



**Submission on the South African Citizenship Amendment Bill, B 17 – 2010
by the Citizenship Rights Africa Initiative**

6 August 2010

The Citizenship Rights Africa Initiative (CRAI), a civil society coalition working on nationality rights in Africa, welcomes the opportunity to comment on the South African Citizenship Amendment Bill, B-17, 2010, which will amend the Citizenship Act, 1995 (as already amended in 1997 and 2004). We also welcome some of the provisions of the bill. We do, however, have concerns about the proposed amendments to and some existing provisions of South African citizenship law, which are expanded below. In relation to the amendments, we are especially concerned by the new provision on loss of nationality and the requirement that someone seeking to naturalise as a South African must renounce another nationality if their other actual or potential nationality is of a country that does not allow dual nationality. In light of these concerns, and some lack of clarity in both the proposed amendments and the original text, we suggest that South Africa consider a complete revision of the Citizenship Act. We attach to this submission general recommendations on the content of nationality laws in Africa that were developed on the basis of extensive consultation as part of the CRAI campaign and are included in a report published by the Open Society Foundations in 2009, *Citizenship Law in Africa: A Comparative Study*.

Citizenship by birth

The South African constitution provides in its Article 28 that ‘Every child has the right to a name and a nationality from birth’. In providing this guarantee, South Africa is in compliance with its obligations under the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and other international human rights treaties. In the detail of its citizenship law, however, South Africa is not in complete compliance with the terms of Article 28 of the constitution nor the international norms.

The existing provisions of the Citizenship Act (subsection 2(1)) appear at first sight to fulfil this right completely by granting citizenship by birth to any person on the basis only of birth in the country (known as *jus soli* citizenship). However, this right is qualified by exceptions (in subsections 2(2) and 2(3)), which exclude from citizenship by birth the children of one parent who was a diplomatic representative or not a permanent resident, if the other parent was not a South African citizen, and also a person who had lost South African citizenship and then reacquired it by naturalisation. The meaning is not immediately transparent, but – read together positively rather than as exceptions – the overall effect is that a child born in South Africa is a citizen by birth only if one parent is a citizen or both parents are permanent residents. In the practice of the South African Department of Home Affairs birth in the country of a single parent who was a permanent resident has in fact been sufficient to qualify for citizenship by birth; this practice has in all likelihood been sufficiently consistent to create a legitimate expectation under Section 3 of the Promotion of Administrative Justice Act that this will be the interpretation applied.

The new section 2(1)(b) provides that a person ‘born in or outside the Republic, one of his or her parents, at the time of his or her birth, being a South African citizen’ is a citizen by birth. The first category of citizenship by birth is thus explicitly tied to having a South African parent, wherever the person is born (subsection (1)(a) simply states that existing citizens by birth remain so).



The new section 2(2) on exclusion from the right to citizenship by birth has become even more unclear in light of the amendments to section 2(1) to which it refers. It deletes the reference to children of diplomats, and states:

No person shall be a South African citizen by virtue of subsection (1)(b) if, at the time of his or her birth, one of his or her parents had not been lawfully admitted to the Republic for permanent residence therein, and his or her other parent was not a South African citizen.

The new subsection (1)(b), however, already requires that one parent be a South African citizen for a person to have the right to South African citizenship by birth, and relates to persons born in or outside the country, so subsection 2(2) now seems to have no meaning.

We recommend that subsection 2(2) be redrafted to make it explicit that what is meant is that a child born (presumably in South Africa) of at least one parent who is a permanent resident of South Africa is a citizen by birth. When combined with the new section 2(1)(b) this would be a simple restatement of the existing situation, but in language that is easy to understand.

The new subsection 2(4) provides for another category of citizen by birth, stating that a person born in South Africa of parents admitted to the Republic (by implication, both parents must be legally admitted, but not necessarily permanent residents) qualifies for citizenship by birth if he or she continues living there until majority. An addition to the categories of citizenship by naturalisation provides for children born in South Africa of parents who are not legally admitted to naturalise as citizens if they are still resident there at majority (on which see below). These provisions are in principle welcome.

At least 18 other countries in Africa, largely of the civil law tradition, already apply the principle that a person who is born in a country and is still resident there at majority qualifies to apply for recognition of citizenship by birth (*nationalité d'origine* in French). Most of them do not apply any requirement that the parents have been legally admitted to the country. This principle has been important in countries that do not have a *jus soli* basis for their law in helping to avoid the multi-generational exclusion from the right to a nationality that has been the cause of conflict in countries such as the Democratic Republic of Congo or Côte d'Ivoire.

