

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	926
Land:	Somalia
Kilde:	UNHCR
Titel:	Citizenship and statelessness in the horn of Africa – December 2021
Udgivet:	22. december 2021
Optaget på baggrundsmaterialet:	25. januar 2022

CITIZENSHIP AND STATELESSNESS IN THE HORN OF AFRICA **DECEMBER 2021**

Citizenship and Statelessness in the Horn of Africa

A Study by Bronwen Manby for UNHCR
December 2021



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Methodology and acknowledgments

This report is proposed as the foundation for further study of the risks of statelessness in the four countries it covers. It is based on desk research and the author's previous experience of researching access to citizenship in African states, as well as interviews with government officials, UN agencies, and non-governmental organisations in each country. It provides an analysis of the laws in force in the states and territories under considerations, as well as implementing regulations where available, and other official policy statements. The regional and national offices of UNHCR also supplied important information and commentary. The final draft report was circulated to the competent authorities in each state for their feedback, and these comments have been integrated before publication. The report aims to be up to date until the end of June 2021.

The tables comparing provisions of national citizenship laws included throughout the report inevitably involve 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.

This report may be quoted, cited, and uploaded to other websites, provided that the source is acknowledged. The views expressed and any errors and omissions are those of the author, and do not necessarily reflect the official view of UNHCR.

Thanks for comments and contributions are due to:

- Benedicte Voos, Senior Protection Officer (Statelessness) and Lynette Lagat, Protection Associate (Statelessness) – UNHCR Regional Bureau for East Horn of Africa and the Great Lakes
- Getachew Gebo Geto – National Statelessness Focal Point, INVEA, Ethiopia
- Abdikani Wehlie – Head of Civil Registration & National Statelessness Focal Point, Somalia
- Laura de Somer & Samia Abdoukarim Abdallah – UNHCR Djibouti
- Soufiane Adjali & Suleiman Ahmedin -UNHCR Eritrea
- Guelnoudji Ndjekoukosse, Kimenyi Buzoya, Katie Ogwang & Anna Koptsiukh – UNHCR Somalia
- Armen Yedgaryan & Mohamed Abdi Bakal – UNHCR Sub Office, Hargeisa, Somalia
- Henok Yilma & Ota Hlinomaz – UNHCR Ethiopia
- Kamal Nidam Adan – UNICEF Hargeisa, Somalia
- Brendan Ross – UNICEF Somalia
- Dekha David - UNICEF Djibouti
- Nikodimos Alemayehu – UNICEF Ethiopia
- Anna Zita Metz, Asta Bareisaite & David Satola – Identification for Development, World Bank
- Amin Abdi Mohamed – SWDC, Somalia
- Burhan Abdullah Shiil – Puntland Minority Women's Development Organisation, Somalia
- Ibrahima Hassan - Minority/Marginalised Communities Advocacy Network, Somalia
- Khadar Mohamed Ahmed – Hargeisa University Legal Clinic, Somaliland
- Ambrose King – Ethiopian World Federation, Ethiopia
- Claire Thomas – Minority Rights Group
- Derek Nurse – Memorial University of Newfoundland, Canada
- Daniel van Lehman – Portland State University, United States of America
- Ibrahim Hashi Jama – manager of the website Somalilandlaw.com

A note on terminology¹

“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 apparently 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 generally termed “nationality of origin” (*nationalité d’origine*) in civil law countries; 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

¹ This section is substantially the same as versions published in previous reports by the same author for UNHCR on statelessness in West, East and Southern Africa.

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 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. 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.

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.

1. Summary

The categories of people at risk of statelessness in the Horn of Africa are not dissimilar to those in other parts of the African continent. The first category is the most widely dispersed; that of vulnerable children, and the adults they become. Those falling in this category include orphans, abandoned infants, children of foreign or absent fathers (where gender discrimination exists in fact or law), children being cared for by foster families, street children, those trafficked across borders, and other children separated from their parents, especially at a young age. Other groups at risk of statelessness are cross-border populations, including nomadic and pastoralist communities, as well as those affected by border disputes; long-term refugees and former refugees, and migrants without documentation of another nationality – and especially their descendants; and generally people of mixed ancestry and thus potential dual nationality, but who have no documentation from any state. These groups exist in every country of the region. This report also highlights two particular groups at risk of statelessness: the members of the various minority communities in Somalia; and people of Eritrean descent (or mixed Eritrean-Ethiopian descent) living in Ethiopia.

It is not possible to provide statistics on how many are stateless in the Horn of Africa. That is, it is not possible to estimate how many people are “not considered as a national by any state under the operation of its law”, the international law definition of a stateless person. Statelessness is often only a situation that becomes apparent over time, after repeated efforts to obtain documents from the authorities of one or more countries. With the exception of Djibouti, the countries considered by this report have very low levels of birth registration and have not historically provided for a national identity card or required one to access services. The distinction between a person lacking identity documents and a person who is stateless is thus not necessarily immediately clear: it remains possible for many people living in the Horn of Africa, whether peasant farmers or nomads in remote areas, or others who remain entirely in the informal sector, to avoid the need for identity documentation altogether.

There are plans and existing projects to upgrade identity systems throughout the region, and it may be that it is during these processes that statelessness is revealed. The conclusion and recommendations for this report propose legal reforms and procedures that should be put in place to ensure that these efforts to strengthen identification result in the prevention and reduction of statelessness, rather than its creation.

Causes of statelessness

The causes of statelessness include gaps in nationality laws, when they fail to provide the safeguards against statelessness established by international law; most importantly the right to nationality for children found in a state’s territory of unknown parents and for children born in the territory who cannot acquire nationality from either of their parents. Even where these protections exist, however, risks of statelessness remain high if the law provides no general rights to nationality based on birth in the territory and if naturalisation is difficult to access (as is the case in all the states considered in this report).

Discrimination between men and women in transmission of nationality to children is often a cause of statelessness, especially where the child is born in the territory of the mother's nationality and not the father; this discrimination is exacerbated where there are also distinctions based on birth in or outside a formally registered marriage. Discrimination based on ethnicity, religion, national origin, or race similarly creates high risks of statelessness, especially where this discrimination is encoded in law.

Statelessness is also caused by failures in administrative systems to ensure that a legal right to a nationality can be claimed in practice. This includes a lack of universal birth registration, weaknesses of civil registration more generally, and the absence of child protection systems to ensure that all children have a documented identity, family connections, and nationality. Even in states with more complete coverage of birth registration, parents without identity documents are often unable to register the births of their children, while single parents commonly face discrimination. These problems 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. Although the achievement of universal birth registration is not a complete solution without the necessary parallel reforms to nationality laws, strengthened civil registration is a critical part of the effort to prevent and reduce statelessness.

Finally, statelessness in Africa has roots in the colonial history of the continent: 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. These are exacerbated by the challenges created by more recent conflict and forced displacement, by the determination of the citizen body for more recently established states, and by management of migration more generally.

International and African standards

Minimum standards for the content of nationality laws are established by the UN human rights treaties, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and 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 and on loss and deprivation of nationality, that – together with the views and comments of the treaty bodies – 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 the right to a nationality; Article 6(4) specifically provides (in line with Article 1 of the 1961 Convention on the Reduction of Statelessness) that a child shall acquire the nationality of the state of birth if he or she is not granted nationality by any other state. The Committee of Experts responsible for oversight of the treaty has adopted a General Comment providing guidance on 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 considered many communications that relate directly or indirectly to the right to a nationality and the prevention of statelessness. 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 in the final stages of consideration by the political organs of the African Union.

The League of Arab States and Organisation of Islamic Cooperation (OIC), of which Djibouti and Somalia are both members, have both adopted commitments relevant to the ending of statelessness. The Arab League Declaration on Women's Nationality Rights urges states to grant women and men equal rights in transmission of nationality to children and spouses. The Arab Declaration on Belonging and Legal Identity called on states to ensure that all children are registered at birth and are able to acquire a nationality. The Covenant on the Rights of the Child in Islam provides for children to have the right to birth registration and to have their nationality determined.

The minimum legal reforms required by international law for the prevention of statelessness are the equal rights of men and women to confer nationality on their children, as well as 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 of a child born in the territory and who remains resident during his or her childhood to acquire nationality, at the latest at majority.

Protection against statelessness in the legal frameworks of the states considered in this report

In general, laws that are based purely on descent in attribution of nationality at birth; that discriminate on the basis of sex, ethnicity, religion or similar status; that do not contain minimum protections for vulnerable children; and that restrict access to naturalisation, place significant numbers at risk of statelessness.

All the countries in the region base their nationality laws primarily on descent. Although all have protections in law for children of unknown parents, none provides for children born in the territory who are otherwise stateless to have the right to a nationality, as required by the African Charter on the Rights and Welfare of the Child. Djibouti, Eritrea and Ethiopia are all parties to this treaty, and Somalia has signed.

Djibouti, Eritrea and Ethiopia are all parties to CEDAW, and they have removed discrimination in transmission of nationality to children and spouses. Somalia is not a party to CEDAW, and Somali citizenship law continues to discriminate on grounds of sex. Somalia is, however, a member of the Arab League, which endorses the equal rights of parents.

Somalia's law also creates risks of statelessness through a presumption of citizenship in favour of those who are "Somali", defined as "any person who by origin, language or tradition belongs to the Somali Nation". The law does not provide any safeguards against statelessness for those who might not be considered "Somali" and yet do not have any other state to call home, leaving members of Somalia's

minority communities, who face significant discrimination in daily life, at high risk of not being recognised as nationals as Somalia seeks to rebuild its identification infrastructure.

All the states considered by this report 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 appears to be inaccessible in practice – as it is in all African countries. Lack of access to naturalisation does not in principle create statelessness if the person concerned has another nationality and this nationality is documented. But it does at least create exclusion from the benefits of citizenship, and it greatly increases the risk of statelessness if naturalisation is impossible to access for those who have lost any connection to their country of origin, including for later generations born in a country where neither parent is recognised as a national.

Birth registration

While Djibouti has achieved birth registration rates of above 90 percent of children under five, none of the other countries covered by this have reported rates of above five percent (although the latest information from Ethiopia is an improvement to 16 percent). Recent initiatives have slightly improved these figures, but birth registration remains very low – and of course even lower among those who are already adults. Although birth registration is not (usually) accepted as proof of nationality, it provides the most authoritative evidence of the facts that enable a person to claim nationality – place and date of birth, and identity of parents. Universal birth registration is thus a priority for the prevention of statelessness.

If the parents of a child are not nationals of the country of birth, access to consular services may be essential, both to issue documents required for the parents to be able to register the child's birth in the host country, and for that child's right to the parent's nationality to be assured, through transcription of the birth certificate into the records of the state of origin. Yet it can be costly and difficult to access such consular services, nearing impossible for those who are refugees or without existing identity documents.

In the absence of birth registration, states rely in practice on alternative identification systems to establish a person's identity and nationality, usually including witness testimony of different kinds.

Due process and transparency in nationality administration

For legal protections against statelessness to be effective, the administration of nationality and identification needs to follow basic rules of due process and transparency. Amongst other requirements, there should be clearly stated criteria for proof of entitlement to citizenship, including witness testimony in case birth certificates or other documents are not available, and the steps to be taken in case no evidence of citizenship is available (for example in the case of children of unknown parents).

Administrative safeguards against statelessness start with the establishment of child protection systems that ensure that the right of every child to acquire a nationality is respected in practice, in line with the obligations of the African Charter on the Rights and Welfare of the Child and the UN Convention on the Rights of the Child. This means that procedures should be put in place so that, for example, the legal attribution of nationality to children of unknown parents found in the territory is practically implemented

by issue of the necessary documents to confirm that status. State and other agencies supporting vulnerable children should treat the establishment of identity documents and nationality as a priority on the same level as ensuring access to schooling and health care. This is true even where birth registration is not a precondition to access such services.

Nationality administration could be significantly improved with greater transparency over decision-making. This would include simplification of the procedures for proof of nationality, and the provision of written reasons for rejection of any application for the issue of identity documents confirming nationality, or the decision to confiscate or fail to renew documents, or to deprive nationality. There is also a need for low-cost access to independent review and appeal of such decisions. This should include administrative review by the relevant identity authority, an easily accessible appeal to an independent oversight body, and access to courts by the usual processes. 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. Finally, the state should publish statistics in relation to issue of documents, naturalisation, and deprivation of nationality.

Overview of the report

This study seeks to provide a comparative analysis of nationality law and its implementation 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.

This report is the fourth in a series commissioned by UNHCR on nationality and statelessness in West, East and Southern Africa. The other three reports have covered the member states of the Economic Community of West African States (ECOWAS); of the East African Community (EAC); and of the Southern African Development Community (SADC). This report draws on the analysis of statelessness in the previous reports, and builds on it, based on the particular experience of the Horn of 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 the states and territories covered by this report. 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 and identifies individual examples of such groups. Section 6 outlines international standards on nationality and statelessness, and the jurisprudence of the African human rights institutions. Section 7 consists of some concluding reflections on the meaning of statelessness in the region, and the priorities for action as identification systems are upgraded. A comprehensive set of recommendations is provided in section 8.

The Horn of Africa has seen significant turbulence in recent years. The analysis of legal frameworks can as a consequence seem a somewhat abstract exercise. However, even when poorly implemented laws

continue to shape public consciousness, and as state capacity improves become increasingly important. The analysis in this report is relevant and important despite the political unrest and conflict as it is published.

Key recommendations

In order to strengthen nationality systems and address the risk of statelessness caused by historical and contemporary migration, some key recommendations are condensed here from the longer list in section 8. The priorities for the states covered in this report and by regional bodies should be:

- Accession to the international and African treaties 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 not granted nationality by any other state.
 - removal of provisions in the law and requirements in administrative procedures (including birth registration) that discriminate on the grounds of sex of the parent 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 effective processes for administrative and judicial review of decisions relating to recognition of nationality and the issue of identity documents, including by
 - The creation of independent oversight mechanisms that can provide a rapid and low-cost review, with a right to be heard and respect for principles of due process;
 - Clearly described procedures for access to the courts in such matters;
 - Legal and paralegal support for those whose status is in doubt.
- The establishment of procedures to identify those who are at most 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 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 long-term refugees, former refugees, stateless persons and persons of undetermined nationality.
- 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 Specific Aspects to the Right to a Nationality and the Eradication of Statelessness in Africa.

2. The history of nationality law in the Horn of Africa

History and demography of the territories considered in this report

The territories considered in this report vary greatly in their history, size and demographic make-up. These differences have important impacts on nationality law and administration today.

Ethiopia is one of only two contemporary African states (the other being Liberia) not to be colonised by European powers. A series of kingdoms were established over the centuries in the northern highlands of today's Ethiopia, which by the late 19th century had been consolidated and expanded under the Emperor Menelik II. Ethiopia retained its internal sovereignty for almost the entire era of colonial rule. The external borders of today's state were, however, established by the conquest of neighbouring territories by the Italians, French and British. Italy had attempted to annex the whole of the Ethiopian territory, but the Italian army was famously defeated by Ethiopian forces at the Battle of Adwa in 1896. A second Italian invasion in 1936, was, however, successful; the territory was occupied by Italian forces and the emperor deposed. In 1941, during the Second World War, the Italians were defeated by British forces advancing from Sudan, and the Emperor Haile Selassie was returned to the throne. Ethiopia was among the 51 states that formally adopted the United Nations Charter in 1945. The emperor was overthrown in 1974 by a military government known as the Derg; the Derg regime was in turn overthrown in 1994, and the current constitution entered into force in 1995.

Ethiopia has more than 80 ethnic groups, of which ten are estimated to number more than one million (in descending order of size: Oromo, Amhara, Somali, Tigrie, Sidama, Guragie, Welaita, Hadiya, Afar & Gamo), by far the most numerous being the Oromo and the Amhara, estimated in 2007 at more than 25 million and almost 20 million each.² (See further the heading below: Ethiopia's federal constitution.)

The ancient kingdom of Aksum was centred in northern Ethiopia and Eritrea, and the territory that is now **Eritrea** fell at different times more or less under the control of what became the Ethiopian empire. However, while Ethiopia remained independent, except for the brief period of Italian and British occupation, Eritrea was colonized by Italy from the late nineteenth century. The port of Massawa on the Red Sea coast came under Italian control in 1885, and by 1890 Italy had acquired the remainder of the Eritrean territory by treaty with the Ethiopian empire.

The territory of today's **Somalia** was historically the site of several sultanates centred on the port towns, including Mogadishu. Italy gained military control of the larger east and southern part of the territory,

² Summary and Statistical Report of the 2007 Population and Housing Census Results, Federal Democratic Republic of Ethiopia Population Census Commission, Addis Ababa, December 2008, available at [https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft\(1\).pdf](https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft(1).pdf).

signing various treaties with Somali clan leaders during the late 19th century. In 1936, following the second Italian invasion and conquest of Ethiopia, the Italian territories of Eritrea, Ethiopia and Somalia were merged into Italian East Africa (*Africa Orientale Italiana*). The northern Somali territory came under British control in the 1880s, and in 1898 was formally declared to be the Protectorate of British Somaliland. (See further the headings below: The Federal Member States of Somalia and the status of Somaliland, and Minorities in Somalia.)

Following the 1941 defeat of Italian forces in Ethiopia, the Eritrea and Somalia governorates of Italian East Africa came under British military administration. Britain had also occupied the Ogaden region of Ethiopia, largely inhabited by people of Somali ethnicity; this was restored to Ethiopian administration in 1948. In 1949 the United Nations designated Eritrea and Italian Somalia as UN trust territories, in accordance with agreements among the allied powers at the Potsdam Conference of 1945 and the provisions of the UN Charter. Italian Somalia was removed from British military administration in November 1949, and designated a UN trust territory (the Trust Territory of Somaliland) under Italian administration, which was restored on 1 April 1950. British Somaliland remained a protectorate until 26 June 1960, when an independence constitution came into force – for less than one week.³ On 1 July 1960 the Italian-administered territory also gained independence, and the two territories were joined together to form the Somali Republic, under a constitution approved by referendum in 1961 (though with significant rejection of the constitution by the northern regions).⁴

Eritrea initially remained under British administration as a UN trust territory. However, a further UN resolution adopted in 1950 designated Eritrea “an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown”.⁵ In accordance with this resolution Ethiopia incorporated Eritrea as an autonomous territory under imperial jurisdiction in 1952. A proclamation stated that “all inhabitants of the territory of Eritrea except persons possessing another nationality are hereby declared to be subjects of Our Empire and Ethiopian nationals”; as well as “all inhabitants born in the territory of Eritrea and having at least one indigenous parent or grandparent”. If those living in the territory had another nationality, they were permitted to renounce Ethiopian nationality within six months and retain the foreign nationality.⁶ In 1962, Ethiopian Emperor Haile Selassie dissolved the federation and annexed Eritrea as a province of Ethiopia, the status it retained until independence in 1993. All inhabitants of Eritrea became Ethiopian nationals.

