Protection of Stateless Persons, Guidelines on Statelesness No. 4 on Prevention of Childhood Statelessness, and Guidelines on Statelessness No. 5 on Loss and Deprivation of Nationality.

- All SADC Member States except DRC are already party to the African Charter on the Rights and Welfare of the Child, of which Article 6 deals with birth registration and the right to a name and nationality. They should review their laws and procedures in line with the General Comment on Article 6 of the Charter adopted by the African Committee of Experts on the Rights and Welfare of the Child in 2014. DRC signed the African Charter on the Rights and Welfare of the Child in 2010, and should move towards accession to the treaty.

SADC institutional support for inter-state cooperation and common norms

The SADC institutions should, in collaboration with UNHCR and other relevant international agencies, facilitate collaboration among SADC Member States to resolve cases of potential statelessness, by:

- Promoting the establishment of bi- and tri-lateral commissions to conduct verification missions to border populations, ensuring that all those resident in border areas have the documents of one or other (or both) state(s).
- Promoting the exchange of information and coordinated adjudication procedures among SADC Member States and with neighbouring countries in order to establish a nationality for persons whose nationality is in doubt.
- Facilitating the provision of training on statelessness for officials responsible for nationality administration.
- Promoting the harmonisation of the nationality laws and practices of Member States in line with the recommendations in this report.
- Conducting research and publishing reports on the consequences and prevalence of statelessness in the region and the profiles of those at risk in order to inform legislative and policy reforms to be implemented by Member States.
- Supporting the adoption of the draft Protocol to the African Charter on the Right to a Nationality and the Eradication of Statelessness in Africa.

Law reform

SADC Member States should:

- Remove discriminatory provisions from domestic legislation in relation to the transmission of nationality to a spouse or child on the basis of sex or on the basis of birth in or out of wedlock.
- Review provisions that create preferential access to citizenship on the basis of race, religion or ethnic group to ensure that they comply with international and African norms and standards, and in particular to avoid the risk of statelessness for those who are born in the country who are not members of the preferred group or groups.
- Ensure that every child has the right to a nationality, including through provisions that:
    - Incorporate the safeguards against statelessness that are contained in the international conventions on statelessness and the international and African human rights treaties, in particular for children born in the country who cannot obtain access to the nationality of one of their parents, or children found in the country whose parents are unknown.
    - Provide for access to nationality for a person born in the country who remains there during childhood and until majority, whether automatically or on the basis of an application procedure, in particular where that person is otherwise stateless.
    - Establish an accessible procedure for the confirmation of nationality, based on testimony and other forms of proof as well as birth registration, and the issuance of a document that is conclusive proof of nationality unless overturned by a court.
- Review the conditions and procedures for naturalisation to provide limits to the excessive discretion to grant or refuse naturalisation, in order to make naturalisation accessible to a far wider number of people, and in particular to the nationals of other SADC Member States, including refugees and former refugees. Conditions should be clearly described and advertised, not be overly onerous to fulfil, and should not discriminate against any particular ethnic, religious or racial group. Decisions that a person does not fulfil the conditions for naturalisation should be reasoned, and subject to challenge in court.
- Ensure that domestic legislation on nationality ensures a right to nationality, and documents to prove it, for vulnerable children, including abandoned infants and children who are unaccompanied or separated from their parents.
- Review laws and procedures to ensure that they are adapted to contemporary realities, including to create systems for access to nationality from birth for nomadic and border populations, as well as the descendants of migrants and refugees.
- Provide in law for decisions by the executive to deprive a person of nationality, or to refuse to recognise claimed existing nationality, to be reasoned and subject to review and appeal by the courts.
- Provide in law for administrative and judicial procedures for the determination or certification of nationality where that is in doubt and for issuance of a document that is conclusive proof of nationality, including the right to appeal in case of rejection.
- Provide in law for rapid and effective administrative review of decisions relating to entitlement to identity documents (complaints systems) and also facilitate low-cost access to an independent judicial authority for adjudication of those decisions, as well as permitting appeal to the normal courts responsible for similar matters.
- Establish a statelessness determination procedure, which will grant the status of stateless person to an individual whose nationality cannot be confirmed, and facilitate the naturalisation of stateless persons.