We recommend that the amended subsections 2(4) and 4(3) be redrafted simply to provide for a child born in the country who is still resident there at majority to qualify for citizenship by birth and have the right to apply for recognition of that status at majority.

In line with South Africa's constitution and international obligations, both the existing law and the proposed amendment (subsection 2(3)) provide that a child born in the country who has no right to another nationality shall be a South African citizen by birth.

However, we are concerned that South Africa's Citizenship Act (as it currently exists or as amended) does not provide for citizenship to be granted to foundlings: children found on the territory of unknown parents or the nationality of whose parents is not known. Under Article 2 of the 1961 UN Convention on the Reduction of Statelessness (to which South Africa is not a party, but which provides authoritative guidance on minimum standards) '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.' Provisions to this effect are common globally – in Africa, at least 39 countries have



incorporated the principle into their law (even though only nine are parties to the 1961 Convention).

We recommend that South Africa should amend its law to include a provision that a person found in the country as a child whose parents are not known should be a citizen by birth.

Finally, CRAI also urges the South African Parliament to enact a further amendment that a person born in South Africa of one parent also born in the country qualifies as a citizen by birth. This provision is in effect in at least 12 African countries already, and further strengthens the protection against exclusion and non-integration into the national polity of the children of migrants.

Citizenship by naturalisation

The proposed new Section 4 of the Citizenship Act adds a category of citizenship by naturalisation that is complementary to the additional category of citizenship by birth for children born in the country and still resident at majority. The new section 4(3) provides for children born in the country of parents who are neither citizens nor admitted for permanent residence to apply to be citizens by naturalisation, provided their birth has been registered. The reference to admission for permanent residence is confusing: presumably this section is intended to apply children of parents who were not admitted legally at all? As stated above, we recommend that such children should qualify for late recognition of citizenship by birth, as do the children of legally admitted parents; a person who has only ever lived in South Africa and has therefore much weaker connections with any other country should not have to fulfil the additional requirements for naturalisation of showing that they are of good character, etc. When combined with the new requirement that a person seeking to naturalise must renounce another nationality if their other actual or potential nationality is of a country which does not allow dual nationality (see below), these additional conditions could be highly problematic.

The proposed amendments to the Citizenship Act have changed the wording on the time qualification for obtaining citizenship by naturalisation, and the amended section 5 now requires that a person must be admitted as a permanent resident and ordinarily resident in South Africa for a 'continuous period' of not less than five years immediately preceding the application. In addition, the person must already be a permanent resident. (Previously, it stated that the person had to be resident for a 'continuous period' of one year plus an additional four years of 'residence'.) However, this requirement for five years' *continuous* residence should be clarified: it cannot surely mean that a person cannot travel out of the country at all during the period? The requirement that a person be admitted as a permanent resident and 'ordinarily resident' for five years should be sufficient. Ordinary residence should be defined.

By way of comparison, more than twenty African countries provide for citizenship by naturalisation on the basis of five years' residence, with no requirement for previous admission to an interim status of permanent resident or equivalent.

Citizenship by descent

The proposed new Section 3 of the Citizenship Act provides that an adopted person should be a 'citizen by descent' rather than a citizen by birth. The other categories of citizens by descent (people born outside the country) have been removed and incorporated within provisions on citizenship by birth, so that the only category left is adopted children. There appears to be no difference between the rights and responsibilities of citizens by birth and citizens by descent,



so the separate category adds unnecessary confusion; while the whole point of the legal act of adoption is to put the child in the same position as a natural child of the adopting parent(s). There is thus no reason why adopted children should not be citizens by birth – and, indeed, calling an adopted child a citizen by descent seems very counter-intuitive.

Birth registration

Sections 2(3) and (4) and section 4(3) of the Citizenship Act as amended, applying to children born in South Africa who would not otherwise have a nationality and to children born in South Africa who are still resident there at majority, provide that they qualify for citizenship only if their birth is registered in accordance with the Births and Deaths Registration Act, 1992. While at first sight this seems a reasonable requirement, CRAI is concerned that it may in practice exclude many children who should be eligible for citizenship by birth in South Africa.