An Eritrean Liberation Movement was founded in 1958, seeking independence from Ethiopia, succeeded by the Eritrean Liberation Front in 1961. In 1970, a splinter group formed the Eritrean

³ Laurie Fransman, Adrian Berry, and Alison Harvey, *Fransman’s British Nationality Law*, 3rd ed. (London: Bloomsbury Professional, 2011), catalogue entry on Somalia. See also the history set out at http://www.somalilandlaw.com/citizenship_law.htm.

⁴ Referendum on the 1960 Somali Republic Constitution, 20 June 1961, Official Returns Table 1, extracted at [SomalilandLaw.com](http://www.somalilandlaw.com/The_1961_Referendum_Table_1.pdf) http://www.somalilandlaw.com/The_1961_Referendum_Table_1.pdf.

⁵ UN General Assembly Resolution, “Eritrea: Report of the United Nations Commission for Eritrea; Report of the interim Committee of the General Assembly on the report of the United Nations Commission for Eritrea”, 2 December 1950, UN Doc A/RES/390(V).

⁶ Imperial Order for the Federal Incorporation and Inclusion of the Territory of Eritrea within the Empire of Ethiopia, No. 6 of 1952 (*Negarit Gazeta* 12th Year No.1) as quoted in Fasil Nahum, ‘Ethiopian Nationality Law and Practice’, *Journal of Ethiopian Law* 8, no. 1 (1972): 168–83. See also Zecharias Fasil, ‘Report on Citizenship Law : Ethiopia’, *GLOBALCIT Country Reports* (Firenze: European University Institute, 2020), <https://cadmus.eui.eu/handle/1814/66827>.

People's Liberation Front (EPLF), which subsequently joined other regionally based armed groups in the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), allied for the overthrow of the post-1974 Derg regime. In 1991, when the EPRDF finally defeated the Derg, the new Ethiopian transitional government immediately approved a referendum on the status of Eritrea, as had been promised within the alliance. The referendum was held in April 1993 under UN supervision, with 99 percent of those who voted in favour of independence, and the EPLF became the ruling party of the new state the following month.

Despite its small geographical size, there are nine major ethno-linguistic groups in Eritrea: Tigrinya, Tigre, Kunama, Nara, Bilen, Saho, Afar, Hedareb, and Rashaida.⁷

The territory of what is now the **Republic of Djibouti** was first ceded to France in a series of treaties from 1862 to 1885 with leaders of the Afar people (a nomadic people living in the northern part of the territory, as well as parts of modern Eritrea and Ethiopia) and the Issa-Somalis (also nomadic, living in the southern part of the territory, as well as parts of modern Somalia and Ethiopia). The territory's location at the entrance to the Red Sea became strategic with the opening of the Suez canal in 1869, and was also intended as a stopping off point for ships travelling to French-controlled Indochina. In 1896 the French merged three separate regions, including the new city and port that they had named Djibouti (located in the southern part of the territory), to form what became known as the *Côte française des Somalis*. From 1897 to 1917 a railway was completed to Addis Ababa. The port attracted immigration from neighbouring territories, Arabs from Yemen across the Red Sea, and French, other European, and Asian traders.⁸

In 1958, as France restructured its relationships with its colonies, the territory voted for continued association with France in the French Community established by the constitution of the 5th French Republic. The *Côte française des Somalis* became an overseas territory with its own territorial assembly elected by universal suffrage. From 1967 until final independence as the Republic of Djibouti in 1977, the name of the territory was changed – as Afar politicians gained more representation in local politics – to the *Territoire français des Afars et des Issas*.

Djibouti is by far the smallest state, its population estimated today at just under one million; Eritrea's population is estimated at 3.5 million; Somalia at close to 16 million; and Ethiopia at 115 million, Africa's second most populous state (after Nigeria).⁹

⁷ See sources cited in Peggy A. Hoyle, 'The Eritrean National Identity: A Case Study', *North Carolina Journal of International Law and Commercial Regulation* 24, no. 2 (1999): 381–416.

⁸ Kassim Shehim and James Searing, 'Djibouti and the Question of Afar Nationalism', *African Affairs* 79, no. 315 (1980): 209–26; Simon Imbert-Vier, 'Afars, Issas ... and Djiboutians: Toward a History of Denominations', *Northeast African Studies* 13, no. 2 (2014): 123–49.

⁹ 'World Population Prospects 2019' UN Department of Economic and Social Affairs Population Division, <https://population.un.org/wpp/Download/Standard/Population/>.

Nationality in the era of European colonisation

Ethiopia

Ethiopia was the first sub-Saharan African country to have its own nationality law, adopted in 1930 by the Emperor Haile Selassie during the first year of his reign, the year before the first modern constitution of 1931.¹⁰ The 1931 constitution itself stated only that “All the natives of Ethiopia, subjects of the empire, form together the Ethiopian Empire”; the details were left to the law.¹¹ Looking to European models (especially Switzerland) within a general effort to modernise the Ethiopian state, the nationality law adopted a descent-based system through the male line only, unless the child was born out of wedlock (a concept imported from Europe, since the concept of illegitimacy was largely unknown in Ethiopia).¹² Women married to Ethiopian men automatically acquired Ethiopian nationality; naturalisation for others was permitted on the basis of quite stringent conditions, including fluent knowledge of written and spoken Amharic; though in 1933 the law was amended to allow the emperor to waive the conditions at his discretion.¹³ The law did not permit loss of Ethiopian nationality in any other circumstances than acquisition of another nationality; and reacquisition of Ethiopian nationality required only return to Ethiopia, renunciation of the other nationality, and application for readmission, with no discretion.

Eritrea and Somalia

The Italians adopted a civil code for Eritrea in 1909, which stated that those who were native to the colony, or belonged to a tribe originating there, were “colonial subjects” (*sudditi coloniali*).¹⁴ An ordinance provided similar rules for Italian Somalia in 1911.¹⁵ A law of 1933, which reconfigured the structures of government in the two colonies, provided a more elaborated definition of those who were “Eritrean or Somali subjects”. They included: all those individuals living in Eritrea or Italian Somalia who were not Italian citizens, or citizens or subjects of any other state; those born of an Eritrean or Somali father (or mother, if the father was unknown); those born in Eritrea or Somalia if both parents were unknown; women married to an Eritrean or Somali subject; and “an individual belonging to an African or Asian population who had provided civil or military service in the colony”.¹⁶ The various laws established a racial hierarchy in which only those who were white or of mixed race, and fulfilled further conditions showing their assimilation to Italy, had the possibility of acquiring Italian citizenship (*cittadinanza*) with

¹⁰ Proclamation Promulgating the Ethiopian Nationality Law, 22 July 1930 (15 Hamle 1922, Ethiopian calendar). See also Abera Jembere, *An Introduction to the Legal History of Ethiopia: 1434 - 1974* (Münster: Lit Verlag, 2000).

¹¹ Constitution of Ethiopia, 1931, Articles 1 and 18.

¹² Although the law was gender-neutral at first sight, the provisions setting out the arrangements through which children born of mixed marriages could establish their Ethiopian nationality stated that: “Every child born in a lawful mixed marriage follows the nationality of its father.” Ethiopia Nationality Law, July 1930, sections 1 and 6. See also Robert Allen Sedler, ‘Nationality, Domicile and the Personal Law in Ethiopia’, *Journal of Ethiopian Law* 2, no. 1 (1965): 161–79; Nahum, ‘Ethiopian Nationality Law and Practice’.

¹³ Proclamation amending the Nationality Law of 15 Hamle 1922, 25 Meskerem 1926 (Ethiopian calendar).

¹⁴ Codice civil per la Colonia Eritrea approvato con regio decreto 28 giugno 1909 no.589.

¹⁵ Ordinamento giudiziario per la Somalia Italiana, approvato con regio decreto 8 giugno 1911, no.937. Both laws extracted in Felice de Dominicis, *Commento alla legge sulla Cittadinanza Italiana del 13 giugno 1912* (Turin: Unione Tipografico-Editrice Torinese, 1916).

¹⁶ Legge 6 luglio 1933, No. 999, Ordinamento organico per l’Eritrea e la Somalia, art.15.

the associated rights. The status of those who were subjects of the Ethiopian emperor was somewhat unclear; but following the conquest of Ethiopia, racial hierarchies were more stringently enforced.¹⁷

In the Protectorate of British Somaliland, those born in the territory who were not “British subjects” (confusingly, compared to the French and Italian terminology, “British subject” was until 1948 the highest status in British law) or did not have another nationality became “British protected persons” (BPPs), a lesser legal status created for the “natives” of a protectorate.¹⁸

Djibouti

As for the other colonised territories, the inhabitants of the *Côte française des Somalis*, subsequently the *Territoire français des Afars et des Issa*, were all French nationals for international law purposes during the colonial era. However, as in Italian Eritrea and Somalia and in British Somaliland – and other parts of the French empire – there was a racial hierarchy within French nationality. In the French territories, this was effected by the difference in status between *sujets français* and *citoyens français*. Only French citizens had full civil rights. These were of course mostly those of French ethnic ancestry, but included a handful among the native population (the *indigènes*), or those of mixed-race (*métis*), provided they showed sufficient assimilation to France.¹⁹ Uniquely among French territories, the legislation governing Djibouti provided for French nationality – with the status of *sujet français* – to be attributed based purely on birth in the territory, in order to incorporate the majority of the population with origins in neighbouring states.²⁰ Foreigners of *statut indigène* (those of non-European descent), could also naturalise as *sujets français*.²¹

Nationality law at the transition to independence and amendments since independence

Ethiopia

The legal framework for Ethiopian nationality established in 1930 continued in effect throughout the period of colonisation of Ethiopia’s neighbours, and was resumed unaltered after the brief period of military occupation during the second world war. The 1930 law also remained in effect following the overthrow of the Ethiopian emperor.

¹⁷ Giulia Barrera, ‘The Construction of Racial Hierarchies in Colonial Eritrea: The Liberal and Early Fascist Period, 1897-1934’, in *A Place in the Sun: Africa in Italian Colonial Culture*, ed. Patrizia Palumbo (Berkeley and Los Angeles: University of California Press, 2003), 81–115; Giulia Barrera, ‘Sex, Citizenship and the State: The Construction of the Public and Private Spheres in Colonial Eritrea’, in *Gender, Family and Sexuality: The Private Sphere in Italy, 1860-1945*, ed. Perry R Willson (Basingstoke: Palgrave Macmillan, 2004); Fabrizio de Donno, ‘La Razza Ario-Mediterranea: Ideas of Race and Citizenship in Colonial and Fascist Italy, 1885–1941’, *Interventions* 8, no. 3 (2006): 394–412; Luca Bussotti, ‘A History of Italian Citizenship Laws during the Era of the Monarchy (1861-1946)’, *Advances in Historical Studies* 05, no. 04 (2016): 143–67, <https://doi.org/10.4236/ahs.2016.54014>.

¹⁸ In 1948, “British subjects” – those born in Britain or one of the territories designated a “crown colony” under British law, or the child of a British subject father – were renamed “citizens of the UK and colonies” (CUKCs), as part of a major reorganisation of British nationality law. BPP status was established under the British Protected Persons Order in Council of 1934, revised in 1949. Fransman, Berry, and Harvey, *Fransman’s British Nationality Law*, chap. 7.

¹⁹ Bronwen Manby, *Citizenship in Africa: The Law of Belonging* (Oxford: Hart Publishing, 2018), chaps 3 & 4; Emmanuelle Saada, *Les enfants de la colonie: les métis de l’empire français entre sujétion et citoyenneté* (Paris: La Découverte, 2007).

²⁰ Simon Imbert-Vier, ‘Devenir citoyen ou national en Côte française des Somalis: manipuler des catégories’, *Outre-mers: Revue d’histoire* 107, no. 404–405 (December 2019): 41–62.

²¹ Yerri Urban, ‘Race et nationalité dans le droit colonial français (1865-1955)’ (PhD, Dijon, Université de Bourgogne, 2009), 310, <https://hal.archives-ouvertes.fr/tel-01630611/document>.

The 1995 constitution recognised the Ethiopian citizenship of “any woman or man either of whose parents is an Ethiopian citizen”, for the first time creating equal rights for men and women to transmit nationality to their children.²² For the time being, however, the gender discriminatory nationality law of 1930 remained in force. In 2003, the 1930 law was finally replaced, bringing gender equality but retaining the *jus sanguinis* regime, except for the introduction of a presumption of Ethiopian nationality for abandoned infants.

Eritrea

The Eritrean provisional government’s Nationality Proclamation No.21 of 1992, on the basis of which eligibility to register in the independence referendum was determined, provided that Eritrean nationals were those born of a father or mother “of Eritrean origin”. The law defined “Eritrean origin” to mean (descent from) a person who was resident in Eritrea in 1933, the date of the Italian law defining Eritrean or Somali subjects. Those who had entered and resided in Eritrea between 1934 and 1951 (after the establishment of the Italian colony and before the federation with Ethiopia) were also entitled to a certificate of nationality on application. Any person who arrived in Eritrea in 1952 or later had to apply for naturalisation in the same way as any other foreigner, showing a ten-year residence in Eritrea before 1974, or a twenty-year residence thereafter, and renounce any other nationality. Barred from acquiring nationality were those who had “committed anti-people acts during the liberation struggle of the Eritrean people”.²³ In practice, those who were recognised as obtaining Eritrean nationality in 1993 included many people of mixed ancestry.

Proclamation 22/1992 then established procedures for participation in the referendum, providing that those eligible to vote were adults who had acquired nationality under Proclamation 21/1992 and who held an identification card issued by the provisional government’s Department for Internal Affairs.²⁴ More than 1.1 million people registered; among them almost 300,000 outside the territory, including more than 150,000 in Sudan and close to 58,000 in Ethiopia.²⁵

The Ethiopian and Eritrean governments agreed that “until such time that the citizens of one of the sides residing in the other’s territory are fully identified and until the issue of citizenship is settled in both countries, the traditional right of citizens of one side to live in the other’s territory shall be respected.”²⁶ In 1996, Ethiopia agreed with Eritrea that Eritrean-Ethiopians should actively choose between their two

²² Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995. Article 6 provides that: “(1) Any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian. (2) Foreign nationals may acquire Ethiopian nationality. (3) Particulars relating to nationality shall be determined by law.”

²³ Eritrean Nationality Proclamation No.21/1992, sections 2-4.

²⁴ Eritrean Referendum Proclamation No.22/1992, section 16.

²⁵ Eritrea: Birth of a Nation (Asmara: Government of Eritrea, 1993), chap. ‘Referendum Results’, http://www.dehai.org/conflict/history/birth_of_a_nation.htm.

²⁶ “Agreement on Security and Other Related Matters between the Ministries of Internal Affairs of the governments of Ethiopia and Eritrea”, Addis Ababa, 13 May 1994, article 2.3. Cited in Human Rights Watch, ‘The Horn of Africa War: Mass Expulsions and the Nationality Issue (June 1998-April 2002)’ (New York, January 2003). See also (from the Eritrean perspective) Natalie S. Klein, ‘Report on the Deportation of Eritreans and Ethiopians of Eritrean Origin from Ethiopia, June – August 1998’ (Washington, D.C.: Embassy of Eritrea to the United States, 1999).

possible nationalities, rather than automatically losing their existing status²⁷ (see further the heading below: Ethiopians of Eritrean descent).

Somalia

In 1960, in anticipation of the independence of their respective territories, the Italian and British authorities each adopted laws to regulate citizenship.

The law on citizenship adopted by the Italian administration on 12 February 1960 did not create any explicit transitional provisions on who would become citizens of the new state. In line with Italy's own citizenship law at the time, it established a descent-based framework thereafter, through the father only.²⁸

The Somaliland Nationality and Citizenship Ordinance issued by the British on 25 June 1960 also established a descent-based framework for citizenship. This was in contrast to the citizenship regime negotiated for most former British territories, where the transitional rules were for a person born in the country of one parent also born there to acquire citizenship automatically at independence, and for attribution of nationality based purely on birth in the territory for those born after independence. After defining "Somali" as "any person whose mother tongue is the Somali language and who follows Somali customs", the ordinance provided for attribution of nationality on the date of independence (27 June 1960) to a "Somali" born in the territory, or whose father was born in the territory (or mother if out of wedlock). For those born after the ordinance came into force, citizenship was acquired on the basis of descent from a citizen father (or mother if born out of wedlock). Those who "normally resided" in British Somaliland, however, were able to apply for citizenship. "Normally reside" was defined to accommodate nomadic populations and included "a person who from time to time temporarily absents himself from the territory for the purposes of grazing or herding livestock or in pursuit of his vocation, occupation, employment or education or for recreation."²⁹

Both the Italian and British citizenship laws adopted in advance of independence were repealed and replaced on 22 December 1962 by a new law on Somali citizenship, which remains in force.

The 1962 law provided for retention of citizenship attributed by the previous laws, and established a descent-based regime going forward, through the father. Citizenship is also acquired by operation of law by any person "who is a Somali residing in the territory of the Somali Republic or abroad and declares to be willing to renounce any status as citizen or subject of a foreign country". "Somali" is defined as "any person who by origin, language or tradition belongs to the Somali Nation".³⁰ Dual citizenship is not permitted under the 1962 law: any Somali acquiring another citizenship automatically

²⁷ Agreed minutes of the Fourth Ethio-Eritrean Joint High Commission Meeting, 18-19 August 1996, cited in Human Rights Watch, *The Horn of Africa War: Mass Expulsions and the Nationality Issue (June 1998-April 2002)*.

²⁸ Legge 12 febbraio 1960, no.9, *Cittadinanza Somalia*.

²⁹ Somaliland Nationality and Citizenship Ordinance No.15 of 1960, 23 June 1960.

³⁰ Law No.28 of 22 December 1962 on Somali Citizenship, articles 2 and 3. See also N.A. Noor Mohammed, *The Legal System of the Somali Democratic Republic* (Charlottesville, VA: Michie, 1972), chapter 2 'Citizenship'.

loses Somali citizenship; and any person with another citizenship is required to renounce it in order to acquire or retain Somali citizenship. This prohibition on dual citizenship was, however, overruled by the 2004 Transitional Federal Charter (now repealed), and by the 2012 Provisional Constitution establishing the current federal system (see also Section 3, Comparative analysis of nationality legislation).