- Review regulations to ensure that they confirm with constitutional and legislative provisions, and ensure that all rules relating to the grant, recognition, loss or deprivation of nationality are published in an official journal and on relevant websites.
- Support the adoption of the draft Protocol to the African Charter on the Right to a Nationality and the Eradication of Statelessness in Africa.

Nationality administration

SADC Member States should adopt measures to increase accessibility, due process, transparency and efficiency in nationality administration, including by:

- Taking all necessary measures to ensure that all children born in the country are registered at birth, without discrimination, including those children born in remote areas and in disadvantaged communities, as well as those in the country as refugees, stateless persons or migrants regardless of migratory status; and that children not registered at birth can be registered later during childhood or adulthood.
- Improving the current operation and archiving of civil registration systems, aiming to achieve free, accessible, and universal registration of births, including for children of migrants, refugees, nomadic populations and other marginalised groups.
- Take steps to facilitate consular access to ensure that nationals who are outside the country of nationality can renew identity documents, enabling birth registration in the country of birth preserve, and, if required, transcribe births certificates issued by the country of birth into the records of the country of origin of the parents.
- Publishing annual statistics on nationality procedures, including issuance of identity documents and naturalisations, and percentage of applications refused in each case.
- Clarifying which department or agency is responsible for the consideration and resolution of cases of statelessness. This should be the body with nationality matters among its responsibilities, combined with the courts for review or appeal of certain decisions.
- Providing or facilitating legal and other assistance for those who are seeking proof of nationality, especially during periods when new procedures or law reforms are introduced.
- Ensuring that vetting systems to verify a person's citizenship are established by law, apply to all applicants equally, have clear criteria and procedures, allow the right to be heard in person or by a representative, and provide for decisions to be issued within a reasonable period and for a negative response to be reasoned and delivered in writing.
- Ensuring that costs related to nationality administration and identification do not prevent people from obtaining the documents to which they are entitled in law.
- Taking urgent measures to ensure universal birth registration and strengthen civil registration systems more generally.

Identification of populations at risk of statelessness, and prevention and reduction of statelessness

SADC Member States should seek to identify and provide solutions for those persons who are stateless or at risk of statelessness, and in particular they should:

- Conduct research into populations at risk of statelessness, in order to identify those groups or individuals who require confirmation of their right to nationality of the country they live in, or interim protection as stateless persons prior to facilitated acquisition of nationality.

- Conduct specific awareness raising activities among populations at risk of statelessness to encourage individuals to acquire those documents that would confirm their nationality, including birth certificates, and to apply for confirmation of nationality through the procedures available, whether of the country of residence or another relevant country.
- In case of forced population movements caused by conflict or other crises, ensure issue of identity and civil status documentation at the earliest moment to those who have been forced to move. In particular, the country of asylum should ensure birth registration and issue birth certificates to all those born in the country, whatever the legal status of their parents, and should provide administrative assistance to establish necessary identity documents, including birth certificates, for those born outside the country of asylum, in line with Article 25 of the 1951 Refugee Convention (Article 25).
- Where individuals cannot be confirmed to have a nationality under existing laws, provide them with a temporary protective status in accordance with the procedures required by the Convention relating to the Status of Stateless Persons, and facilitate their acquisition of nationality.

An integrated approach to nationality systems

- SADC Member States should address nationality and statelessness from a systemic perspective, seeking to put in place coherent initiatives on documentation and identity management that provide access to a nationality for all both in theory and in practice, and that identify and provide documentation to all. In particular, efforts to upgrade identification systems should include analysis of the legal and procedural gaps that lead some to be excluded and perhaps ultimately rendered stateless.

Appendix 1: Nationality laws in force

This analysis in this paper is based on the laws currently in force, listed below.