Statistics South Africa reports that registration of births has improved substantially in South Africa since 1998, increasing from less than 25% in 1998 to 72% in 2005. All provinces had completeness of over 60%, ranging from 97% in Western Cape, to only 62% in KwaZulu-Natal.¹ UNICEF's independently collected figures showed 78% registration of all children under 5 in 2006.²

However, as StatsSA notes, a substantial proportion of births are registered late. These unregistered children are disproportionately from poor or marginalised families or from communities where the systems of registration are not in place, difficult to access or not functional. Among the most marginalised families in this context are the children of undocumented or poorly qualified (such as farmworkers) migrants to South Africa, especially those who would have difficulty in establishing another nationality. This bureaucratic requirement may therefore have the effect of denying children born in South Africa the rights guaranteed in the constitution and international law, and apparently provided for in the legislation.

Until such time as 100% of all children born in South Africa are registered, the requirement for birth registration in the provisions relating to citizenship by birth should be relaxed. In particular, the legislation should allow for late registration and for alternative methods of proof of birth in South Africa in the absence of a formal registration under the Births and Deaths Registration Act. Although there are some legitimate concerns about the potential for fraudulent late registration or proof of birth, South Africa is bound by international law and its own constitution to take steps to ensure that the right to a nationality is respected for all children, including – especially – those that are most vulnerable.

In respect of children born outside South Africa to a South African parent, the Department of Home Affairs provides for notification of the birth to the South African embassy or mission in the country concerned, or at a regional office of the Department of Home Affairs in South Africa. There is a need to ensure that this requirement is widely known and easily available in practice, including to parents resident in countries where South Africa does not have diplomatic representation.

¹ *The coverage and quality of birth registration data in South Africa: 1998–2005*, Report no. 06-03-01 (2007), Statistics South Africa, 2007.

² *The State of the World's Children*, UNICEF, 2009, Statistical Table 9: Child Protection; for South Africa data only, see also http://www.unicef.org/infobycountry/southafrica_statistics.html.



In relation to adopted children, the proposed amended section 3 of the Act also repeats a provision in the previous version that the child's birth must be registered under South African law. It is not clear whether this may create an obstacle to adopted children acquiring South African citizenship, but for the avoidance of doubt it should be provided in the Citizenship Act that for an adopted child birth registration under the legislation of the country where the child was born, and fulfilment of the other criteria for adoption, will be sufficient.

Dual nationality

The proposed addition of a new requirement to the section dealing with citizenship by naturalisation that a person applying must satisfy the minister that they are either a citizen of a country that allows dual nationality, or that, if their presumed other nationality is with a country that does not allow dual nationality, they have renounced that nationality (section (5)(1)(h)), is problematic at several levels. Perhaps most importantly, this provision may adversely affect asylum seekers and refugees or their children, or persons who, while they have not sought or acquired refugee status in South Africa, cannot be reasonably expected to acquire proof that they have renounced their previous nationality – either because the administrative authorities in their country are non-functional or inaccessible from South Africa, or because they are persona non-grata in their country of origin.

For example, children of Somali nationals who have fled to South Africa and were born in South Africa may wish to apply for naturalisation as South Africans (under the proposed new section 4(3), if unamended) if they are still resident in South Africa at majority. It is not reasonable to require them to provide proof that they have renounced Somali citizenship – which they are likely never to have had formal recognition of, even if they were entitled to it in theory. Even an adult migrant from Somalia – or from many of the other countries in Africa who both have dysfunctional administrative structures and do not allow dual nationality – legally admitted to South Africa for the requisite period may well have serious difficulties in providing proof that they have renounced nationality in accordance with the required procedures under that other country's laws. For refugees it may be particularly problematic since some countries require the permission of the authorities if a person is to renounce citizenship. Alternatively, if a person has renounced another nationality as part of the process of applying for naturalisation and the application is then denied, they are highly likely to become stateless. We recommend that this proposed addition to the act be deleted.

South Africa's already existing requirement (section 6 of the Citizenship Act) that a citizen by birth seeking another nationality should have the permission of the authorities to do so is shared in the African continent only with Egypt and Eritrea — countries associated with a high level of police control of the population. In general, the trend is for African countries to allow dual nationality without restriction, and as of the end of 2009, 27 countries (in addition to Egypt, Eritrea and South Africa) allowed dual nationality. Kenya will now join those countries since its new constitution has been approved by referendum. South Africa should share this more relaxed attitude and amend its law accordingly.