Djibouti

When Djibouti gained independence in 1977, in the wake of the Ethiopian revolution of 1974, there were no explicit transitional provisions on acquisition of the new Djiboutian citizenship; however, the citizenship law finally adopted in 1981 did seek to create a framework to determine who did or did not become Djiboutian at the transfer of sovereignty. The law aimed to create very restricted access to Djiboutian citizenship, given that “more than 50,000 people originating from neighbouring countries live in the territory, making up more than one tenth of the population”; while at the same time not questioning the Djiboutian nationality of those who had previously been recognised as French.³¹ Those who became Djiboutian under the 1981 law, with effect from independence in 1977, were those within the jurisdiction of the new state who had French nationality at that date, based on birth in the territory or having acquired it on application; however, dual nationality was not permitted, and a person holding another nationality after independence would automatically lose their Djiboutian nationality. For those born after independence, children would only acquire nationality at birth if *both* parents were Djiboutian (with the exception of foundlings and children of Djiboutian mothers if the father was unknown).³²

The 1981 law was replaced in 2004. The new nationality code made access to nationality easier, so that a child acquired nationality at birth from either parent, whether born in or out of wedlock.³³ Dual nationality was also permitted for the first time.³⁴ In 2018, the 2004 nationality code was incorporated, with minor amendments, as Title II of a new civil code.³⁵

Nationality in the federal systems of Ethiopia and Somalia

Eritrea and Djibouti are centralised states, and nationality administration depends on centrally governed institutions. The federal systems of Ethiopia and Somalia, however, mean that, although recognition and grant of nationality is a responsibility of the federal government, an analysis of risks of statelessness must also consider the practice of nationality administration by the units making up the federation. The claimed independence but unrecognised status of Somaliland adds further complications.

Ethiopia’s federal constitution

After the overthrow of the Emperor Haile Selassie in 1974, the Derg military regime reorganized Ethiopia's fourteen provincial administrations, sub-dividing them into sub-regions and districts (woredas), as part of its programme to dismantle previous hierarchies of privilege. Addis Ababa and

³¹ *Loi no. 200/AN/81 portant Code de la nationalité djiboutienne, exposé des motifs.*

³² *Ibid.*, articles 5-11, 32.

³³ *Loi n°79/AN/04/5ème L portant Code de la nationalité djiboutienne. Articles 4-6.*

³⁴ *Ibid.*, article 11.

³⁵ *Loi n°003/AN/18/8ème L portant Code Civil.*

some other cities were also given their own administrations. The Derg established peasants' associations to implement land reform, and similar associations in urban areas known as kebeles ("neighbourhoods"), initially to collect rent and taxes, and with powers later extended to include other matters—including the registration of houses, residents, births, deaths, and marriages.³⁶ In 1987, following the adoption of a new constitution, a further reorganisation created 25 administrative regions and five autonomous regions (Eritrea, Aseb, Tigray, Dire Dawa, and Ogaden). Despite this limited autonomy for some regions, the administrative system remained centralised.³⁷

The Constitution of the Federal Democratic Republic of Ethiopia 1995, adopted after the overthrow of the Derg, created a radical shift. The constitution gives significant powers to the regional states of the federation, as well as the right of self-government to each of "the nations, nationalities and peoples of Ethiopia".³⁸ Ethiopia has more than 80 ethnic groups, but only nine regional states were created in 1995: five were named after the dominant ethnic group in that region (Amhara, Oromo, Tigray, Afar and Somali) but also have substantial minorities; the Southern Nations, Nationalities and Peoples (SNNP) Region alone comprises almost 60 different "nations, nationalities and peoples"; two are divided mainly between two groups (Benishangul-Gomuz and Gambella); and the state of Harrar is named for the Harrar ethnic group, although they form less than ten percent of the population, which is mainly Oromo and Amhara.³⁹ There are also two city administrations (Addis Ababa and Dire Dawa). Article 39 of the 1995 constitution grants unconditional rights of self-determination to the "nations, nationalities, and peoples"⁴⁰, from whatever level of administrative unit, up to and including secession from Ethiopia.⁴¹ Following a 2001 referendum, a separate administrative zone was created on this basis for the Siltie in the SNNP regional state.⁴² In 2020, the new regional state of Sidama was established, after a long campaign by the Sidama ethnic group, following a November 2019 referendum supporting separation

³⁶ Proclamation No. 31 of 1975 on Public Ownership of Rural Lands, Chapter 3; Proclamation No. 47 of 1975 on Government Ownership of Urban Lands and Extra Houses, Chapter V.

³⁷ Thomas P. Ofcansky and LaVerle Berry (editors). *Ethiopia: A Country Study*. Washington: GPO for the Library of Congress, 1991. <http://countrystudies.us/ethiopia/>.

³⁸ There is an extensive literature on Ethiopia's federal constitution. See, for example, Christophe Van der Beken, 'Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level', *Afrika Focus* 20, no. 1 (2007): 105–51; Assefa Fiseha, 'Ethiopia's Experiment in Accommodating Diversity: 20 Years' Balance Sheet', *Regional & Federal Studies* 22, no. 4 (2012): 435–73; Yonatan Tesfaye Fessha and Christophe Van der Beken, 'Ethnic Federalism and Internal Minorities: The Legal Protection of Internal Minorities in Ethiopia', *African Journal of International and Comparative Law* 21, no. 1 (1 February 2013): 32–49, <https://doi.org/10.3366/ajicl.2013.0051>; Yonatan Tesfaye Fessha, 'The Original Sin of Ethiopian Federalism', *Ethnopolitics* 16, no. 3 (2017): 232–45, <https://doi.org/10.1080/17449057.2016.1254410>; Berihun Aduugna Gebeye, 'Citizenship and Human Rights in the Ethiopian Federal Republic', *Ethiopian Constitutional and Public Law Series*, 2019, 9–94; Solomon M. Gofie, 'The State and the "Peoples": Citizenship and the Future of Political Community in Ethiopia', in *Citizenship, Belonging, and Political Community in Africa: Dialogues between Past and Present*, ed. Emma Hunter (Athens: Ohio University Press, 2016), 240–55.

³⁹ Fiseha, "Ethiopia's Experiment in Accommodating Diversity".

⁴⁰ Article 39(5) defines a "Nation, Nationality or People", without distinction among the terms, as "a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable predominantly contiguous territory."

⁴¹ In 2001, this power was used to create a separate administrative zone for the Siltie in the Southern Nations and Nationalities Region. Lahra Smith, 'Voting for an Ethnic Identity: Procedural and Institutional Responses to Ethnic Conflict in Ethiopia', *Journal of Modern African Studies* 45, no. 04 (2007): 565–94, <https://doi.org/10.1017/S0022278X07002881>.

⁴² Lahra Smith, "Voting for an ethnic identity: procedural and institutional responses to ethnic conflict in Ethiopia", *Journal of Modern African Studies*, Vol. 45, No. 4, 2007, pp. 565–594. See also Lahra Smith, *Making Citizens in Africa: Ethnicity, Gender, and National Identity in Ethiopia*, Cambridge University Press, 2013.

from the SNNP region.⁴³ Other ethnic groups continue to call for their own regional states, encouraged by the success of the Sidama.⁴⁴

Ethiopian nationality is legally constituted at the federal level, and the federal constitution has a bill of rights with non-discrimination provisions, including in relation to freedom of movement, voting and holding political office.⁴⁵ In practice, however, a person's membership of one of the federal units must be confirmed (via the administrative sub-units) before Ethiopian nationality is recognised (see heading below: National identity cards and passports). The regional states and city administrations were as of 2017 sub divided into more than 103 administrative zones, 993 woredas (rural districts) and municipalities/city administrations, and more than 18,500 kebeles.⁴⁶

The regional state constitutions vary in their definitions for membership of that region, though all reflect the federal constitution in their general provisions on individual and group rights. Minority groups are explicitly classified as "indigenous" or "non-indigenous" in some regional constitutions, while the distinction is made in practice in others.

The Amhara regional constitution states that "The supreme power of the national regional state resides in and belongs to the peoples of the Amhara region"; whereas that of Oromia is more exclusive, stating that "sovereign power in the region resides in the people of the Oromo Nation". The Somali regional state has similar provisions to those of Oromia. In some states, a degree of autonomy is given to minorities through the three-tier system of local government within each regional state (the zone or "nationality administration", woreda/city administration and kebele). However, this is not uniform across the regions: the Amhara region provides for nationality administrations for the Himra, Awi and Oromo ethnic groups, the Southern Nations region has numerous ethnically defined nationality administrations, and Benishangul-Gumuz has five ethnically determined zones; but Oromia provides no territorial or other form of autonomy for non-Oromo residents of the state.⁴⁷ The Benishangul-Gumuz constitution lists only five ethnic groups as indigenous, even though almost 50 percent of the population is made up of members of other groups who have migrated to the region in the past. The Gambella constitution

⁴³ Yonatan T. Fessha, 'The Sidama have voted for their own state. What follows is far less certain' *The Conversation*, 3 December 2019 <https://theconversation.com/the-sidama-have-voted-for-their-own-state-what-follows-is-far-less-certain-127748>; Kjetil Tronvoll, with Filata Boroje and Kairedin Tezera, 'The Sidama's quest for self-rule: A study of the referendum on regional statehood', *European Institute of Peace*, January 2020 <https://www.eip.org/wp-content/uploads/2020/06/Sidamas-quest-for-self-rule.pdf>; Brook Abdu, 'Sidama embarks on statehood' *The Reporter Ethiopia*, 20 June 2020 <https://www.thereporterethiopia.com/article/sidama-embarks-statehood>.

⁴⁴ Bereket Eshetu Messele, 'Splitting Southern Nations region into four can promote peace' *Ethiopia Insight*, 10 October 2020 <https://www.ethiopia-insight.com/2020/10/10/splitting-southern-nations-region-into-four-can-promote-peace/>.

⁴⁵ *Constitution of the Federal Democratic Republic of Ethiopia*, 1995, articles 25, 32 and 38.

⁴⁶ "Ethiopian Experience of Civil Registration and Vital Statistics", *FDRE Vital Events Registration Agency Presentation to Technical Seminar on Legal Frame Work for Civil registration, Vital Statistics and Identity Management*, Manila, Philippines, July 2017. "Woreda" is sometimes used for all district level administrations, and sometimes used only in rural contexts, with "municipality" or "city administration" used as the equivalent in urban areas. Serdar Yilmaz and Varsha Venugopal, 'Local Government Discretion and Accountability in Ethiopia', *International Studies Program Working Paper* (Georgia State University, 2008), <https://icepp.gsu.edu/files/2015/03/ispwp0838.pdf>; Zemelak Ayele, 'Local Government in Ethiopia: Still an Apparatus of Control?', *Law, Democracy & Development* 15, no. 1 (2011), <https://doi.org/10.4314/ldd.v15i1.7>; Tilahun Meshesha Fenta, 'Local Government in Ethiopia: Practices and Challenges', *Journal of Management Science and Practice* 2, no. 4 (2014): 71–79.

⁴⁷ Van der Beken, 'Ethiopia: Constitutional Protection of Ethnic Minorities at the Regional Level'.

similarly refers to “founder” nations. Both these constitutions ensure the right of non-indigenous populations to live and work in the regions, but not to hold public office.⁴⁸

The Federal Member States of Somalia and the status of Somaliland

Following independence in 1960, Somalia was made up of eight regions: the two northern regions (the former British protectorate of Somaliland) and six southern regions, each with a governor appointed by the central government,⁴⁹ subdivided into districts with elected district councils.⁵⁰ The military government that took power in 1969 put all local administration under central government direction.⁵¹

Since the overthrow of the Siad Barre regime in 1991, Somalia has had no central government in control of all the internationally recognised territory. Security is currently maintained by the African Union Mission in Somalia (AMISOM), first deployed to Somalia in 2007 to support the Somali government and to assist in the fight against the Islamist insurgency Al-Shabaab. Three decades of war have destroyed infrastructure of all kinds, including infrastructure related to identification.

The ongoing efforts to reconstitute the central state as a federation, through the Transitional Federal Charter adopted in 2004 and the Provisional Constitution of 2012, create additional complications in considering the interpretation of Somali citizenship as does the status of the break-away territory of Somaliland that declared independence in 1991. The 2012 Provisional Constitution was supposed to be in effect for four years only but has yet to be replaced.⁵²

The 2012 Provisional Constitution establishes a federal structure and gives parliament the power to establish federal member states.⁵³ Since 2012, six federal member states have been recognised by the central government⁵⁴, each of which has its own constitution: Galmudug, Hirshabelle, Jubaland, Puntland, Southwest State, and Somaliland; in addition, the Banadir Regional Administration is responsible for Mogadishu municipality, the capital city.⁵⁵

Article 54 of the 2012 Provisional Constitution of Somalia provides that citizenship and immigration are among the matters reserved to the federal government. Nonetheless, several of the constitutions of the federal member states provide for citizenship at the state level. The Puntland constitution, which was

⁴⁸ Fessha and Beken, ‘Ethnic Federalism and Internal Minorities’.

⁴⁹ Law No. 14 of 14 June 1962. Information in this paragraph, and links to the laws, from http://www.somalilandlaw.com/local_government_law.htm.

⁵⁰ Law No. 19 of 14 August 1963; Law No. 8 of 8 February 1967.

⁵¹ Law No. 52 of 8 June 1972; Law No. 21 of 3 February 1977.

⁵² Jan Amílcar Schmidt, ‘The Somali Constitutional Review Process. Taking Stock’, ConstitutionNet, 8 March 2017 <https://constitutionnet.org/news/somali-constitutional-review-process-taking-stock>

⁵³ Provisional Constitution of Somalia 2012, articles 48 & 49.

⁵⁴ Puntland declared itself an autonomous territory in 1998, and was recognised as a federal member state in 2012; it was followed by Jubaland (2013), Southwest (2014), Galmudug (2015), and Hirshabelle (2016). See Michael Keating and Sagal Abshir, *The Politics of Security in Somalia*, NYU Center on International Cooperation, April 2018, p.5. https://cic.nyu.edu/sites/default/files/politics_of_security_in_somalia_2018_final_0.pdf

⁵⁵ Ministry of Planning, Investment and Economic Development, ‘Federal Member States (FMS)’, <https://mop.gov.so/index.php/the-ministry/directorates/planning/federal-member-states-fms/>

adopted just before the Provisional Constitution, refers to the citizenship of Puntland, which is to be determined by law.⁵⁶ South West State provides that citizenship of the state is “certified by the municipality of origin” and that a citizen of the state does not lose citizenship on acquisition of another; it also provides that a law on citizenship will provide more detail on acquisition and loss of state citizenship.⁵⁷ The Jubaland constitution provides that the Jubaland people are Somali citizens who are resident in Jubaland.⁵⁸ The Gulmadug and Hirshabelle constitutions, however, include no provision on citizenship, although (like the others) they do provide for basic rights and freedoms to be enjoyed by citizens of the state.⁵⁹

Somaliland declared independence from Somalia in 1991, and a decade later adopted a framework to regulate citizenship. The constitution adopted by Somaliland in 2000 attributes citizenship to the descendants of a person residing in Somaliland on 26 June 1960, the date of independence from Britain⁶⁰; a citizenship law adopted in 2002 specifies that descent must be traced through the male line and provides further detail.⁶¹ The independence of Somaliland is recognised neither by the government of Somalia nor by the United Nations or African Union. Nonetheless, citizenship in Somaliland is administered in practice without reference to the Provisional Constitution of Somalia or the 1962 citizenship law but rather in accordance with the constitution of Somaliland and the citizenship law adopted by the territory. The constitution and citizenship law adopted by Somaliland are thus relevant in considering existing and future risks of statelessness, whatever the status of Somaliland.

⁵⁶ Constitution of Puntland State of Somalia, 2012, art.5: “1. The people of Puntland State are the citizens of Puntland and any person who has acquired Puntland citizenship in a legal manner. 2. A special law shall define Puntland citizenship, the right to reside and the attainment of Puntland citizenship.” No law has in fact been adopted to provide further definition. Article 39 : “1. Anyone who is a citizen of Puntland or has acquired Puntland citizenship in a lawful manner shall be deemed to be a Puntland citizen. 2. A Puntland citizen shall not lose his / her citizenship if he / she acquires the citizenship of another country.”

⁵⁷ Constitution of South West State of Somalia, September 2014, art. 8.

⁵⁸ Provisional Constitution of Jubaland State of Somalia, 1 August 2015, art. 5: “The People 1. Jubaland people are the Somali citizens who inhabit Middle Jubba, Lower Juba and Gedo. 2. A Jubalander is any person who has resided in the State of Jubaland.”

⁵⁹ Constitution of Galmudug State of Somalia, 28 July 2015; Provisional Constitution of Hirshabelle State, 5 October 2016 (basic rights and freedoms are set out in chapter two of each constitution, in almost identical terms, including a guarantee of non-discrimination in article 11).

⁶⁰ Constitution of the Republic of Somaliland, April 2000, art. 4: “1. Any person who is of Somaliland origin being a descendant of a person residing in Somaliland on 26th June 1960 or earlier shall be recognised as a citizen of Somaliland.” (“Qof kasta oo u dhashay Somaliland, kana Isiran dadkii deganaa dalka Somaliland 26kii Juun 1960kii iyo ka hor, waxa loo aqoonsanayaa muwaadin Somaliland”).

⁶¹ Somaliland Citizenship Law No 22 of 2002, art. 2(1): “A Somaliland citizen by birth is anyone whose father is a descendent of persons who resided in the territory of Somaliland on 26 June 1960 and before.” (“Waxa Muwaadin dhalad Somaliland ah qof kasta oo uu dhalay Aabbe ka Isirran dadkii deganaa dhulka Somaliland 26 Juun 1960kii iyo ka hor.”)

3. Comparative analysis of nationality legislation

Constitutional protection for the right to a nationality

Only the Ethiopian constitution provides for the right to a nationality in its constitution: article 36 on the rights of children states that every child has the right to a name and nationality. The Ethiopian constitution also establishes general principles relating to nationality, including that men and women have equal rights to transmit nationality to their children, and that “no Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will”.⁶²

The provisional constitution of Somalia of 2012 provides that dual citizenship is permitted, and that denial, suspension, or deprivation of Somali citizenship may not be based on political grounds.⁶³

The constitution of Eritrea provides for the equal rights of men and women to transmit citizenship to their children, for the possibility of acquiring citizenship, and that a law shall regulate other questions.⁶⁴

The Djibouti constitution simply refers the regulation of nationality to the law.⁶⁵ However, a law on the legal protection of minors adopted in 2015 provides that “every child shall be registered at birth and shall have from birth the right to a name, the right to acquire a nationality and, as far as possible, to know and be cared for by his or her parents”.⁶⁶

Nationality attributed at birth

All the countries of the Horn establish a primarily descent-based nationality law regime. In Djibouti, Eritrea and Ethiopia the law does not discriminate on the basis of sex in transmission of nationality to children; whereas in Somalia (and Somaliland⁶⁷) nationality is acquired through the father only. Other provisions of the law in Somalia also establish discrimination in favour of people of Somali ethnicity. None of the states provide any rights to nationality based on birth in the territory; the only protections against statelessness are provided in the case of children of unknown parents.