ANGOLA	CONSTITUTION, 2010 LEI NO.2/16 DE 31 DE MARÇO, LEI DA NACIONALIDADE
BOTSWANA	CONSTITUTION 1966 CITIZENSHIP ACT CAP 01:01 (ACT 8 OF 1998, AS AMENDED 2004)
COMOROS	CONSTITUTION, 2001 (AS AMENDED 2018) LOI NO. 79-12 DU 12 DÉCEMBRE 1979 PORTANT CODE DE LA NATIONALITÉ COMORIENNE
DRC	CONSTITUTION 2006 LOI NO. 04-024 DU 12 NOVEMBRE 2004 RELATIVE À LA NATIONALITÉ CONGOLAISE
ESWATINI	CONSTITUTION 2005 SWAZILAND CITIZENSHIP ACT NO. 14 OF 1992
LESOTHO	CONSTITUTION 1993 (AS AMENDED 2018) LESOTHO CITIZENSHIP ORDER NO. 16 OF 1971 (AS AMENDED 1993)
MADAGASCAR	CONSTITUTION 2010 ORDONNANCE NO. 60-064 DU 22 JUILLET 1960 PORTANT CODE DE LA NATIONALITÉ MALGACHE (AS AMENDED 2017)
MALAWI	CONSTITUTION 1994 (AS AMENDED 1998) CITIZENSHIP ACT 1966 (AS AMENDED 2019)
MAURITIUS	CONSTITUTION 1968 (AS AMENDED 2016) MAURITIUS CITIZENSHIP ACT 1968 (AS LAST AMENDED 1995)
MOZAMBIQUE	CONSTITUTION 2004 LEI DE 20 DE JUNHO DE 1975, LEI DA NACIONALIDADE (AS AMENDED 1987)
NAMIBIA	CONSTITUTION 1990 (AS AMENDED 2010) NAMIBIAN CITIZENSHIP ACT NO. 14 OF 1990 NAMIBIAN CITIZENSHIP (SPECIAL CONFERMENT) ACT NO.14 OF 1991 NAMIBIAN CITIZENSHIP (SECOND) SPECIAL CONFERMENT ACT, NO.6 OF 2015
SEYCHELLES	CONSTITUTION 1993 (AS AMENDED 2011) CITIZENSHIP ACT NO. 18 OF 1994 (AS LAST AMENDED 2013)
SOUTH AFRICA	CONSTITUTION 1996 (AS AMENDED 2013) SOUTH AFRICAN CITIZENSHIP ACT NO. 88 OF 1995 (AS AMENDED 2010)
TANZANIA	CONSTITUTION 1977 (AS AMENDED 2005) TANZANIA CITIZENSHIP ACT NO. 6 OF 1995
ZAMBIA	CONSTITUTION 2016 ZAMBIA CITIZENSHIP ACT NO.33 OF 2016
ZIMBABWE	CONSTITUTION 2013 CITIZENSHIP OF ZIMBABWE NO.23 OF 1984 (AS AMENDED 2003)

Appendix 2: Status of UN treaties

Treaties relating to statelessness

Dates of ratification/accession available at: https://treaties.un.org/Pages/ParticipationStatus.aspx

STATE	CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS 1954	CONVENTION ON THE REDUCTION OF STATELESSNESS 1961
ANGOLA	7 Oct 2019	7 Oct 2019
BOTSWANA	25 Feb 1969	--
COMOROS	--	--
DRC	--	--
ESWATINI	16 Nov 1999	16 Nov 1999
LESOTHO	4 Nov 1974	24 Sep 2004
MADAGASCAR	-- [521]	--
MALAWI	7 Oct 2009	--
MAURITIUS	--	--
MOZAMBIQUE	1 Oct 2014	1 Oct 2014
NAMIBIA	--	--
SEYCHELLES	--	--
SOUTH AFRICA	--	--
TANZANIA	--	--
ZAMBIA	1 Nov 1974	--
ZIMBABWE	1 Dec 1998	--

[521] *Acceded 20 February 1962; but the Government of Madagascar denounced the Convention on 2 April 1965, with effect from 2 April 1966.*

Treaties with provisions on the right to a nationality

Dates of ratification/accession available at:
https://treaties.un.org/Pages/ParticipationStatus.aspx