Loss and deprivation of citizenship

Parliament should delete the proposed addition of a new ground in the section on loss of citizenship. The addition (section 6(1)(c)) would provide for automatic loss of citizenship if a person 'engages in a war under the flag of a country that the Government of the Republic does not support.' The only safeguard against injustice – which is not offered to a citizen by naturalisation – is that a person affected by the provision (ie, *after* they have already lost their



citizenship) may apply to the minister who may ‘if he or she deems it fit’ order the retention of citizenship.

There is no definition of what ‘engages in a war’, ‘under the flag of’, or ‘does not support’ mean; no provision for the person affected to be able to make representations and be heard before citizenship is taken away; no requirement that the war affect South Africa’s vital interests, the phrase used in the 1961 Convention (there is already a provision on loss of citizenship in case of a person serving in the armed forces of another country of which they are a citizen in a war against South Africa); and no requirement that the person have another citizenship before they lose their South African one.

These changes are in violation of international human rights principles on due process and the right to a nationality, and also appear to be in violation of Article 20 of the Constitution, which provides simply that ‘No citizen may be deprived of citizenship.’ The fact that it is described as ‘loss’ not ‘deprivation’ of citizenship is a merely semantic distinction. Moreover, the existing provisions of section 6 related to acquisition of dual nationality without permission and serving in the armed forces of another country against South Africa could already be argued to be in violation of this constitutional requirement.

The existing Section 8 on deprivation of citizenship from naturalised citizens should also provide for an affected person to make representations and be heard before citizenship by naturalisation can be taken away. The provision that naturalised citizenship may be taken away if ‘the Minister is satisfied that it is in the public interest’ to do so is already too vague to provide protection against arbitrary executive action. In addition, the provision allowing for deprivation of naturalised citizenship if it is found to have been acquired by fraud should be applied consistent with the principle of proportionality: the deprivation should be justified based on the gravity of the facts alleged.

Although section 25 of the Citizenship Act as currently in force provides that any decision of the minister may be reviewed by the High Court, the administrative procedures should already have allowed for due process to be incorporated into the processes for recognition and loss of citizenship, before a person has to go to the expensive and difficulty of a High Court application.

Sections 6 and 8 should also provide specific protection against making a person stateless: in line with the UN Convention on the Reduction of Statelessness (to which South Africa is not yet a party), the law should provide that a person cannot lose their nationality if they would therefore become stateless.

UN Conventions on Statelessness

South Africa is not a party to the 1961 Convention on the Reduction of Statelessness nor to the 1954 Convention relating to the Status of Stateless Persons, and should take steps to accede to these two treaties and to ensure that all aspects of domestic law are in compliance with their provisions.



The Citizenship Rights Africa Initiative

This submission is made on behalf of the Citizenship Rights Africa Initiative (CRAI). CRAI is a campaign led by the Global Pan African Movement, the International Refugee Rights Initiative (IRRI) and the Open Society Foundations in Africa, in collaboration with other civil society organisations. The campaign aims to promote an equal right to a nationality for all, and to raise awareness of unequal access to and arbitrary deprivation of nationality as a major human rights issue and one of the principal causes of political exclusion and consequent conflict in Africa.

In 2009, two major studies of citizenship law in Africa were launched in association with the CRAI campaign — *Citizenship Law in Africa: A comparative study*, published by the Open Society Foundations and *Struggles for Citizenship in Africa*, published by Zed Books — which together include detailed information on the content of the citizenship laws of 53 countries in Africa, and on the political crises and conflict that have resulted from failure to respect the right to a nationality. The comparative information in this submission is taken from these books, both of which are available in full text on the website of the Africa Governance Monitoring and Advocacy Project (AfriMAP) of the Open Society Foundations, www.afriMAP.org/report. The recommendations from *Citizenship Law in Africa* are attached.

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Recommendations from

Citizenship law in Africa: A comparative study

These recommendations, extracted from the report *Citizenship law in Africa: A comparative study*, published by the Open Society Foundations in 2009, were developed over a long period of consultation with some of the foremost experts on citizenship law in Africa and globally.