⁶² Constitution of the Federal Democratic Republic of Ethiopia, 1995, articles 6, 33 and 36.

⁶³ Somalia Provisional Constitution 2012, article 8.

⁶⁴ Eritrea Constitution, 1997, article 3.

⁶⁵ Constitution de la République de Djibouti 1992, article 57.

⁶⁶ Loi no 95/AN/15/7ème L du 18 mai 2015 sur la protection et la promotion des mineurs, art. 7: « tout enfant est enregistré à sa naissance et a dès celle-ci le droit à un nom, le droit d'acquérir la nationalité et, dans la mesure du possible, connaître ses parents et d'être élevé par eux ».

⁶⁷ Although Somaliland is not recognised as a state in international law, this section provides analysis of the risks of statelessness created by its laws; risks which may also depend on the future status of the territory.

Nationality based on descent

Djibouti, Eritrea and Ethiopia all provide for nationality to be attributed at birth to a child whose father or mother is a citizen, whether the birth takes place inside or outside the country. Eritrea provided for gender equal attribution immediately from independence, and this is confirmed by the constitution adopted in 1997. Ethiopia's 1995 constitution provided, in its single article on nationality, for gender equality in attribution of nationality to children for the first time, but it was not until 2003 that the nationality law was brought into conformity with this provision. In Djibouti, where the constitution refers all matters related to nationality to legislation, the law was reformed in 2004. The nationality law in these countries also does not discriminate based on birth in or out of wedlock. However, if the parents are not married, descent from a father will depend on recognition under the family law or civil code (see further below).

The 2012 Provisional Constitution of Somalia does not regulate acquisition of citizenship, delegating this task to parliament. The Law on Somali Citizenship of 1962 provides for attribution of citizenship by operation of law to any person whose father is a Somali citizen⁶⁸, or a person "who is a Somali resident in Somalia or abroad and declares to be willing to renounce any status as citizen or subject of another country" (art.2). "Somali" is defined in the law as "any person who by origin, language or tradition belongs to the Somali Nation" (art.3). Questions of gender equality remain highly contested in relation to citizenship as in other matters.⁶⁹ A proposed amended citizenship law proposed in 2016 would remove gender discrimination but retain the role of Somali ethnicity (see heading below: Minorities in Somalia). Aside from discrimination in the law, membership and belonging in Somalia depends on membership of a clan, which is transmitted through the male line only (see heading below: National identity cards and passports, in section on Nationality administration in practice).

The Eritrean nationality law appears at first sight to provide a similar ethnic requirement to that of Somalia. Section 2(1) of the nationality law states that "Any person born to a father or a mother of Eritrean origin in Eritrea or abroad is an Eritrean national by birth." Section 2(2), however, goes on to state that "A person who has 'Eritrean origin' is any person who was resident in Eritrea in 1933". While tracing descent from a person resident in Eritrea in 1933 (the date of the Italian law defining Eritrean citizenship) may be very challenging, this is in origin a residence-based definition rather than an ethnic one. It does not, however, conform to the international norm that habitual residence should be the first principle in the context of attribution of nationality on succession of states (see below, heading on Nationality on Succession of States).

⁶⁸ This gender discrimination is also present in the law adopted by Somaliland, which provides for citizenship by descent through the male line, with the exception that the child of a Somaliland mother whose father is not known may apply for naturalisation, subject to all the usual conditions. Somaliland Citizenship Law No.22 of 2002, sections 2 and 4. The Somaliland constitution of 2000 provided for citizenship to be attributed based on descent from a person residing in Somaliland at the date of independence from Britain, without explicitly stating whether that person should be a father or mother. Constitution of the Republic of Somaliland, 2000, art.4.

⁶⁹ Although the Somali Family Law of 1975 gave women equal rights in property, inheritance and divorce, there was significant social resistance to this reform. "Human Rights Brief: Women in Somalia", Immigration and Refugee Board of Canada, 1 April 1994, available at <https://www.refworld.org/docid/3ae6a83b8.html>. See also Institute on Statelessness and Inclusion, Somali Women Development Centre (SWDC), Somaliland Human Rights Centre (SHRC), Global Campaign for Equal Nationality Rights (GCENR), "Joint Submission to the Human Rights Council at the 38th Session of the UPR: Somalia", October 2020 https://files.institutesi.org/UPR38_Somalia.pdf.

Table 1: Right to nationality by descent

Country	Born in country		Born abroad				Legal Provision	Date Gender equality achieved		
	In wedlock + Father (F) &/or Mother (M) is a national	Out of wedlock + Father (F) &/or Mother (M) is a national	In wedlock + Father (F) &/or Mother (M) is a national	Out of wedlock + Father (F) &/or Mother (M) is a national						
	F	M	F	M	F	M	F	M		
Djibouti	R	R	R	R	R	R	R	R	L2018Arts29 &30	2004
Eritrea	R	R	R	R	R	R	R	R	C1997Art3 L1992Art2	1992
Ethiopia	R	R	R	R	R	R	R	R	C1995Art6 L2003Art3	1995
Somalia ~	R	-	R	-	R	-	R	-	L1962Art2	-

R: child is citizen from birth as of right
- no rights
~ racial, religious or ethnic discrimination in citizenship law: in Somalia, a person must be of “Somali origin” to be a citizen from birth

Rights to nationality based on birth in the country

None of the laws considered in this study provide any general rights to nationality (regardless of a person’s other possible nationalities) based on birth in the territory. None of the variations of that rule that are commonly provided for attribution of nationality are recognised: whether automatic attribution to any person born in the territory, or to the second generation born in the territory; or rights based on birth in the territory and residence during childhood.

Protections against statelessness

Although Djibouti, Ethiopia and Eritrea have all acceded to the African Charter on the Rights and Welfare of the Child, and Somalia has signed (see Annex 3), none of the laws provide protection against statelessness for a child born in the territory who, in the words of article 6(4) of the Charter, “is not granted nationality by any other State in accordance with its laws”. That is, they do not protect the child born in the territory of parents who themselves are stateless, or of unknown nationality, or who cannot transmit nationality to their children (for example, because of gender discrimination in the law of the parents’ country or countries of origin).

The only protection against statelessness is provided for children of unknown parents (“foundlings”). Djibouti and Eritrea each provide that a child born in the territory of unknown parents shall be presumed to be a national. This wording could potentially create some problems in interpretation: the usual formulation is that a child *found* in the territory of unknown parents is presumed to be a national, since if the parents are unknown, place of birth is also likely to be unknown. Somalia and Ethiopia both adopt

this more usual phrasing, but with a lack of clarity as to the age of the child when found.⁷⁰ The Ethiopian law states that the presumption of Ethiopian nationality relates to an “infant” found in the territory, and the upper age of an “infant” is not defined. Somalia’s law includes protection for foundlings in a provision on “minors in special circumstances” which refers both to a “minor” and to a “child”, without indicating the difference (if any) between them.⁷¹

Interpretation of such laws should bear in mind the definition of “child” in Article 2 of the African Charter on the Rights and Welfare of the Child, as a “human being below the age of 18 years”. In its General Comment on Article 6 of the Charter on the right to birth registration and a nationality, the African Committee of Experts on the Rights and Welfare of the Child urged States to, “at a minimum, grant nationality to all such children found abandoned, including those who (at the date they were found) were not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth.”⁷²

In Djibouti, a new law adopted in 2015 provides for legal protection of minors, including children without any family support, and gives authority to a children’s judge (*juge des mineurs*) to take the steps necessary to protect a child.⁷³ Djibouti provided an additional temporary procedure to resolve statelessness in Article 8 of its 2004 nationality code: for a transitional period of five years following the adoption of the law, the competent officials were empowered to issue certificates based on information in public knowledge (*actes de notoriété*) enabling late birth registration and recognition of nationality for those born in the territory who had not been able to establish their Djiboutian nationality.⁷⁴ This system would be similar to the recognition of nationality by a court based on a person’s “apparent status” (*possession d’état*) that exists in a number of former French territories in Africa. It does not seem, however, that this proposal to provide a facilitated route to proof of nationality was enabled in practice through the adoption of an implementing decree. The provision is not repeated in the 2018 civil code of which the nationality code now forms part.

⁷⁰ The Somaliland Citizenship Law provides that citizenship “may be granted to a child who is born in the territory of Somaliland and whose parents are not known”; with the apparent implication that citizenship is acquired by grant rather than attributed by operation of law, as is required by international law. Somaliland Citizenship Law 2002, art.11.

⁷¹ Law No. 28 of 22 December 1962, Article 15. Minors in Special Circumstances: 1. Any minor who is a child of unknown parents and was born in the territory of the Somali Republic, shall be considered a Somali citizen, provided that he has not acquired a foreign citizenship or the status as subject of a foreign country. 2. Any child of unknown parents found in the territory of the Somali Republic shall be presumed, until the contrary is proved, to have been born in the territory of the Somali Republic.

⁷² African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/02 (2014), adopted by the Committee at its twenty-third Ordinary Session (07 - 16 April, 2014), para 96.

⁷³ Loi n°95/AN/15/7ème L portant Code de protection juridique des mineurs.

⁷⁴ “Pour une période transitoire de 5 ans, le Directeur de la Population et les Commissaires des Districts de l’intérieur sont habilités à procéder à la délivrance des actes de notoriété supplétifs d’actes de naissance pour les individus nés en République de Djibouti et qui, par méconnaissance ou par impossibilité, n’ont pas pu établir leur qualité de djiboutien. Ils sont réputés avoir été djiboutiens même si cette qualité n’est établie que postérieurement à leur naissance.” Loi no.79/AN/04 art.8.

Table 2: The right to a nationality based on birth in the country

Country	Birth in country	Birth & one parent also born	Birth and resident at majority	Child otherwise stateless	Parents stateless or of unknown nationality	Abandoned infant (ai) or parents unknown (pu)	Relevant legal provision (most recent amendment in brackets)
Djibouti						pu	L2018Art31
Eritrea						pu	L1992Art2
Ethiopia						ai	L2003Art3
Somalia						pu	L1962Art15

This table includes blank columns, to indicate the potential rights to acquire nationality based on birth in the territory that are provided for in other African states (See Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, Open Society Foundations 3rd edition, 2016).

Adopted children

If a nationality law does not provide for an adopted child to acquire nationality from its adoptive parents, that child may be at high risk of statelessness. This is of course especially the case if the child is adopted from a foreign country or if the child's birth parents are or were of unknown nationality. However, the lack of such a provision may also place a child who is in principle already a national at risk, if there is no mechanism to establish the legal connection to the adoptive parents (known as filiation in the civil law systems), so that the adopted child acquires the same rights as any other child would do.

Both Ethiopia and Eritrea provide for a foreign child adopted by a national to have the right to apply for citizenship, and the law does not specify additional conditions (other than release from previous nationality in the case of Ethiopia).

Djibouti's 2004 nationality law specified that adoption had no effect in itself on nationality; however, this was changed at the incorporation of the nationality code into the civil code of 2018, and the legal act of plenary adoption by a national now itself attributes Djibouti nationality to the child. The civil code makes a distinction between plenary adoption (in which contacts with a birth family cease) and simple adoption (in which the adopted person retains rights in his or her original family).⁷⁵

Neither the 1962 Law on Somali Citizenship (nor the 2002 Somaliland Citizenship Law) contain any mention of adoption.

Islamic Sharia law has not traditionally permitted full adoption, recognising instead the system akin to guardianship known as *kafala*, under which a person (*kafeel*) undertakes responsibility for the protection, upbringing and care of a child, in the same way as a parent would do for his or her own child – but without breaking the child's legal links with his or her birth family.⁷⁶ The system of *kafala* is recognised by the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of

⁷⁵ Loi n°003/AN/18/8ème L portant Code Civil, Titre IX : De la filiation adoptive, arts.435–472.

⁷⁶ Usang M Assim and Julia Sloth-Nielsen, 'Islamic Kafalah as an Alternative Care Option for Children Deprived of a Family Environment', *African Human Rights Law Journal* 14, no. 2 (2014): 322–45.

the Child.⁷⁷ In several North African states, a person cared for by a *kafeel* who is a national is given the right to acquire nationality on application, but there is no automatic attribution based on this status.⁷⁸

In any event, full legal adoptions are rare, even if permitted, in countries where legal paperwork has historically been less important and informal arrangements for looking after vulnerable children are more prevalent. In countries where there has been significant conflict – including Somalia above all in the Horn of Africa – there are many children looked after by a different family from the one they were born into, without any formal recognition of that fact, whether through adoption or another legal arrangement. Nationality laws rarely provide any protection against statelessness in these cases – including the laws of the countries considered by this report. However, Ethiopia’s revised family code of 2000 provides that a child who is treated by the community as being the child of a man or woman is in “possession of status” of such a child.⁷⁹ This concept from civil law perhaps provides a potential route for informal adoptions to be recognised and to provide the legal rights associated – including nationality.

Table 3: Provisions on minor adopted children

Country	Auto.	Opt.	Disc.	None	Comments	Legal provision
Djibouti	x				Applies only in case of plenary adoption	L2018Art37
Eritrea		x				L1992Art5
Ethiopia		x			If resident in Ethiopia with adoptive parents	L2003Art7
Somalia				x	No provision in the law	-
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						

Marriage

Historically, discrimination was the norm in relation to the right to acquire nationality based on marriage to a national. Eritrea established equal rights from the date it attained independence, followed by Ethiopia in 2003, and Djibouti in 2004.

Djibouti, however, removed all additional rights based on marriage in the 2018 civil code: a spouse may only apply for naturalisation on the same terms as any other foreigner. The 2004 law that introduced equality between spouses was already quite restrictive, establishing a ten-year period of required residence in Djibouti before a spouse could acquire nationality (reduced to five if there were children), although other conditions were at that time still reduced.

⁷⁷ *Convention on the Rights of the Child*, art.20(3); *African Charter on the Rights and Welfare of the Child*, art. 25(2)(a).

⁷⁸ See for example, the Moroccan nationality code of 1958 (*Dahir n° 1-58-250 du 21 safar 1378 portant code de la nationalité marocaine*), as last modified 2011, art.9(2), providing for acquisition by declaration based on five years of the relationship.

⁷⁹ Revised Family Code Proclamation No. 213/2000, art.156: “A person has the possession of the status of child when he is treated by the community as being the child of such man or woman”.

Somalia continues to provide that a woman acquires nationality automatically upon marriage to a national, while a man married to a Somali woman has no additional rights other than those normally provided for foreigners to acquire through naturalisation.⁸⁰

Table 4: Right to transmit nationality to a spouse

Country	Nationality by marriage	Res. period (if any)*	Marriage period (if any)	Level of discretion	Relevant legal provision(s)	Year of equality
Djibouti				Marriage has no effect as of right	L2018Art34	2004
Eritrea	=	3 yrs		On application shall be granted	L1992Art6	1992
Ethiopia	=	1 yr	2 yrs	On application may be granted	L2003Art6	2003
Somalia	w			Automatic	L1962Art13	-

* If residence period noted then residence is after marriage
 = Equal rights for men and women to pass citizenship
 w Only a foreign woman acquire nationality on basis of marriage to a national man

Dual nationality

Dual nationality was commonly prohibited by the laws of the newly independent African states in the 1960s. The continent has, however, shared in the global trend to greater tolerance of dual nationality over recent decades. The countries of the Horn of Africa have only partially moved in the same direction. Only Djibouti has amended its law (in 2004) to permit a person either to acquire or to retain another nationality without losing Djiboutian nationality, and to permit a person acquiring Djiboutian nationality to retain another.⁸¹ This provision is retained under the 2018 civil code.⁸²

Ethiopia's 2003 nationality proclamation maintained the rule established by 1930 nationality law and does not permit dual nationality either for citizens from birth or for those naturalising as Ethiopian. Although the constitution provides that "no Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will", a person acquiring another nationality is regarded as voluntarily relinquishing Ethiopian nationality.⁸³

The rules in Eritrea permit dual nationality only with permission of the authorities. Those who hold another nationality and reside abroad (whether they acquired the other nationality before the new nationality law entered into effect or were born with two nationalities) are permitted to present 'adequate justification' for permission to keep it; a person naturalising must renounce another nationality; and those

⁸⁰ The Somaliland law is similar, but also provides for a Somali woman to lose citizenship automatically if she marries a foreigner and acquires her husband's citizenship, or if her husband acquires another citizenship (unless he was a refugee). This final provision creates particular risks of statelessness, since there is no guarantee the wife would acquire citizenship with the husband in this case. Somaliland Citizenship Law, 2002, art. 9.

⁸¹ Loi no.79/AN/04 art.11 (cf. Loi no.200/AN/81, art.32).

⁸² Loi n°003/AN/18/8ème L, art.35.

⁸³ See discussion in Fassil, 'Report on Citizenship Law: Ethiopia'.

who voluntarily acquire a foreign nationality after entry into force of the law may be deprived of nationality by a ministerial committee.⁸⁴

In Somalia, the law and constitution conflict. The 1962 Law on Somali Citizenship provides that citizenship is lost on acquiring another (art.10(a)), and that a person naturalising must renounce a previous citizenship (Arts.2(b) and 4(c)); a former citizen may recover citizenship by establishing residence in the territory and renouncing citizenship of any other country (art.12). The Provisional Constitution of 2012, however, states that “A person who is a Somali citizen cannot be deprived of Somali citizenship, even if they become a citizen of another country.”⁸⁵ In principle, the constitution has superior authority; however, the lack of consistency creates uncertainty in application of the law.⁸⁶

The 2004 Transitional Federal Charter also permitted a person who acquired another nationality to retain Somali citizenship. The status of those who lost citizenship on the grounds of acquiring another before the 2004 Transitional Federal Charter entered into force is not clear (nor is the date the Charter entered into force⁸⁷).

In practice, a prohibition on dual nationality creates significant risk of statelessness if it is applied indiscriminately to those who were born with entitlement to two (or more) nationalities (rather than restricting the prohibition to those who *voluntarily* acquire another nationality through naturalisation based on residence in the other state, or marriage to a national of another state). A prohibition on dual nationality creates particular risks of statelessness if it applies to children as well as adults, meaning that the person concerned has no opportunity to choose one nationality on reaching adulthood. Even if this possibility is offered, many of those affected are likely to have no knowledge of the obligation to make such a choice.

In the context of the Horn of Africa, it is very likely to be the case that a person with one or both parents originating from another country has never taken any steps to acquire recognition of the other nationality, for example by applying for a national identity card or passport. It is also very possible that even if the person did do so, they would be refused recognition for lack of existing documentation or witness support. In practice, in the Horn of Africa as in other regions, those who are most at risk of statelessness are those who are at the same time potentially nationals of more than one country – but who lack the ability to prove a connection to either state.