STATE	CERD	CCPR	CEDAW	CRC	CMW
ANGOLA	2 Oct 2019	10 Jan 1992	17 Sep 1986	5 Dec 1990	--
BOTSWANA	20 Feb 1974	8 Sep 2000	13 Aug 1996	14 Mar 1995	--
COMOROS	20 Sep 2004	Signature only 25 Sep 2008	31 Oct 1994	22 Jun 1993	Signature only 22 Sep 2000
DRC	21 Apr 1976	1 Nov 1976	17 Oct 1986	27 Sep 1990	--
ESWATINI	7 Apr 1969	26 Mar 2004	26 Mar 2004	7 Sep 1995	--
LESOTHO	4 Nov 1971	9 Sep 1992	22 Aug 1995	10 Mar 1992	16 Sep 2005
MADAGASCAR	7 Feb 1969	21 Jun 1971	17 Mar 1989	19 Mar 1991	13 May 2015
MALAWI	11 Jun 1996	22 Dec 1993	12 Mar 1987	2 Jan 1991	--
MAURITIUS	30 May 1972	12 Dec 1973	9 Jul 1984	26 Jul 1990	--
MOZAMBIQUE	8 Apr 1983	21 Jul 1993	21 Apr 1997	26 Apr 1994	19 Aug 2013
NAMIBIA[522]	11 Nov 1982	28 Nov 1994	23 Nov 1992	30 Sep 1990	15 Dec 1994
SEYCHELLES	7 Mar 1978	5 May 1992	5 May 1992	7 Sep 1990	--
SOUTH AFRICA	10 Dec 1998	10 Dec 1998	15 Dec 1995	16 Jun 1995	--
TANZANIA	27 Oct 1972	11 Jun 1976	20 Aug 1985	10 Jun 1991	--
ZAMBIA	4 Feb 1972	10 Apr 1984	21 Jun 1985	6 Dec 1991	--
ZIMBABWE	13 May 1991	13 May 1991	13 May 1991	11 Aep 1990	--

CERD: Convention on the Elimination of all forms of Racial Discrimination, 1965
CCPR: International Covenant on Civil and Political Rights, 1966
CEDAW: Convention on the Elimination of all forms of Discrimination Against Women, 1979
CRC: Convention on the Rights of the Child, 1989
CMW: Convention on the Rights of All Migrant Workers and Members of their Families, 1990

[522] *See historical information on status of Namibia before independence at https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_en#Namibia.*

Appendix 3: Status of AU treaties

Date of ratification/accession available at: http://www.au.int/en/treaties

STATE	ACHPR	PROTOCOL ON THE RIGHTS OF WOMEN IN AFRICA	ACRWC
ANGOLA	2 Mar 1990	30 Aug 2007	11 Apr 1992
BOTSWANA	17 July 1986	--	10 Jul 2001
COMOROS	1 Jun 1986	18 Mar 2004	16 Apr 2004
DRC	22 July 1987	9 Jun 2008	Signature only 2 Feb 2010
ESWATINI	15 Sep 1995	5 Oct 2012	5 Oct 2012
LESOTHO	10 Feb 1992	26 Oct 2004	27 Sep 1999
MADAGASCAR	9 Mar 1992	Signature only 28 Feb 2004	30 Mar 2005
MALAWI	17 Nov 1989	20 May 2005	16 Sep 1999
MAURITIUS	19 Jun 1992	16 Jun 2017	14 Feb 1992
MOZAMBIQUE	22 Feb 1989	9 Dec 2005	15 Jul 1998
NAMIBIA	30 Jul 1992	11 Aug 2004	23 Jul 2004
SEYCHELLES	13 Apr 1992	9 Mar 2006	13 Feb 1992
SOUTH AFRICA	9 Jul 1996	17 Dec 2004	7 Jan 2000
TANZANIA	18 Feb 1984	03 Mar 2007	16 Mar 2003
ZAMBIA	10 Jan1984	2 May 2006	2 Dec 2008
ZIMBABWE	30 May 1986	15 Apr 2008	22 Feb 1995

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