Recommendations

International treaties and harmonisation of laws

1. African states acting within the framework of the African Union should take steps to prepare and adopt a Protocol on Nationality to the African Charter on Human and Peoples' Rights, based on the principles of the African Charter, the Constitutive Act of the African Union, the Universal Declaration of Human Rights and other international human rights norms (and the recommendations below).
2. African states that have not yet done so should take immediate steps to ratify relevant treaties, including the African Charter on the Rights and Welfare of the Child, the UN Convention on the Rights of the Child, the UN Convention relating to the Status of Stateless Persons, and the UN Convention on the Reduction of Statelessness.
3. African states should withdraw any reservations made to Article 9 of the UN Convention on the Elimination of All Forms of Discrimination Against Women, Article 7 of the U.N. Convention on the Rights of the Child, and the statelessness conventions. African states should interpret Article 6 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in light of the general nondiscrimination requirements established by Article 2 of the Charter.
4. African states should bring their nationality laws into line with the norms embodied in these treaties (and the recommendations below). The Regional Economic Communities that make up the African Union should lead these efforts.
5. African states should cooperate in making efforts to harmonise nationality laws and to determine the nationality of persons who face difficulties in establishing their nationality.
6. African intergovernmental institutions, including the African Commission on Human and Peoples' Rights, should monitor and report on African states' respect in their nationality law and practice for the human rights norms established by African and international treaties.

Right to a nationality

7. National constitutions and nationality laws should provide for an explicit and unqualified right to a nationality from birth.
8. The law should provide for persons to have a right to nationality (whether from the time of birth or by acquisition at a later stage) on the basis of any appropriate connection to the country, including birth in the territory, having a father or mother (including an adoptive father or mother) who is a citizen, marriage to a citizen, or habitual residence.
9. The law should provide for a child to have nationality from birth (of origin) if he or she is born in the state concerned, or if he or she is born in the state concerned and :
 - a. either of his or her parents are citizens; or
 - b. either of his or her parents was also born in the country; or
 - c. either of his or her parents has his or her habitual residence in the country; or



- d. he or she would otherwise be stateless.
10. The law should provide that a child found in the territory of the state shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that state.
11. The law should provide for a person to have the right to obtain recognition of nationality from birth (of origin) if he or she was born in the state concerned or arrives there as a child, fulfils a minimum residence requirement, and still has his or her habitual residence there at the age of majority.
12. The law should provide at a minimum for a child to have nationality from birth (of origin) if he or she is born outside the state concerned and
 - a. either of his or her parents was born in that state and is a national or has the right to acquire the nationality of that state; or
 - b. either of his or her parents is a national or has the right to acquire the nationality of that state and the child would otherwise be stateless.
13. Under no circumstances should national laws be amended, adopted, or repealed in circumstances where the changes are, or could be interpreted to be, intended to deny or revoke the nationality of any specific individual or group. No law relating to the denial or revocation of nationality should have retroactive effect. In case of doubt, national courts should apply a presumption in favour of the person or group concerned.

State succession

14. In case of state succession, the law should provide the following:
 - a. Every person who had the nationality of a predecessor state, irrespective of the mode of acquisition of that nationality, or who would otherwise become stateless as a result of the state succession, has the right to opt for the nationality of any or all of the successor states to which he or she has an appropriate connection, including birth in the territory, having a father or mother (including an adoptive father or mother) who is a citizen, marriage to a citizen, or habitual residence.
 - b. If a person does not take any action to opt for the nationality of one of the other states, the law should attribute to a person the nationality of the successor state where he or she is habitually resident.
15. Transitional provisions relating to nationality dating from independence should be interpreted in favour of those affected and should not be invoked arbitrarily to deny nationality to any person.

Non-discrimination

16. The law should not refer to membership of any particular racial, ethnic, religious, linguistic or similar category noted in international human rights treaties as the basis for inclusion or exclusion from nationality rights.
17. The law should grant men and women equal rights to acquire, change or retain their nationality and confer nationality on their children.
18. The law should not permit any discrimination with regard to the acquisition of nationality as between legitimate children and children born out of wedlock.
19. African states should take legal and other measures to ensure that persons of any race, ethnicity, religion or linguistic community have a right to nationality on the same terms, and, in particular, that members of groups that have historically been excluded from nationality (including children whose mothers but not fathers are citizens), benefit from such measures.