⁸⁴ Eritrean Nationality Proclamation (No. 21/1992, section 2(5), 4(2)(e), and 8(1)(a).

⁸⁵ Provisional Constitution of Somalia 2012, art.8(3).

⁸⁶ The Somaliland Citizenship Law adopted in 2002 provides that a Somaliland citizen by birth may acquire the citizenship of another country without losing citizenship; however, renunciation is required for those acquiring citizenship by naturalisation. Dual citizenship is, moreover, not permitted for women who marry a foreign husband and acquire his nationality. Somaliland Citizenship Law, 2002, arts. 4 & 9.

⁸⁷ Delegates to the Somalia National Reconciliation Conference held in Kenya adopted a draft of the Transitional Federal Charter at a plenary meeting of the Conference on 15 September 2003. The draft outlined a five-year mandate leading to the establishment of a new Somali constitution and national elections. On 29 January 2004, some Somali leaders involved in the negotiations signed a document which proposed amendments to the September 2003 version of the Charter. However, not all faction leaders signed. The Somali National Reconciliation Conference formally concluded on 14 October 2004 with the swearing-in of Colonel Abdullahi Yusuf Ahmed as President of Somalia. See UN Secretary General reports to the Security Council on Somalia, 2004 – 2008, collated at <https://www.ohchr.org/EN/Countries/Pages/SecretaryGeneralReportsSO.aspx>.

Table 5: Rules on dual nationality

Country	Dual nationality permitted?			Relevant legal provisions
	Yes	Sometimes	No	
Djibouti	(2004)			C1992Art24 L2018Art35
Eritrea		‡ (x) (1992)		L1992Arts2,4&8
Ethiopia			(1930)	L2003Arts5,6&20
Somalia !!		‡ (2004)		C2012Art8 L1962Arts2,4,6,10

dates in brackets are the year the current rule was adopted
 !! constitution conflicts with legislation: Somalia's constitution permits dual nationality for those born Somali, the legislation does not
 Dates in brackets are the year the current rule was adopted
 (x) permission of government required
 ‡ dual nationality allowed only for nationals from birth / prohibited for those who naturalise

Acquisition of nationality by naturalisation or registration

Naturalisation appears under the law to be easiest in Ethiopia, where the person is required to “have established his domicile in Ethiopia and to have lived in Ethiopia in total for at least four years preceding the application”. The other residence periods provided are ten years for Djibouti; seven years for Somalia (although Somaliland provides for ten years); and 20 years for Eritrea (joining just a handful of African states in requiring such a long period). All the territories have good character requirements, and Eritrea and Somaliland add provisions excluding people from naturalisation who have carried out activities opposed to their sovereign status. Other conditions for naturalisation typically include good health, or the ability of the applicant to support him or herself (see Table 6).

A requirement to show integration through knowledge of a national language is also common. Until 2003 Ethiopia required a person to “Know [the] Amharic language perfectly, speaking and writing it fluently”; the current law relaxes this test, requiring only the ability to “communicate in any one of the languages of the nations/nationalities of the Country.”⁸⁸ Djibouti and Eritrea also require knowledge of a national language. Somalia (and Somaliland), perhaps surprisingly given the general emphasis on Somali identity, do not have any such requirements.⁸⁹

The Ethiopian Nationality Proclamation of 2003 provides that an application for naturalisation is submitted to a Nationality Affairs Committee accompanied with relevant documents.⁹⁰ There is, however, no subsidiary legislation establishing more detailed procedures for this process. A revised

⁸⁸ Proclamation No. 378/2003, art.5 (cf Ethiopian Nationality Law of 1930, art. 12).

⁸⁹ The Somaliland Citizenship Law provides for naturalisations to be granted by the president after consultation with a 12-person National Citizenship Committee, made up of members of the Council of Ministers and chaired by the Minister of Internal Affairs. This committee has never been constituted. Somaliland Citizenship Law No.22/2002, art.5.

⁹⁰ Proclamation No. 378/2003, art.10(1); art. 23(1): “A Nationality Affairs Committee comprising the following members shall be formed: a) a representative of the Authority (chairperson); b) a representative of the Ministry of Foreign Affairs (member); c) a representative of the Ministry of Justice (member); d) a representative of the Federal Police Commission (member); e) a representative of the Authority (member and secretary).”

refugee law adopted in 2019 specifically provided that refugees in Ethiopia could naturalise on the same basis as other foreigners.⁹¹

All the territories except for Djibouti require a person naturalising to renounce another nationality, even if they permit dual nationality for those who were born with two nationalities or who acquire another. Ethiopia provides as an alternative that the applicant can “show that ... he is a stateless person”, an important principle to recognise – but it is not clear what evidence would be required to show that the person is stateless.

Particular concern about the creation of statelessness arises if there is no possibility for minor children to be included within the application of an adult for naturalisation, since they may be deemed (in law or practice) to have lost the nationality of the parent that they were born with.

Very little is known about the implementation of naturalisation provisions in practice, including the basis for proof of residence (whether the person is required to have a legal residence permit, or merely show factual residence). No figures are published, and it seems very likely that (as is the case generally across Africa⁹²) very few acquire citizenship by this route in any of the countries of the region.

⁹¹ *Refugees Proclamation No.1110/2019, art.42: “Every recognised refugee or asylum seeker who fulfils the necessary requirements provided in the relevant provisions of the Ethiopian Nationality Law relating to naturalisation may apply to acquire Ethiopian Nationality by law.”*

⁹² Bronwen Manby, ‘Naturalisation in African States: Its Past and Potential Future’, *Citizenship Studies* 25, no. 4 (2021): 514–42, <https://doi.org/10.1080/13621025.2021.1926098>.

The impossibility of naturalising: Rastafarians in Ethiopia

In the late 1940s, the Emperor Haile Selassie designated a 200-hectare site in Shashamane, about 250km south of Addis Ababa, as available for settlement by the African diaspora, in thanks for their support during the occupation of Ethiopia by the Italians and British. From the 1960s, Jamaican (and other) followers of the Rastafari faith have travelled to Ethiopia to take up this offer. The number of Rastafarians living in the settlement is estimated to be in the hundreds, perhaps more than a thousand. Many have been resident in Shashamane over several decades, and some for generations.

In 2003, the Ethiopian immigration department considered the status of 120 people who were living in the settlement: 77 had a tourist visa, 13 had a business visa, and 31 had residence permits; none was an Ethiopian citizen.⁹³

In 2017 it was announced that the Rastafarian community would be eligible to be issued a version of the new Ethiopian national ID cards on the basis of the status of “Foreign National of Ethiopian Origin”⁹⁴, giving them more secure rights in the country than the temporary permits held to date.⁹⁵ Leaders remain hopeful that citizenship may be offered in future.⁹⁶

Although the Rastafarians in Ethiopia are generally recognised as nationals of other countries, and thus not stateless, the risk of statelessness is there for their children, as future generations are born outside the territory of the country of origin of the parents.⁹⁷ Many states that were formerly British territories (and the UK itself) place restrictions on transmission of citizenship to the second generation born outside the territory. Jamaica, however, has removed these restrictions. Nonetheless, members of the Rastafarian community in Ethiopia can also face extended delays and challenges in renewing passports from their countries of nationality.

⁹³ Erin C. MacLeod, *Visions of Zion: Ethiopians and Rastafari in the Search for the Promised Land* (New York: NYU Press, 2014), 4 (citing Giulia Bonacci, *Exodus ! L’histoire du retour des Rastafariens en Éthiopie* [Paris, Scali, 2008]).

⁹⁴ In accordance with Proclamation No. 270/2002 concerning the rights of foreign nationals of Ethiopian origin.

⁹⁵ “Ethiopian Jews, Rastafarians to receive Ethiopian IDs”, *Agence de Press Africaine*, 27 July 2017.

⁹⁶ Interview, Ras Ambrose King, *Ethiopian World Federation*, March 2021.

⁹⁷ Yoseph Berhanem “Promised land no more? Rastafaris struggle in Ethiopia, stateless and not allowed to own property, or even pay taxes”, *Medium.com/Mail & Guardian* (Johannesburg), 15 November 2015; Maria Gerth-Niculescu, “Why Ethiopia’s Rastafari community keeps dwindling”, *Deutsche Welle*, 9 September 2019.

Table 6: Right to acquire nationality as an adult by naturalisation

Country	Res. period	Language / cultural requirements	Character	Ren. Other	Health / income	Other ¹	Minor children included?	Limits on rights for naturalised / dual	Legal provision
Djibouti	10 yrs	Assimilation, in particular sufficient knowledge of one of the languages used	Good conduct and morals; no convictions for offences against state security, or sentenced to 6 mths in prison for crime of dishonesty.	No	Good health	Period reduced to 5 years if important services	Yes, automatic	President must not be a dual national	C1992Art23 L2018Arts36-46
Eritrea ²	20 yrs	Understands and speaks one of the languages of Eritrea	High integrity and not convicted of any crime; not committed “anti-people act during the liberation struggle of the Eritrean people”	Yes	Free of mental and physical disabilities, not a burden on society, ability to provide for one & family's own needs	Residence period 10 yrs if before 1974	Yes, on application	President must be national by birth	C1997Art40 L1992Art4,6,&7
Ethiopia	4 yrs	Able to communicate in any one of the languages spoken by the nations/ nationalities of the country	Good character, no record of criminal conviction	Yes	Sufficient and lawful source of income to maintain himself and his family	Foreigner making “outstanding contribution” may be exempted from conditions.	Yes, on application	No (specific provision that equal rights)	C1995Art33 L2003Arts4-12, 18
Somalia	7 yrs	-	Good civil and moral conduct	Yes	-	Period can be reduced to 2 yrs for “child of a Somali mother”. Honorary citizenship possible in case of “exceptional circumstances”	No	No	L1962Arts4-9

¹ 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.

~ racial, ethnic or religious discrimination applies

² Eritrea provides additional criteria for the acquisition of nationality by persons resident in Eritrea between 1934 and 1952; these are described as naturalisation but are non-discretionary, and more in the nature of transitional provisions

Loss, renunciation, deprivation, and reacquisition of nationality

Loss and deprivation

In the 1961 Convention on the Reduction of Statelessness, “loss” of nationality is used to mean withdrawal of nationality that is automatic, by operation of law; “deprivation” of nationality, by contrast, requires a decision of the competent authority. This report follows this usage of these terms.

Ethiopia’s constitution provides that no Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will. However, this does not apply in case of dual nationality: a person holding another nationality is interpreted to have shown the will to lose Ethiopian nationality. A person is deemed to have voluntarily renounced nationality if he or she (i) voluntarily acquires another nationality, or (ii) was born with two nationalities and retains another nationality after one year after majority, or (iii) acquires another nationality by operation of law and exercise the rights related to that nationality.⁹⁸ However, there is no published guidance on more detailed interpretation of these provisions. Ethiopia provides no other grounds for deprivation of citizenship.

In Djibouti, the only provision in the 2018 civil code relating to loss and deprivation is the specific provision that a person does not lose nationality on acquiring another (unless it is voluntarily renounced).⁹⁹ There are thus no circumstances in which the law provides for a Djiboutian national to involuntarily lose or be deprived of his or her nationality.¹⁰⁰

Eritrea provides that any national (from birth or later acquisition) may be deprived of nationality if the person voluntarily acquires another nationality (this is not automatic loss but requires a decision; however, dual nationality is thus held with permission only), or serves another country in violation of a specific provision of Eritrean law, or is condemned for treason by a court of law. In addition, a national by naturalisation may be deprived on grounds of fraudulent acquisition, conviction of a crime and sentenced to more than five years imprisonment, or crimes against the state.¹⁰¹

In Somalia, the law and constitution conflict in relation to dual citizenship: the law provides for citizenship to be lost if a person voluntarily acquires another citizenship, whereas the 2012 constitution provides that citizenship is not lost in this case. In addition, the law provides that a citizen shall lose citizenship if he or she accepts employment from another government, or serves in its armed forces, and the person has not given up the role with a time limit set by the Somali government.¹⁰²

⁹⁸ Proclamation No. 378/2003, art. 20.

⁹⁹ Loi n°003/AN/18/8ème L, art.35.

¹⁰⁰ The 1981 law had provided quite extensive grounds for deprivation of nationality within its Title V, which was not included within the 2004 law. The 2004 law only explicitly repealed previous provisions which were inconsistent with its content, leaving the status of Title V of the 1981 law a little uncertain. Since the 2018 civil code did not include the content of Title V on loss and deprivation from the 1981 law, it seems that these provisions were considered repealed with effect from 2004. Loi No.200/AN/81, articles 34 & 35; Loi No.79/AN/04/5eme, articles 11 & 42.

¹⁰¹ Proclamation 21/1992, art. 8.

¹⁰² Law no.28 of 1962, arts. 10 & 11. The law in Somaliland provides very similar grounds for deprivation of citizenship in case of working for a foreign government, “where this is detrimental to the sovereignty of Somaliland”. A naturalised person may be deprived of citizenship if convicted of a crime and

Table 7: Criteria for loss or deprivation of nationality

Country	Dual nat.	Nationality acquired after birth										Relevant legal provisions
	Acquires another citizenship	Work for / act like national of another state	crime vs state	Work foreign state (incl. armv)	Fraud / misrep.	crime vs state	ordinary crime	disloyal / incompatible behaviour	res. out of	Time limit for deprivation	protection vs statelessness	
Djibouti											n/a	L2018Art 35
Eritrea	(x)	x	x	x	x	x	x	x			No	L1992Art3,6,8
Ethiopia	x										Partial *	C1995Art33 L2003Arts19&20
Somalia !!		x			x	x					No	C2012Art8 L1962Arts6,10-11

(x) government may deprive if acquires another nationality

!! Constitution conflicts with legislation; provisions in the citizenship law noted here

* Ethiopia provides that no national may be deprived of nationality against his or her will; however, nationality is deemed automatically lost if a person acquires or retains another nationality as an adult. Children born with two nationalities may thus be at risk of statelessness if the other nationality is not confirmed.

Renunciation and reacquisition

Even though Djibouti's 2004 law permitted dual nationality for the first time and mentioned voluntary renunciation as the only reason for loss of nationality, it contained no provision for reacquisition of nationality by those who had previously lost it; and none is included within the 2018 civil code. Eritrea provides for deprivation of nationality by decision of the relevant authorities if a person renounces its nationality – that is, permission is required to give up Eritrean nationality (as it is for dual nationality). There is no provision on reacquisition. Ethiopia has a renunciation provision, but it also requires permission and discharge of outstanding obligations. By contrast, reacquisition is relatively easy in Ethiopia, requiring only reestablishment of domicile in Ethiopia and renunciation of the other nationality. In Somalia, renunciation has no particular conditions other than a person must be resident abroad; but reacquisition is subject to the same conditions as for naturalisation except for a shorter residence period.¹⁰³

sentenced to five years imprisonment. In addition to the standard conditions for revocation of naturalised citizenship in case of fraud, the Somaliland law also provides for deprivation of citizenship if a person subsequently breaks one of the conditions for naturalisation (eg is convicted of a crime). Law no.22 of 2002 art. 7.

¹⁰³ The position is similar in Somaliland, except that the condition relating to residence abroad is not included, and the residence period for reacquisition is the same as for naturalisation. Law no.22 of 2002 art. 4 & 7(1).

Table 8: Renunciation and reacquisition

Country	Renunciation		Reacquisition	Relevant legal provisions
	Conditions applied	Protection vs statelessness		
Djibouti	No conditions other than acquisition of another nationality	Yes	No provision	L2018Art 35
Eritrea	May be deprived if renounces	No	No provision	L1992Art8
Ethiopia	Shall not be released unless fulfils military obligations and serves any criminal penalty	Yes	If domiciled in Ethiopia and renounces other nationality	L2003Arts19&22
Somalia	By declaration, must be resident abroad	Yes	If resident in Somalia 3 yrs and fulfils conditions for naturalisation	L1962Arts10&12

4. Nationality administration in practice

Birth registration

The right to birth registration is enshrined in many international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Rights of All Migrant Workers and Members of their Families, and the Convention on the Rights of persons with Disabilities. Universal birth registration has long been an international objective. Yet, with the exception of Djibouti, birth registration rates in the Horn of Africa are amongst the lowest in the world.

As at the date of this report, no official statistics were available for Eritrea¹⁰⁴, and the latest published statistics for Ethiopia and Somalia generally were 3 percent of children under five with birth registration, as at 2016 and 2006, respectively.¹⁰⁵ Ethiopia had improved its rate to more than 16 percent of children under one year old by the end of 2020.¹⁰⁶ In Djibouti, by contrast, registration rates were reported to have reached 93 percent of under-fives in 2006, and in the city of Djibouti (home to more than half the population) to have reached 99 percent or more by 2018; in rural areas, however, only around 80 percent of births are registered.¹⁰⁷

Birth registration is critical for the establishment of the child's nationality. Although birth registration does not (in most countries) record or prove the nationality of the child him or herself, it provides the information on the basis of which nationality can be determined: place and date of birth, and identity of the parents. In the absence of timely birth registration, other routes to prove this information are needed, including the acceptance of whatever other documentary exists, and witness testimony.

Gender discrimination in birth registration procedures also creates risks of statelessness, by increasing the likelihood that a birth is not registered. For example, if only the mother may register a birth, or the presence of both parents is required (in case a birth is out of wedlock), or if only the father can register a birth (if in wedlock).

¹⁰⁴ Concluding Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the State of Eritrea's Report on the Status of Implementation of the African Charter on the Rights and Welfare of the Child, January 2017 https://acerwc.africa/wp-content/uploads/2018/14/Concluding_%20Observations_%20Eritrea.pdf

¹⁰⁵ Birth registration of under fives is a statistic collected by the Demographic and Health Survey programme funded by USAID (available at <https://dhsprogram.com/Where-We-Work/Country-List.cfm>), and by the UNICEF Multiple Indicator Cluster Surveys (available at <http://mics.unicef.org/surveys>). See also UNICEF database on birth registration available at <https://data.unicef.org/topic/child-protection/birth-registration/>.

¹⁰⁶ Figure for Ethiopia 2020 supplied by UNICEF Ethiopia office May 2021.

¹⁰⁷ Committee on the Rights of the Child, "Combined third to fifth periodic reports submitted by Djibouti under article 44 of the Convention, due in 2012", CRC/C/DJI/3-5, 27 January 2020; "L'État civil de la République de Djibouti", Ministère de l'Intérieur, Mars 2018, Presentation, UNSTATS Workshop on the Operation of Civil Registration, Vital Statistics and Identity Management Systems and the Production of Vital Statistics Reports for the Eastern Mediterranean Region Countries (Group1), Casablanca, Morocco, 19-23 March 2018 available at <https://unstats.un.org/unsd/demographic-social/meetings/2018/Casablanca/>

Djibouti

Djibouti has recently updated its legal framework. The new civil code adopted in 2018¹⁰⁸ replaced the previous law of 1972.¹⁰⁹ In addition to incorporating the nationality code, it provides comprehensive rules on registration of births, marriages, divorces and deaths, as well as establishment of parentage (*filiation*), inheritance and other matters. Despite the fact that Djibouti reformed its nationality law in 2004 to provide that a child can acquire nationality equally from a Djiboutian mother or father, a birth is declared to the civil registration officials by the father, or by medical or birth attendants if the father is not available.¹¹⁰ The requirement is for a birth to be registered within three days, a remarkably short deadline; as is common in former French territories, late birth registration must be ordered by a court, through a *jugement supplétif d'acte de naissance*.¹¹¹ In practice, the three-day deadline is only applied in Djibouti city, and the requirements in the rural areas vary quite widely.¹¹² Tribunals have conducted regular outreach to ensure late registration, especially among children attending school; if parents do not have identity documents a *jugement supplétif* is also necessary on their behalf.¹¹³

To register a birth, the person registering (in most cases the father) must provide: birth notification from the hospital, identity documents of one or both parents, and death certificate of a parent if relevant. The fees payable are 500 DJF (USD 2.80) for a new-born baby and 1 500 DJF (USD 8.40) for late registration (through a *jugement supplétif*) – in addition to any fees to obtain the birth notification or other documents required.¹¹⁴

The civil code establishes a procedure for abandoned infants to be declared to civil status officials.¹¹⁵ In practice, this protection is applied to children who are apparently four years old or less. If such a child is reported to the authorities the police are given the responsibility to carry out an inquiry to identify the child's parents. If they cannot be found, the police present the child to the *juge des mineurs*, who will give an order for the late registration of the child's birth, with the presumption of Djiboutian nationality, and for the placement of the child in the care of a children's home. In case of older children, an adult – for example from an organisation working with children – would need to intervene on a child's behalf for

¹⁰⁸ Loi n°003/AN/18/8ème L portant Code Civil.

¹⁰⁹ Loi n°72-458 du 2 Juin 1972, appliqué par le décret n°73-376 du 27 Mars 1973.

¹¹⁰ Loi n°003/AN/18/8ème L, art. 87.

¹¹¹ Loi n°003/AN/18/8ème L, art 86: "Lorsqu'une naissance n'aura pas été déclarée dans le délai légal, l'officier de l'état civil ne peut la relater sur ses registres qu'en vertu d'un jugement rendu par le tribunal du lieu dans lequel est né l'enfant, et mention sommaire en est faite en marge à la date de la naissance. Si le lieu de la naissance est inconnu, le tribunal compétent est celui du domicile du requérant."

¹¹² Interview, UNICEF Djibouti, 29 March 2021.

¹¹³ Kossi Agbeviade Djoke & Guedda Mohamed Ahmed, « Analyse des goulots d'étranglement du système d'enregistrement des naissances à Djibouti: Rapport définitif », Ministère Délégué Chargé de la Décentralisation & UNICEF, Novembre 2017.

¹¹⁴ According to the page 'Acte de naissance' on the official e-government website, as of March 2021: https://www.egouv.dj/sousmenu/sousmenu_selected/Service/7

¹¹⁵ Loi n°003/AN/18/8ème L, art.89: "Toute personne qui trouve un enfant nouveau-né est tenue d'en faire la déclaration à l'officier de l'état civil du lieu de la découverte. Si elle ne consent pas à se charger de l'enfant, elle doit le remettre, ainsi que les vêtements et autres effets trouvés avec lui, à un centre agréé pour l'accueil des enfants abandonnés. Si en revanche, elle consent à se charger de l'enfant, elle doit en faire la déclaration au procureur de la République et engager une action aux fins de placement ou d'adoption."

the courts to take any steps to establish late registration of birth, while the presumption of nationality would not apply.¹¹⁶

The civil status service of the city government of Djibouti is, within its territory, responsible for registration of births and deaths, as well as civil marriages; marriages and divorces according to Islamic law (more common than civil marriages) are managed by the *ma'adoun al chari* (sharia judge), under the authority of the Ministry of Justice.¹¹⁷ Birth registration was asserted in an official presentation in 2018 to be close to 100 percent in Djibouti city (around 60 percent of the population), but recognised to be much lower among the nomadic population of the rural areas.¹¹⁸ In 2018, Djibouti launched a programme to digitise its civil registration system and archives.¹¹⁹ By 2020, UNICEF was reporting a birth registration rate of above 95 percent.¹²⁰

Eritrea

A system of birth registration was established in Eritrea during the colonial period (see heading above: Nationality in the era of European colonisation). However, under Italian rule, birth registration was obligatory only for Italians and European foreigners, and not for Eritrean “subjects”. When Eritrea was incorporated into Ethiopia in 1960, the relevant civil registration law became the Ethiopian civil code of the same year. In 1991, a proclamation enacted the 1960 Ethiopian civil code as the transitional civil code of the soon to be independent Eritrea.¹²¹

As of 2002, birth registration remained optional, and was functional in only eight urban areas (Asmara, Keren, Massawa, Dekemhare, Assab, Mendefera, Segeneyti and Akordet), and not in rural areas. No statistical data were kept, so the birth registration rate was not known – but presumed low.¹²² According to information in a 2017 report prepared for the Dutch government, birth registration is in principle now compulsory within three months. To register a birth parents will require proof of birth (a clinic notification or a church baptismal certificate if available), a vaccination certificate, a letter issued by the local government office (which must be signed by three witnesses), and their residence cards. These

¹¹⁶ Interview, UNICEF Djibouti, 29 March 2021.

¹¹⁷ Loi no 169/AN/02/4ème L Portant organisation et compétence d'Al-Ma'adoun al chari ou statut d'Al Ma'adoun al chari.

¹¹⁸ “L’État civil de la République de Djibouti”, Direction Générale de la Population et de la Famille, Ministère de l’Intérieur, mars 2018, Presentation, UNSTATS Workshop on the Operation of Civil Registration, Vital Statistics and Identity Management Systems and the Production of Vital Statistics Reports, for the Eastern Mediterranean Region Countries (Group 1), Casablanca, Morocco, 19-23 March 2018, available at <https://unstats.un.org/unsd/demographic-social/meetings/2018/Casablanca/>.

¹¹⁹ “Djibouti s'apprête à devenir le premier pays africain à disposer de documents administratifs entièrement biométriques”, Xinhua, 3 December 2018 http://french.xinhuanet.com/2018-12/03/c_137646567.htm.

¹²⁰ A statistical profile of birth registration in Africa, UNICEF, November 2020 (see figure 4) <https://data.unicef.org/resources/a-statistical-profile-of-birth-registration-in-africa/>.

¹²¹ Proclamation No. 2/1991 of 15 September 1991 enacting the Transitional Civil Code of Eritrea.

¹²² Michael Ghebrenegus (Ministry of Justice), Woldeyesus Elisa (National Statistics and Evaluation Office), Yosef Debesay (UNICEF), “Demographic Profile and Birth Registration Status of Eritrea”, paper presented to Kampala Workshop on Birth Registration, 21-24 October 2002. <https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticle50737.aspx>.

documents are submitted to the sub-region office, which issues civil registry certificates. The procedures are not entirely consistent and there is no central civil register or archive.¹²³

Ethiopia

Although Ethiopia adopted a Civil Code in 1960, which contained extensive provisions related to registration of civil status, no institutions were created to implement this law for several decades, and a date of entry into force was never established.¹²⁴ A revised Federal Family Code was adopted in 2000, together with family codes at regional state level,¹²⁵ which provided legal backing for certificates already issued at sub-national level. Similarly, the nationality law of 2003 envisages issuance of nationality ID cards to adults.¹²⁶ However, no further action was taken.

Birth certificates could historically be obtained from the city administrations. A person seeking a birth certificate would apply to the kebele, which would investigate whether the information given by the applicant about birthplace in Ethiopia, parents' and relatives' birth-place in Ethiopia, clan lineage, etc. were accurate. After this investigation was successfully completed by the kebele, the municipality made its own independent investigation and verification of the information and issued the birth certificate. A birth certificate was not issued to non-Ethiopians.

It was not until 2012 that a further law provided the authority for new institutions to carry out both registration of vital events and the issue of a new national identity card,¹²⁷ followed later in the year by an implementing regulation for the civil registration element of the law.¹²⁸ The regulation authorised the establishment of the semi-autonomous Vital Events Registration Agency (VERA), reporting to a Vital Events Council (chaired by the Minister of Justice), and to a board of management appointed by the government.¹²⁹ VERA was subsequently merged with the Department for Immigration and Nationality Affairs to become the Immigration, Nationality and Vital Events Agency (INVEA), accountable to the Ministry of Peace.¹³⁰ It is represented in each regional state, reflecting Ethiopia's federal structure. Civil registration is carried out by the kebele manager; though in future, it is intended that every kebele office will have its own civil registration officer, responsible for ensuring birth registration; the information recorded in the registers will continue to depend on the kebele ID.¹³¹ The law provides for either the

¹²³ Country of Origin Report on Eritrea, Government of The Netherlands, February 2017 <https://www.government.nl/documents/reports/2017/02/06/country-of-origin-report-on-eritrea-february-2017>.

¹²⁴ Tilahun Teshome, 'The Child and the Law in Ethiopia: The Case of the UN Convention on the Rights of the Child', *Journal of Ethiopian Law* 18 (1997): 37–80.

¹²⁵ Article 321 of the Revised Family Code Proclamation of 2000. There are also regional codes in some of the regional states, including Tigray and Amhara

¹²⁶ Art. 13, Proclamation No. 378/2003.

¹²⁷ Registration of Vital Events and National Identity Card Registration, Proclamation No. 760/2012; in 2015, Proclamation No.902-2015 authorised existing authorities to remain in place until the new system was activated in 2016. The 2012 proclamation repealed the never-implemented provisions on civil registration in the 1960 civil code.

¹²⁸ Regulation No. 278/2012 to Provide for the Establishment of the Vital Events Registration Agency.

¹²⁹ "ID4D Country Diagnostic: Ethiopia", World Bank, 1 June 2017.

¹³⁰ Council of Ministers Regulation No.449/2019. See also outline of structures in Centre of Excellence for CRVS Systems, "Snapshot of Civil Registration and Vital Statistics Systems of Ethiopia", International Development Research Centre, 2019 <https://crvssystemscs.ca/country-profile/ethiopia>.

¹³¹ See history at INVEA website <https://www.invea.gov.et/ourhistory>; interview statelessness focal point, INVEA, 8 February 2021.

mother or father to be able to register the birth of a child, to take place at the nearest administrative office to their “principal residence”, and for abandoned children also to be registered.¹³²

It was only in 2017 that the law was amended to provide for the births of the children of foreigners to be registered as well as Ethiopians.¹³³ Registration of the births of children of refugees began for the first time the same year,¹³⁴ and the rights of refugees to registration of life events was confirmed by the new refugee law of 2019.¹³⁵ Birth registration for refugees is carried out by the Agency for Refugee and Returnee Affairs (ARRA), and Ethiopia pledged in 2019 to ensure universal birth registration among refugees.¹³⁶

The baseline birth registration rate for Ethiopia was very low before these reforms: three percent, according to the 2016 Demographic and Health Survey; and only two in three of those registered held a birth certificate. As is common, the rate varied also significantly by wealth and by place of birth: children in urban areas were much more likely than rural children to have their births registered (12% versus 2%) and birth registration increased with increasing household wealth (from 1% in the lowest wealth quintile to 10% in the highest quintile). Children in Addis Ababa and Dire Dawa were much more likely to have had their birth registered (24% and 19%, respectively) than children in other regions (5% or less).¹³⁷

Birth registration of children has improved in recent years, but as of 2020 was still estimated to reach less than 20 percent of births of children under one year old.¹³⁸ There remain challenges with the legal framework and its implementation, including the continuing requirement for both parents to present themselves as declarants for birth registration (despite the provision in the law¹³⁹), and for registration to be carried out in the usual place of residence (ie the kebele where the parents are registered, even if the birth does not take place in that kebele). These conditions exclude parents who cannot fulfil these requirements – among them asylum-seekers and refugees, the internally displaced, the urban poor, pastoralists, and single parents. Fees for issue of certificates also exclude poor households. The failure to provide for the role of churches and mosques in relation to baptism and confirmation of names means that this route to confirmation of identity is not given any legal recognition. In addition, the directive

¹³² Proclamation No.760/2012, arts. 24–29.

¹³³ Vital Events Registration and National Identity Card Proclamation (Amendment) Proclamation No.1049/2017.

¹³⁴ “In a historic first, Ethiopia begins civil registration for refugees”, UNHCR, 27 October 2017 <https://www.unhcr.org/news/briefing/2017/10/59f2f4757/historic-first-ethiopia-begins-civil-registration-refugees.html>; Diana Diaz, “New Ethiopia policy helps refugees legally document life events”, UNHCR, 3 November 2017 <https://www.unhcr.org/news/latest/2017/11/59f9f5a84/new-ethiopia-policy-helps-refugees-legally-document-life-events.html>.

¹³⁵ Refugees Proclamation No.1110/2019, art.36.

¹³⁶ High-Level Segment on Statelessness: Results and Highlights, UNHCR, 2019, available at <https://www.unhcr.org/ibelong/high-level-segment-statelessness/>.

¹³⁷ “Ethiopia Demographic and Health Survey 2016”, Central Statistical Agency, Ethiopia, & DHS Program, July 2017 <https://dhsprogram.com/pubs/pdf/FR328/FR328.pdf>.

¹³⁸ Information from UNICEF Ethiopia office, May 2021.

¹³⁹ Proclamation No.760/2012, art. 26(1): “The birth of a child shall be declared by the father or mother of the child, in their default, by the guardian of the child or, in default of guardian, by the person who has taken care of the child.”

issued by INVEA to civil registration officials provides a list of ethnic groups to be entered in the database; it is reported that applications may be rejected if a parent names an unlisted ethnic group.¹⁴⁰ The legal provisions for civil registration related to nationals and non-nationals, including refugees, are to be revised based on the findings and recommendations of a comprehensive assessment of the CRVS system in Ethiopia.¹⁴¹

Somalia

There is currently no legal or policy framework or institutions with the authority to maintain civil registration generally or birth registration in particular in any of the federal member states of Somalia.¹⁴²

Registration of births was not compulsory for Somali “subjects” under Italian administration; nor for “natives” in British-controlled Somaliland.¹⁴³ The 1963 law establishing local government in the newly independent Somalia gave local district councils the power to register the population and maintain registers of births and deaths, but did not make it mandatory for these functions to be provided.¹⁴⁴ Even before the collapse of central government in 1991, birth registration was thus the exception rather than the rule. If a birth was registered, a local administration would create a family book and record the birth based on witnesses from the clan. This system broke down during the civil war, and most archives have been destroyed. Birth registration rates are very low, estimated at under 5 percent, and in practice there is little incentive for an ordinary Somali to seek to register the birth of a child: a birth certificate is required mainly for issue of a passport, which in turn is required only for international travel or formal employment. Issue of birth certificates for this purpose is a source of income for district administrations.¹⁴⁵

Since 2012, the government has been engaged in efforts to establish a functioning civil registration system, with a draft policy and outline law under discussion. In the meantime, children born in a medical facility may be issued a birth notification by that facility, and some municipal governments or consulates issue certificates of different types.¹⁴⁶

In Somaliland, a declaration of a birth can be made under oath (by affidavit), and such declarations are confirmed by the Ministry of Religious Affairs in Hargeisa.¹⁴⁷ A draft law on registration of births and

¹⁴⁰ *The Ethiopian Civil Registration and Vital Statistics (CRVS) Comprehensive Assessment Report (Draft)*, INVEA, March 2021.

¹⁴¹ *Ibid*; also information from INVEA, July 2021, in comments on this draft report.

¹⁴² UNICEF Somalia Child Protection Strategy Note 2018-2020 <http://files.unicef.org/transparency/documents/Somalia%205.%20Child%20Protection.pdf>.

¹⁴³ In common with similar rules in other British territories, the *Births and Deaths Registration Regulations, 1904*, provided for compulsory registration of the births of children of parents who were European or American only.

¹⁴⁴ Law No. 19 of 14 August 1963 on Local Administration and Local Council Elections, article 9(1)(g).

¹⁴⁵ Interview, UNICEF, 15 December 2020.

¹⁴⁶ COI Report: South and Central Somalia - Country overview, European Asylum Support Office, August 2014 https://coi.easo.europa.eu/administration/easo/PLib/EASO-COIreport-Somalia_EN.pdf

¹⁴⁷ Documents in Somalia and Sudan, Landinfo (Country of Origin Information Centre), Oslo, 5 January 2009 <http://citizenshiprightsafrika.org/documents-in-somalia-and-sudan/>; see also Somalia: Birth registration, including the issuance of birth certificates; the registration of children attending school; title deeds; whether the owner of a home or business must obtain a title deed (2009-June 2013), SOM104486.FE, Research Directorate, Immigration and Refugee Board of Canada, 26 June 2013 <https://irb-cisr.gc.ca/en/country-information/rir/pages/index.aspx?doc=454665&pls=1> See also information on authentication of documents at the Ministry of Foreign Affairs website <https://somalilandmfa.com/old/documentation-authentication.html>.

deaths was prepared in 2019 and is under discussion. Efforts have been made to link health posts with the civil registration authorities at the municipality, and birth registration rates are higher than in the rest of Somalia; nonetheless, less than 20 percent of under-fives are currently registered.¹⁴⁸

International law requires that Somaliland civil registration documents be recognised by other countries (for example, in case they are needed to prove a right to the nationality of that country), even if the other state does not recognise the sovereignty of Somaliland.¹⁴⁹

Table 9: Birth registration rates

Country	% birth registration children <5		Source
	BR	BC	
Djibouti	93	-	MICS2006
Eritrea	-	-	
Ethiopia	16 *	-	UNICEF (unpub)
Somalia	3	-	MICS2006
- No information available BR: birth registration reported BC: birth certificate held by family MICS: Multiple Indicator Cluster Survey (http://mics.unicef.org/surveys) * 3 percent in DHS2016 (https://dhsprogram.com/Where-We-Work/Country-List.cfm)			

National identity cards and passports

In many countries, a national identity card is the principal document that is used to provide proof of nationality in day-to-day situations – even if (as is common) the law also states that a national identity card is not formal legal proof of that status. A passport is required for international travel. By contrast to birth registration and civil registration generally, there is limited international guidance on the issue of national identity documents and passports. However, the UN Convention relating to the Status of Refugees and the UN Guiding Principles on Internal Displacement – as well as the OAU Conventions on refugees and IDPs – provide for the issue of identity documents to the forcibly displaced.¹⁵⁰ Action 8 of UNHCR's Global Action Plan to End Statelessness is to issue nationality documentation to those with entitlement to it.