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

Proof, documentation and information

21. The law should provide that a person has a right both to the documents that are necessary to prove nationality, including birth certificates, and to proof of nationality itself.
22. The laws and practices relating to recognition of nationality should provide for alternative systems of proof of identity and other requirements in contexts where documentary evidence is not available or cannot reasonably be obtained.
23. The law should provide for the certification of nationality by the courts where an application for recognition of nationality has not been processed within a reasonable time or where the official documentation necessary to prove nationality does not exist or cannot be obtained, and for the courts to order that any other documents be issued.
24. The law should provide that, in the event that an application for recognition of nationality is denied, the state must provide reasons in writing for the refusal and the decision may be appealed to the courts.
25. African states should take all necessary measures to provide relevant documentation to all those who are entitled to citizenship and to ensure that the administrative processes by which persons acquire registration and other documents required to prove a right nationality are accessible on the same basis to anyone who satisfies the criteria established by law.
26. African states should take all necessary measures to ensure that all children born in the country are registered at birth, without discrimination, including those children born in remote areas and in disadvantaged communities; and that children not registered at birth can be registered later during childhood or adulthood. These measures should include, for example, the use of mobile birth registration units, registration free of charge and flexible systems of proof where it is not reasonable to meet the standard requirements. Children whose births have not been registered should be allowed to access basic services, such as health care and education, while waiting to be properly registered.
27. African states should take measures to provide for registration of the births of the children of citizens who are born abroad.
28. The law should provide that all citizens have the right to a passport and, where in use, to an identity card.
29. The fees required to apply for recognition, acquisition, retention, loss, recovery or certification of nationality and to obtain necessary documents to support such applications should be reasonable.
30. African states should take steps to inform and educate all those who might be eligible for a particular nationality about that right, especially but not only in the case of succession of states.

Naturalisation

31. The law should provide the right to acquire nationality by naturalisation (or similar process) to anyone who has been habitually resident in the country for five years, or a shorter period in the case of a person married to a citizen, persons born in the country, former citizens, stateless persons, and refugees.
32. Where there is a right to naturalisation only if a person is lawfully present in the country, any period of unlawful residence preceding the recognition of lawful residence should be included in the calculation of the necessary period for naturalisation.



33. Any other conditions required for naturalisation should be clearly and specifically provided in law and reasonably possible to fulfil. Grounds for exclusion from the right to naturalise should not include ill health or disability or general provisions relating to good character and morals, with the exception of criminal convictions for a serious offence.
34. The law should provide that a minor child of a person who acquires the nationality of a state acquires nationality at the same time as the parent if he or she is living with that parent.
35. The law should provide that the rights of those persons who are citizens from birth and those who have acquired nationality subsequently are equal.
36. The law should provide that a person whose application for naturalisation is rejected has the right to be given reasons in writing for the refusal and to appeal to the courts.
37. The law should provide for the courts to rule on an application for naturalisation in the event that it has not been processed within a reasonable time.
38. African states should fulfil the obligations under the 1951 UN Convention relating to the Status of Refugees and the 1954 Convention Relating to the Status of Stateless Persons and as far as possible facilitate naturalisation, including by making every effort to expedite procedures and to reduce as far as possible the charges and costs of such proceedings. These measures should apply in all cases, with no exceptions made on the basis of national origin or membership of a particular national, racial or ethnic origin, political opinion, religion or membership in a particular social group.
39. Where a refugee acquires the nationality of the state of refuge but is not able to renounce his or her previous nationality, his or her new nationality shall be considered to be predominant for the purposes of diplomatic protection in relation to the state of previous nationality and the state of previous nationality shall be bound to recognise this exercise of diplomatic protection.

Marriage and family relations

40. African states should take legal and other measures to facilitate the acquisition of nationality by foreigners married to citizens and by the children of both parents or the foreign spouse, whatever the sex of the foreign spouse or parent.
41. The law should not include any provisions providing that marriage to a foreigner or change of nationality by the husband during marriage automatically changes the nationality of the wife or forces upon her the nationality of the husband, or that place her at risk of statelessness.
42. The law should grant women equal rights to men with respect to the nationality of their children.
43. The law should provide that those who have acquired nationality on the basis of marriage to a citizen do not lose that nationality in the event of dissolution of the marriage.
44. The law should provide for spouses to have the right to acquire nationality on the basis of marriage to a citizen even when they do not have their habitual residence in the country whose nationality is sought.
45. The law relating to the acquisition of nationality by marriage should recognise any marriage conducted according to the laws of the country where it took place; there should be no requirement for it to have been conducted according to the laws of the country whose nationality is sought.