¹⁴⁸ Interview UNICEF Hargeisa, March 2021.

¹⁴⁹ In an advisory opinion on the legal status of the South African administration of Namibia the International Court of Justice affirmed that civil registration certificates should be recognised by other states as valid, even if the status of the authority issuing the document is challenged. See Advisory Opinion of the International Court of Justice on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970): 1971 ICJ Reports 16, para 125. For a discussion of somewhat similar issues in the context of Western Sahara, see Bronwen Manby, 'Nationality and Statelessness Among Persons of Western Saharan Origin', Journal of Immigration, Asylum and Nationality Law 34, no. 1 (2020): 9–29.

¹⁵⁰ UN Convention relating to the Status of Refugees, 1951, art. 27; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, art 6; UN Guiding Principles on Internal Displacement, 1998, principle 20; AU Convention for the Protection & Assistance of IDPs in Africa, 2009, art. 13; see also Global Compact for Safe, Orderly and Regular Migration, 2018, para. 20(c).

In the countries covered by this report, only Djibouti has a fully functioning system for the issue of national identity cards in place. While Eritrea has a national identity card, coverage of the current version is low. Ethiopia is in the process of introducing a national identity card for the first time; and in Somalia a digital identity scheme is proposed.

Djibouti

Djibouti has had a national identity card since 1981, issued by the Ministry of the Interior.¹⁵¹ Before 2014, Djiboutian citizens could be registered either by the mayor's office or by the traditional religious authority.¹⁵² Since 2014, the identity card system has been centralised, and in digital format. The national identity card is compulsory for all adult citizens, and records nationality on the face of the card. The identity card is needed to access any government services, including to register the birth of a child.¹⁵³ In order to obtain a national identity card an applicant must produce the identity document of one or both parents, and an official copy of the birth register entry (*acte de naissance*, the equivalent of a birth certificate) issued less than three months previously; as well as a marriage and/or naturalisation certificate if relevant, student identity card if relevant, or business or employment identification.¹⁵⁴

A law of 2019 provides for a national identity number to be issued to every resident of Djibouti, whether a national or foreigner, based on biometric identifiers and other data, including nationality.¹⁵⁵ This number is to be the basis for all other identity documents, including national identity cards, travel documents, voter cards etc.¹⁵⁶ The law states that no information should be mentioned in this register that could lead to discrimination – including of ethnic, racial, or religious characteristics, or membership of a political party or trades union.¹⁵⁷ As of early 2021, the implementation of the new system was expected.

Djibouti introduced a biometric passport in 2017, with the requirement to replace old passports by the end of the year. To acquire a passport, an applicant must produce a national identity card (only issued in Djibouti) and any previous passport. As of 2017, the fee for issue outside the country was EUR75 (in Brussels).¹⁵⁸

¹⁵¹ Décret n°81-125/PR du 17 novembre 1981 instituant la carte nationale d'identité.

¹⁵² Sabine Dini, 'Migration Management, Capacity Building and the Sovereignty of an African State: International Organization for Migration in Djibouti', *Journal of Ethnic and Migration Studies* 44, no. 10 (2018): 1691–1705, <https://doi.org/10.1080/1369183X.2017.1354058>.

¹⁵³ Djibouti: Requirements and procedure to follow to obtain a national identity card, including identity documents required, the authorities who issue them, the validity period and the circumstances in which they are used in Djibouti (2014-June 2016), 31 August 2016, DJI105552.FE, available at: <https://www.refworld.org/docid/58a5aaf44.html>.

¹⁵⁴ 'Carte d'Identité Nationale', https://www.eqouv.dj/sousmenu/sousmenu_selected_article/Services/7/9

¹⁵⁵ Loi N° 39/AN/19/8ème L portant identification des personnes physiques, création du numéro national d'identification et établissement d'un registre national, 21 janvier 2019, art. 2.

¹⁵⁶ *Ibid.*, art. 12.

¹⁵⁷ *Ibid.*, art. 3.

¹⁵⁸ Djibouti: Requirements and procedures to obtain a passport, including circumstances under which consent is required by another adult; information indicated by the field marked "domicile"; appearance of regular passports (2015-April 2017), 18 April 2017, DJI105789.E, available at: <https://www.refworld.org/docid/592018854.html>

Eritrea

Eritrean citizens over the age of 18 must obtain a national identity card, issued by the government department responsible for immigration. In addition to completing a form with details of the names of both parents and of the grandfather and great-grandfather, an applicant must also provide three witnesses who already have an identity card.¹⁵⁹ Despite the gender-neutral nationality law, paternal descent thus appears to be emphasised for acquisition of a national identity document; children of Eritrean women and refugee fathers also struggle to be recognised as nationals.¹⁶⁰

Other supporting documents include a letter from the local administration, a birth certificate, and, as proof of Eritrean citizenship, the identity cards of a parent or three witness statements.¹⁶¹ In 2014, it was announced that the paper identity card issued since the independence referendum would be replaced; however, few of the new cards were issued and there is a long backlog of applications, meaning that the old paper-based documents are still in use.¹⁶² There is no information on why the issue of identity documents was terminated or when it may be resumed. Checkpoints on roads and roundups in towns are, however, frequent. Identity cards and laissez-passer documents issued by various military and civilian authorities are inspected by military police, with the principal purpose of verifying the holder's completion of or exemption from military service obligations.¹⁶³

Eritrea introduced machine-readable, non-biometric passports in 2010, issued on the basis of an Eritrean national ID (for adults) and also a birth certificate. The fee for issue of a passport for those eligible was US\$200 at the Washington DC embassy at the time of writing this report.¹⁶⁴ Those who have not fulfilled their military service obligations cannot obtain a passport or leave the country.¹⁶⁵ Those in the diaspora cannot obtain a passport unless they have paid a 2 percent tax levied on all nationals resident outside the country.¹⁶⁶

Ethiopia

In principle, the only responsible agency for recognition or grant of Ethiopian citizenship is INVEA. In practice, the identity document of most importance has since the Derg era been the local level “kebele ID” (for an explanation of the kebeles, see above, Ethiopia's federal constitution). Every neighbourhood

¹⁵⁹ Immigration and Refugee Board of Canada, *Eritrea: Procedures to obtain an identity card; whether a person born in Asmara who left Eritrea before independence in 1991 can obtain an identity card; if so, the procedures for doing so*, 12 September 2000, ERT35413.E, available at: <https://www.refworld.org/docid/3df4be2e4.html>; English version of the application form available at the website of the Eritrean consulate in Australia <http://ericon.org.au/wp-content/uploads/2015/08/ID-Checklist.pdf>.

¹⁶⁰ Information from UNHCR Asmara office, May 2021.

¹⁶¹ Country of Origin Report on Eritrea, Government of The Netherlands, February 2017 <https://www.government.nl/documents/reports/2017/02/06/country-of-origin-report-on-eritrea-february-2017>.

¹⁶² Reciprocity and Civil Documents by Country: Eritrea, US State Department, n.d. (last accessed 22 March 2021) <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Eritrea.html>.

¹⁶³ David Bozzini, ‘Low-Tech Surveillance and the Despotism State in Eritrea’, *Surveillance and Society* 9, no. 1/2 (2011): 93–113, <https://doi.org/10.24908/ss.v9i1/2.4102>.

¹⁶⁴ Embassy of Eritrea, Washington DC, Consular Services: Passport. <https://us.embassyeritrea.org/passport/>.

¹⁶⁵ Bozzini, ‘Low-Tech Surveillance and the Despotism State in Eritrea’.

¹⁶⁶ ‘The 2% Tax for Eritreans in the diaspora: Facts, figures and experiences in seven European Countries’, DSP-groep BV & Tilburg School of Humanities, June 2017 <https://www.dsp-groep.eu/projecten/the-2-pct-tax-for-eritreans-in-the-diaspora/>.

has a kebele office, and one of the main responsibilities of these offices is to issue kebele IDs. The kebele card is required for virtually all identification purposes, including those where citizenship status is relevant: to register a SIM card, open a financial account, travel internally, stay in a hotel, obtain a birth, death or marriage certificate, acquire a passport, and enrol to vote.

The process of obtaining a kebele ID varies across the country; the documents themselves are commonly in the form of booklets or cards, without a standard format. As in case of an application for a birth certificate, a committee investigates whether the information given by the applicant is correct. The committee will rely on the officials' personal knowledge of the applicant and his or her family or clan, and on witness testimony; in some kebeles an applicant may need to own property or present a person who is a property owner in the area as a guarantor. If a person has moved within Ethiopia, he or she will need to produce a kebele ID from the former place of residence. Kebele cards generally include the same information: full name (including father and grandfather; as in Eritrea, paternal *jus sanguinis* is still privileged despite formal equality in law), mother's name, photo, data of birth, occupation, ethnic group, emergency contact details, kebele, woreda, date of issue, issuing officer, and kebele stamp.¹⁶⁷

If a person is not recognised as qualifying for a kebele ID, the lack of ID creates serious consequences, including during police stop and search exercises, when ID must be produced, at the risk of detention until a guarantor can provide testimony as to their identity.

Ethiopia is in the process of establishing a national identity card that will – it is planned – replace the kebele ID as the most common form of identification. The 2012 law provides for the new national ID to be managed by “an appropriate federal organ”. The ID project was initially under the jurisdiction of the internal security agency, known as the Information Network Security Agency (INSA), which also has the responsibility for digital technology and cybersecurity and reports directly to the Prime Minister. The project has been taken over by the Ministry of Peace and it is expected that the developed system will be handed over to INVEA.¹⁶⁸

Ethiopian passports are issued on the basis of the kebele ID and birth certificate (also obtained from the kebele administration). A standard passport costs 600 Birr, or USD15.¹⁶⁹

Somalia

Prior to 1991, all towns and districts of Somalia had authority to issue identity cards.¹⁷⁰ Up to 1973, these were issued in Italian in southern Somalia but in English in northern Somalia; after 1973 they were

¹⁶⁷ ID4D Country Diagnostic: Ethiopia, World Bank, 2017 <http://documents1.worldbank.org/curated/en/822621524689442102/ID4D-Country-Diagnostic-Ethiopia.pdf>.

¹⁶⁸ Information from Ethiopia statelessness focal point, INVEA, July 2021, in comments on this draft report.

¹⁶⁹ Information from the Immigration, Nationality and Immigration and Vital Events Agency website, <https://www.ethiopianpassportservices.gov.et/#/Information>

¹⁷⁰ Documents in Somalia and Sudan, Landinfo (Country of Origin Information Centre), Oslo, 5 January 2009 <http://citizenshiprightsafrika.org/documents-in-somalia-and-sudan/>

issued in Somali.¹⁷¹ This system broke down with the collapse of central government, although some municipalities do still issue identity documents. As of 2018, Somalia was believed to be the country in the world where the highest percentage of the population did not hold any official central government identity document.¹⁷² Only those few who are in formal employment or travel internationally hold a passport. Nonetheless, lack of identity documents is also identified as increasing the risk of a household having unmet needs in health, nutrition, and food security.¹⁷³

Somalia is in the process of establishing a digital national identity system.¹⁷⁴ Following an evaluation by the World Bank published in 2016,¹⁷⁵ a “digital uplift project” was approved, including the establishment of a specialized authority to administer a digital ID system, issuing unique identity numbers to individuals based on their biometric data and other basic information.¹⁷⁶ Any adult resident of the country will be eligible to register and be issued a digital identity document, whether or not the person is a citizen or has any existing documentation.¹⁷⁷ This biometric database would then be the foundation for other identity documents, including driver's licences, passports, and voter registration cards.¹⁷⁸ The priority use for the biometric register envisaged by the World Bank support is in the financial sector, enabling financial institutions to fulfil their “know your customer” (KYC) obligations as well as online authentication of identity – transactions where citizenship is not relevant.¹⁷⁹ It is intended that the digital identity system will be linked to the planned civil registration system, but the way in which this would happen has not been determined.¹⁸⁰

¹⁷¹ Immigration and Refugee Board of Canada, *Somalia: Information on the procedure for the issuing of identity cards*, 1 October 1994, SOM18375.E, available at: <https://www.refworld.org/docid/3ae6acb447.html>.

¹⁷² World Bank, ‘Identification for Development (ID4D) Global Dataset’, Identification for Development Initiative (Washington, D.C., June 2018), <https://id4d.worldbank.org/global-dataset>.

¹⁷³ Somalia Joint Multi-Cluster Needs Assessment (JMCNA), Round IV, UN OCHA / REACH, September 2020, Table 1, p.22. https://www.impact-repository.org/document/reach/1fae158b/REACH_SOM_Report_JMCNA_September-2020.pdf

¹⁷⁴ Somalia: Identity documents, including national ID cards, passports and driver's licences, and the requirements and procedures to obtain them; percentage of the population that holds some form of identity document; whether such documents are accepted elsewhere (2018-July 2020), SOM200235.E, Research Directorate, Immigration and Refugee Board of Canada, Ottawa, 28 August 2020 <https://irb-cisr.gc.ca/en/country-information/ir/pages/index.aspx?doc=458174&pls=1>.

¹⁷⁵ Toward a Somali Identification System: ID4D Diagnostic, World Bank, 2016 <http://pubdocs.worldbank.org/en/185701524689472792/Somalia-ID4D-Diagnostic-Web040418.pdf>

¹⁷⁶ Somalia - Capacity Advancement, Livelihoods and Entrepreneurship through Digital Uplift Project, Project Appraisal Document PAD3015, World Bank, 22 February 2019. <http://documents.worldbank.org/curated/en/267241552269666297/Somalia-Capacity-Advancement-Livelihoods-and-Entrepreneurship-through-Digital-Uplift-Project>. See information at the project webpage: <https://projects.worldbank.org/en/projects-operations/project-detail/P168115>.

¹⁷⁷ Federal Government of Somalia, Ministry of Interior, Federal Affairs & Reconciliation, “Digital Identification Policy”, June 2019, annex 2 (Somali version online at: <https://qoobjooq.com/wp-content/uploads/2019/07/ID-Policy-Somali-cover-final-.pdf>).

¹⁷⁸ Hassan Omar Mahadallah, Senior Advisor of Somali National ID Program, *Challenges and Solutions for the Development of an ID System in Post-Conflict Areas: Somalia as a Case Study*, presentation to ID4Africa Conference 2019, https://www.id4africa.com/2019_event/presentations/Inf5/4-Hassan-Mahadallah-Somalia.pdf

¹⁷⁹ Interview, World Bank ID4D, 6 January 2021.

¹⁸⁰ Interview, head of civil registration, Ministry of the Interior, 9 December 2020

Somali passports are issued in Mogadishu and some other cities, and in some embassies. Although they have been technically upgraded, they are accepted as valid travel documents in only a limited number of countries, due to concerns about the process by which they are issued.¹⁸¹

Somaliland uses different documents for proof of identity, all ultimately depending on a process of verification of clan membership by an *akil* (also transliterated as *caaqil*), the heads of the smallest units of the Somali clan system.¹⁸² The Somaliland Citizenship Law provides for issue of a certificate of citizenship (required for issue of a passport) that authorises this role, although there is no implementing decree.¹⁸³ Different municipalities, including Hargeisa (the capital) issue municipal identity documents confirming residence and identity, which also depend on verification of identity by an *akil*.¹⁸⁴ In 2015, the president of Somaliland appointed a steering committee and technical task force (SCATFO) to oversee the creation of a biometric national population register and the issue of national identity cards to all citizens over the age of 15, implemented by the ministry of the interior.¹⁸⁵ National identity cards are being issued in accordance with this project, and are increasingly required to access services.¹⁸⁶

Somaliland issues its own passports, upgraded in 2014,¹⁸⁷ though they are accepted as travel documents only by Ethiopia. However, since Somalilanders are regarded as “Somali” by the government of Somalia, Somalilanders may also be able to obtain a Somalia passport.¹⁸⁸

Voter registration

In Ethiopia and Somaliland, which have not had a national identity card until recently, voter registration cards have also functioned in the past as identity cards. Somaliland has engaged in multiple biometric registration processes (including through iris scans) to establish its electoral register – processes that in practice have established the distinction between Somalilander and foreigner.¹⁸⁹ In Djibouti, the

¹⁸¹ “Documents in Somalia and Sudan”, Landinfo (Country of Origin Information Centre), Oslo, 5 January 2009 <http://citizenshiprightsafrika.org/documents-in-somalia-and-sudan/>

¹⁸² Anna C. Rader, ‘Verification and Legibility in Somaliland’s Identity Architecture’ (PhD, University of London, School of Oriental and African Studies, 2016), 86, 111, <https://eprints.soas.ac.uk/23653/>.

¹⁸³ Somaliland Citizenship Law 2002, sec.3 : “The confirmation of proof of Somaliland citizenship may be obtained by an individual on the production of: a) A declaration relating to the individual made at a court by the Ministry of Internal Affairs registered Akil (clan chief) of the individual’s community. b) The form designed for the purpose by the Citizenship Office and signed by the individual.”

¹⁸⁴ Rader, ‘Verification and Legibility in Somaliland’s Identity Architecture’, 112–13.

¹⁸⁵ “MegaMatcher Accelerator Case Study: Somaliland National ID Project”, Neurotechnology, 2015 https://download.neurotechnology.com/CaseStudy_Somaliland_National_ID_Project.pdf

¹⁸⁶ Interview, Khadar Mohamed Ahmed, Hargeisa University Legal Clinic, 19 March 2021.

¹⁸⁷ Adam Vrankulj, “Somaliland set to replace handwritten passports with electronic documents in 2014”, Biometric Update, 1 November 2013 <https://www.biometricupdate.com/201311/somaliland-set-to-replace-handwritten-passports-with-electronic-documents-in-2014>.

¹⁸⁸ Somalia: Identity documents, including national ID cards, passports and driver’s licences, and the requirements and procedures to obtain them; percentage of the population that holds some form of identity document; whether such documents are accepted elsewhere (2018-July 2020), SOM200235.E, Research Directorate, Immigration and Refugee Board of Canada, Ottawa, 28 August 2020 <https://irb-cisr.gc.ca/en/country-information/rir/pages/index.aspx?doc=458174&pls=1>.

¹⁸⁹ Marie-Luise Schueller and Michael Walls, “Report by International Observers on the 2016 Voter Registration Process in Somaliland”, Progressio, March 2017 https://www.progressio.org.uk/sites/progressio.org.uk/files/progressio_voter_registration_process_in_somaliland_final_170317.pdf; Anna C. Rader, ‘Politiques de la reconnaissance et de l’origine contrôlée : la construction du Somaliland à travers ses cartes d’électeurs’, *Politique africaine* 144 (2016): 51–71.

national identity card has been in effect since independence and is the basis for voter registration.¹⁹⁰ Eritrea has not held national elections since independence in 1993.