Dual nationality

46. The law should provide that existing citizens, whether from birth or by acquisition, may acquire other nationalities without any penalty and that citizens of other countries may be



naturalised without any requirement to renounce an existing nationality, so as to avoid the risk of creating statelessness.

47. Countries that amend their laws to allow dual nationality when it had previously been forbidden should adopt transitional provisions allowing those who had previously lost their nationality on acquiring another to recover their former nationality.
48. Any provisions under national laws placing restrictions on the holding of public office by persons with dual nationality should be narrowly defined, restricted to the very highest offices of state, and applied only to the nationality of the person concerned and not the nationality of his or her parents or spouse. Where there are restrictions, they should apply only from the time the person takes up office and not while he or she is running for election or applying for appointment.

Loss and deprivation of nationality

49. The law should not provide for involuntary loss of birth nationality (nationality of origin).
50. In the case of those persons who are citizens by acquisition, the law should provide for deprivation of nationality only on the grounds of clear, narrowly defined, and objectively provable criteria that comply with international human rights law, and in particular the principle of proportionality. The law should prohibit deprivation of nationality on racial, ethnic, religious, political or similar grounds.
51. The law should prohibit any deprivation of nationality that would have the effect of rendering the person concerned stateless.
52. Where the law provides for the deprivation of nationality on grounds of fraud or false representation, the law should also provide exceptions in favour of retention of nationality where at the time of the fraud or false representation the person involved was a minor or where the fraud or false representation took place more than 10 years earlier.
53. The law should not provide for deprivation of nationality based on refusal to carry out military service or the perpetration of an ordinary crime. The law should not provide for deprivation of nationality on grounds of disloyal or criminal behaviour where such behaviour is not seriously prejudicial to the vital interests of the state. Voluntary service for a foreign military force can only be considered seriously prejudicial to the vital interests of the state if the force is engaged in armed conflict against that state.
54. The law should provide that any children of a person whose nationality is revoked retain nationality, in particular if their other parent retains it or if they would otherwise become stateless; or if the ground for loss relates to the personal behaviour of the parent, or occurs or is discovered after they have attained the age of majority.
55. The law should provide that deprivation of nationality does not affect the spouse of the person concerned.
56. The law should provide that nationality may be only revoked by court order following an individual hearing on the merits of the case, and not by administrative decision. The state should bear the burden of proving that the person concerned is not entitled to nationality and there should be a right to appeal through established procedures.

Renunciation of nationality

57. The law should provide that a person may renounce nationality, unless he or she would otherwise become stateless. Procedures required to renounce nationality should be purely administrative and should give no right to the state to refuse permission.
58. The law should provide for the possibility of recovery of nationality by persons who have previously renounced it.



Expulsions

59. The law should prohibit expulsion of citizens from the country except in the context of extradition by due process of law to stand trial or serve a sentence in another country.
60. The law should prohibit expulsion or return of any person contrary to the provisions of the 1951 UN Convention relating to the Status of Refugees, the 1954 Convention relating to the Status of Stateless Persons, the African Charter on Human and Peoples' Rights or any other relevant international law.
61. The law should protect against arbitrary expulsion of noncitizens from the country, in particular by establishing clear and narrowly defined grounds for expulsion and providing that in all cases, including those where expulsion is purportedly on the basis of national security, the persons affected have the right to have their cases heard on an individual basis before an independent tribunal with the right to representation and appeal through established procedures, and that the state bears the burden of proof of the case for expulsion, including the fact that the person is not a citizen.
62. The law should provide that those who are habitually resident in the country but who for whatever reason have not acquired citizenship nonetheless acquire rights that give them greater protection against expulsion than nonresidents. The courts should apply the law taking into account the proportionality of the harm caused to the person being expelled in relation to the gravity of the reason asserted for his or her expulsion.
63. African states should incorporate in their national laws and respect in practice the provisions of the African Charter on Human and Peoples' Rights prohibiting mass expulsions.

Freedom of movement

64. The law should provide that citizens and those habitually resident in the country, including but not limited to stateless persons, have the right to enter the country.
65. The law should provide that everyone lawfully present in the country has freedom of movement and freedom to choose his or her residence within the country.
66. The law should provide that everyone, including a citizen, has the right to leave the country.