Somalia has held several elections since a federal government was re-established in 2004, but these have been based on an indirect voting system. The difficulty of agreeing who should vote in national elections – who is a Somali citizen with full rights – has been the main blockage to holding elections on the basis of universal suffrage. In practice, agreement on a voter registration system, the criteria to demonstrate eligibility to vote, and the independent oversight of registration, is likely to be the most important gateway for determining entitlement to Somali citizenship, until identification systems are fully established. The contested status of members of minority groups is central to this discussion and reveals their risk of statelessness (see further below, under the heading Minorities in Somalia, in the section on groups at risk of statelessness).

Consular registration and assistance

Access to consular services can be critical for the prevention of statelessness. It is important that the law requires consulates to provide the assistance necessary to ensure that civil status events taking place in another country are legally recognised in the country of origin. In Ethiopia, for example, the 2012 proclamation establishing vital registration system provides for Ethiopian missions abroad to serve as civil status offices.¹⁹¹ Eritrean missions abroad, however, do not issue civil registry certificates – although it is reported to be possible to authorise, via the embassy, a person in Eritrea to apply for a certificate.¹⁹² In Djibouti, the law provides that a birth outside the territory must be declared to the consulate within ten days, an obviously impractical obligation to impose, even with the possibility of extension of this period by presidential decree.¹⁹³

However, the grant of legal authority to a consulate in civil status matters is not sufficient. It is usually the case that consular authorities only transcribe birth certificates issued by the state of birth, and will not register a birth directly, if not already registered by the host country. Consular assistance may, however, also be critical to enable this first step if parents need to produce documents from the country of origin in order to register a child's birth in another country.

These requirements are particularly difficult for refugees – who may fear to approach their embassy, and risk losing refugee status if they do so (although UNHCR advises that this should not be the case). The Refugee Convention therefore provides in Article 25 for a host country to issue “such documents or certifications as would normally be delivered to aliens by or through their national authorities”, and in

¹⁹⁰ Décret N° 2016-019/PR/MI fixant les modalités d'établissement des listes électorales ainsi que les conditions de délivrance et de validité des cartes d'électeurs.

¹⁹¹ Registration of Vital Events and National Identity Card Proclamation No. 760/2012, art.7, as amended by Proclamation No. 1049/2017.

¹⁹² Country of Origin Report on Eritrea, Government of The Netherlands, February 2017 <https://www.government.nl/documents/reports/2017/02/06/country-of-origin-report-on-eritrea-february-2017>.

¹⁹³ Loi n°003/AN/18/8ème L, , art.86: “En pays étranger, les déclarations aux agents diplomatiques ou aux consuls sont faites dans les dix jours de l'accouchement. Toutefois, ce délai peut être prolongé dans certaines circonscriptions consulaires en vertu d'un décret du président de la République qui fixe la mesure et les conditions de cette prolongation.”

Article 27 for refugees to be issued identity documents. The Convention relating to the Status of Stateless Persons includes similar provisions (also Articles 25 & 27).

Those with no recognised status of any kind in the country (as refugee or legal resident) often struggle to access birth registration for their children, leaving them at significant risk of statelessness, especially if the country of origin of the parents does not accept alternative evidence of the child's parentage, and of the parents' nationality.¹⁹⁴

Access to consular services is difficult for refugees and irregular migrants, or those lacking documents from a country of origin, from all of the countries considered in this report. Eritrea creates particular difficulties by its requirement for nationals resident abroad to pay a 2 percent tax on their income before they can access consular services, in addition to any other fees provided.¹⁹⁵

Judicial and other oversight of administrative decisions

As is usual for former French territories, the nationality code in Djibouti establishes court jurisdiction to hear cases where nationality is contested, and authorises them to issue a certificate of nationality to a person who satisfies specified conditions to establish his or her nationality.¹⁹⁶ In Ethiopia the Federal High Court is given the authority to hear cases regarding nationality.¹⁹⁷ The Eritrean nationality proclamation provides for an appeal to the High Court against decisions of the secretary of internal affairs related to nationality or of the committee considering deprivation of nationality. The appeal must be lodged within one month after receipt of a written decision, and the decision of the High Court is final.¹⁹⁸ No similar provision exists in the Somalia citizenship law of 1962.¹⁹⁹

¹⁹⁴ See discussions in: Bronwen Manby, 'Preventing Statelessness among Migrants and Refugees: Birth Registration and Consular Assistance in Egypt and Morocco', Paper Series (London: LSE Middle East Centre, June 2019), <http://eprints.lse.ac.uk/101091/>; Bronwen Manby, "'Legal Identity for All" and Statelessness: Opportunity and Threat at the Junction of Public and Private International Law', *Statelessness and Citizenship Review* 2, no. 2 (2020): 248–71.

¹⁹⁵ This requirement has resulted in controversy in several countries, including the Netherlands, where the Ministry of Foreign Affairs commissioned a report on the issue: 'The 2% Tax for Eritreans in the diaspora: Facts, figures and experiences in seven European Countries', DSP-groep BV & Tilburg School of Humanities, June 2017 <https://www.dsp-groep.eu/projecten/the-2-pct-tax-for-eritreans-in-the-diaspora/>.

¹⁹⁶ Loi n°003/AN/18/8ème L Portant Code Civil, Livre I (Des personnes), Titre II, Chapitre V: Contentieux de la nationalité ; VI: Preuve de la nationalité devant les tribunaux judiciaires; and VII : Des certificats de nationalité.

¹⁹⁷ Federal Courts Proclamation No. 25/1996, art.5.

¹⁹⁸ Nationality Proclamation No. 21/1992, art.11.

¹⁹⁹ As noted above, however, the Somaliland Citizenship Law provides for the courts to issue a certificate of Somaliland citizenship based on the testimony of a clan chief or *akil*; but it does not state how to contest the opinion of the *akil*. Somaliland Citizenship Act 2002, sec.3 : "The confirmation of proof of Somaliland citizenship may be obtained by an individual on the production of: a) A declaration relating to the individual made at a court by the Ministry of Internal Affairs registered *Akil* (clan chief) of the individual's community. b) The form designed for the purpose by the Citizenship Office and signed by the individual."

5. Groups at risk of statelessness

The categories of people at risk of statelessness in the Horn of Africa are similar to those in other parts of the African continent. They include:

- Vulnerable children of different categories, including foundlings, children born out of wedlock, orphans, and others separated from their parents;
- People of mixed parentage or potential dual nationality (but who have no documentation of either nationality);
- Cross-border populations and nomadic pastoralists;
- Long-term refugees and former refugees, and their descendants;
- Migrants with irregular immigration status, especially those with no documents, and their descendants.

These groups exist in every country of the region. In addition, this report highlights two particular groups at risk of statelessness: the members of minority communities in Somalia (whose degree of risk may vary according to which minority they belong to); and people of Eritrean descent (or mixed Eritrean-Ethiopian descent) living in Ethiopia.

It is not possible to provide statistics on how many are stateless: statelessness is often only a situation that becomes apparent over 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.

To address the challenge of measuring the scale of the problem of statelessness, UNHCR is collaborating with other UN agencies, including the Statistical Commission, to improve the collection of statistics on stateless persons and those of undetermined nationality.²⁰⁰ The draft International Recommendations on Statelessness Statistics (IROSS) published for consultation in February 2021 propose collection of data in relation to three categories: “a) Stateless people, b) People with undetermined nationality, and c) Stateless-related people, an optional category comprising people who were previously stateless and the children and family members of people who are currently stateless.”²⁰¹

²⁰⁰ Lily Chen, Petra Nahmias, and Sebastian Steinmueller, “UNHCR Statistical Reporting on Statelessness” UNHCR Statistics Technical Series 2019/1 <https://www.unhcr.org/5d9e182e7.pdf>.

²⁰¹ Expert Group on Refugee and Internally Displaced Persons Statistics, “International Recommendations on Statelessness Statistics (IROSS): IROSS Challenges, Opportunities and Progress Paper”, UN Statistical Commission, February 2021 para. 19 <https://drive.google.com/file/d/1AeyEk7CFOnVPCI4ZDO2bgl1ej34a4RCY/view>

Foundlings, children born out of wedlock, orphans and children separated from their parents, and other vulnerable children

While all the territories considered for this report include protections in their laws to attribute nationality to foundlings (children of unknown parents), these provisions are only as effective as the procedures to implement them in practice. In Djibouti the civil code and the law on the legal protection of minors give the courts general jurisdiction over nationality and birth registration, and a system exists to establish late birth registration and recognise the Djiboutian nationality of very young children whose parents are unknown, but not for older children (see above, under heading on birth registration). In Somaliland, it is reported that a court can give children new identities, including paperwork that enables them to attend school and apply for government documents²⁰²; but no such system exists in Somalia – or in Ethiopia or Eritrea. In Ethiopia, the Family Code of 2000 gives general powers to the courts in relation to the protection of minors, which could perhaps be adapted to this purpose, as the civil registry and national identity systems are strengthened.²⁰³

In a society where nationality, naming and (social) identity is derived from the father, children born out of wedlock face particular difficulties in asserting their legal identity, even if both parents are known. In the Somali clan-based system, for example, children born out of wedlock cannot claim their father's lineage, leaving their status ambiguous.²⁰⁴ Perhaps most at risk of exclusion are children of sex workers, who often face significant stigma, especially those who “look foreign”. In Somalia, many girls from minority communities have been taken as brides by members of the Islamist militia Al Shabaab, who have then abandoned the family or been killed. It is not certain that either family will recognise the children born from such relationships, leaving them at risk of multiple forms of exclusion, including statelessness.

There are many street children across the region who are separated from their families, many of whom have no proof (or even knowledge) of their origins, and live with no papers of any kind. In Djibouti city, around 450 such children had accessed services operated by Caritas in 2015, the only centre providing such assistance at that time.²⁰⁵ In 2010, a government-supported survey estimated that 12,000 children lived on the street in Addis Ababa²⁰⁶; others have proposed that the number may be several times that figure.²⁰⁷ In Somalia, the conflict has created many orphans, and separated other children from their biological parents; although many are cared for within wider kinship networks, others are surviving on

²⁰² Rader, ‘Verification and Legibility in Somaliland’s Identity Architecture’, 73.

²⁰³ Proclamation No. 213/2000.

²⁰⁴ Rader, ‘Verification and Legibility in Somaliland’s Identity Architecture’, 72.

²⁰⁵ Chiara Brunelli, ‘Une enfance passée dans la rue à Djibouti’, Caritas Italie au Djibouti, 22 June 2015 <https://www.caritas.org/2015/06/une-enfance-passee-dans-la-rue-a-djibouti/?lang=fr>

²⁰⁶ UNICEF, Ethiopia Country Programme Document 2012–2015, p.4, citing “Head Count of Street Children in Addis Ababa”, Addis Ababa Bureau of Children and Women’s Affairs and Street Invest International, 2010, https://sites.unicef.org/about/execboard/files/Ethiopia_final_approved_2012-2015_20_Oct_2011.pdf

²⁰⁷ Mulualem Merga et al., ‘Challenges in Decision Making Among Homeless Pregnant Teens in Addis Ababa, Ethiopia: A Descriptive Phenomenological Study’, *Journal of Pregnancy and Child Health* 02, no. 02 (2015), <https://doi.org/10.4172/2376-127X.1000140>. See also Tom Gardner, “Homeless children struggle to survive on the streets of Ethiopia’s capital”, *The Guardian* (London), 7 January 2019 <https://www.theguardian.com/global-development/2019/jan/07/homeless-children-struggle-to-survive-on-streets-of-ethiopia-capital-addis-ababa>.

their own, leaving them vulnerable to recruitment by armed groups, and other risks.²⁰⁸ An in-depth investigation in 2003 highlighted the particular vulnerability of unaccompanied and separated Somali children to trafficking, and to living with a false identity if given asylum in another state.²⁰⁹ Those fleeing the requirement of compulsory military service in Eritrea, and thus lacking any documents, are also among those most vulnerable to trafficking.²¹⁰

Children who are looked after by other families than their birth parents – very common in a region where many have been displaced and separated from their families by conflict – may also be at risk of statelessness. Formal adoption is rare in such situations and may be considered prohibited in Islamic societies. Yet if a child's connection to the family that is in fact caring for him or her is not legally recognised, he or she could be unable to establish nationality – even if the birth parents are known also to be nationals of that country.

Only a minority of orphans or separated children are at risk of statelessness: if members of the child's family can be traced, identity and nationality can usually be established (even as an adult). However, where no such information is available (for example, because the child became separated from his or her family at a very young age), the risks of statelessness are high if mechanisms do not exist to recognise their status in society. The level of risk will become apparent as and when identification systems are strengthened, increasing the importance of official recognition of legal status.

People of mixed parentage or potential dual nationality

Djibouti, Ethiopia and Eritrea have all adopted nationality laws that do not discriminate in transmission of nationality to children, even if they did so in the past. The law of Somalia (and Somaliland), however, continues to discriminate on the basis of sex of the parent. If the child acquires the citizenship of the father there is in principle no risk of statelessness. However, some states do not permit transmission of citizenship from the father to a child born out of wedlock (a formally registered marriage), especially if the child is born outside the country. Moreover, even if the child has the right to the father's citizenship in law, it may be difficult – or impossible – to establish the right to citizenship to the satisfaction of the authorities of the other state, and obtain identity documents to prove it. This is particularly the case if the child's birth is not registered. Discrimination in registration of births creates similar problems.

Even where there is no gender discrimination in law a person of mixed parentage may especially struggle to be recognised as a national in countries where dual nationality is not permitted, as is the case in Ethiopia. Officials may consider that the person has acquired the other nationality in law, and thus is not eligible for the nationality of the state of birth – whether or not the person has ever sought recognition of the other nationality. This is particularly a problem among border populations, as well as Ethiopians of Eritrean origin (see below).

²⁰⁸ UNICEF, *Somalia Child Protection Strategy Note 2018-2020*, <http://files.unicef.org/transparency/documents/Somalia%205.%20Child%20Protection.pdf>.

²⁰⁹ Lucy Hannan, 'A Gap in Their Hearts: The Experience of Separated Somali Children' (UN Office for Coordination of Humanitarian Affairs, 2003), http://www.childtrafficking.org/pdf/user/ocha_gap_in_their_hearts_somalia.pdf.

²¹⁰ US State Department Office to Monitor and Combat Trafficking in Persons, "2020 Trafficking in Persons Report: Eritrea" <https://www.state.gov/reports/2020-trafficking-in-persons-report/eritrea/>.

Border populations and nomadic pastoralists

Across Africa, members of the many ethnic groups that straddle the colonially-imposed borders often face difficulties in being recognised as nationals on either side of that border, even where the laws of both countries place no obstacle to a person holding both nationalities. At the same time, borders in Africa are generally very porous, and those living in border regions may freely cross from side to side, with little regard for the notional change in sovereignty over the territory. Central state institutions may barely exist in remote border regions, or co-exist with other forms of governance, negotiating rather than imposing control over movement of goods and people.²¹¹ Borders are also often not clearly demarcated, and many are contested, including among the states considered in this report.

Perhaps those most affected by the challenges created by these borders are the groups following a pastoralist way of life and livelihood—a population of many millions in Africa. In the Horn of Africa, where much land is arid or semi-arid, a large percentage of the population is traditionally of nomadic, or partly settled, pastoralist lifestyle. Pastoralists are estimated to make up 60 percent of the population of Somalia; more than 40 percent in Djibouti; 15 percent in Ethiopia, and 13 percent in Eritrea.²¹²

Modern state borders cut across the long-established routes of both transhumant (seasonal) or fully nomadic pastoralist communities; and members of those communities may consequently have a weak sense of belonging to any individual state, paying taxes where they are required to do so, moving with the climate and weather variations, and obtaining identity documents where they can. Pastoralists have also been among the refugee flows and returns across the borders in the region. Many members of these pastoralist communities do not have identity documents.²¹³ Substantial ethnic Somali pastoralist populations are found in all Somalia's neighbouring states – Djibouti, Ethiopia and Kenya – and it is often unrealistic to expect to draw clear lines to allocate families to one or other side of the border.²¹⁴ Similarly, the nomadic Afar are found in Djibouti, Eritrea and Ethiopia,²¹⁵ leading to contestations of their status in all three states (national peace accords signed between the government of Djibouti and the Afar *Front pour la Restauration de l'Unité et de la Démocratie* in 1994 and 2001 included specific

²¹¹ For a recent discussion relevant to this report, see Tezera Tazebew and Asnake Kefale, 'Governing the Economy: Rule and Resistance in the Ethiopia-Somaliland Borderlands', *Journal of Eastern African Studies* 15, no. 1 (2021): 1–21, <https://doi.org/10.1080/17531055.2020.1863100>.

²¹² "New Fringe Pastoralism: Conflict and Insecurity and Development in the Horn of Africa and the Sahel" United Nations Economic Commission for Africa, March 2017, Table 2.1, p.6 <https://repository.uneca.org/handle/10855/23727>. See also "Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities" African Union, October 2010 https://au.int/sites/default/files/documents/30240-doc-policy_framework_for_pastoralism.pdf.

²¹³ See for example, John Markakis, *Pastoralism on the Margin*, Minority Rights Group, 2004 <https://minorityrights.org/publications/pastoralism-on-the-margin-november-2004/>.

²¹⁴ Discussed in the case of Kenya in the report *In Search of Protection and Livelihoods: Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities*, Republic of Kenya, Royal Danish Embassy, and Royal Norwegian Embassy, September 2010.

²¹⁵ Shehim and Searing, 'Djibouti and the Question of Afar Nationalism'; Kassim Shehim, 'Ethiopia, Revolution, and the Question of Nationalities: The Case of the Afar', *The Journal of Modern African Studies* 23, no. 2 (1985): 331–48, <https://doi.org/10.1017/S0022278X00000203>; John Markakis, 'Anatomy of a Conflict: Afar & Ise Ethiopia', *Review of African Political Economy* 30, no. 97 (2003): 445–53, <https://doi.org/10.1080/03056244.2003.9659777>; Yasin Mohammed Yasin, 'Political History of the Afar in Ethiopia and Eritrea', *Africa Spectrum* 43, no. 1 (2008): 39–65.

commitments on the issue of identity documents).²¹⁶ The Beni-Amer are found in both Eritrea and Sudan, along the Red Sea coast.²¹⁷

There is an almost total lack of international law or national precedent relating to the determination of the nationality of those whose lifestyles mean that place of birth is not registered, nor likely to be in the same place as members of the wider family, while “habitual residence” is hard to determine.²¹⁸

As noted above, the transitional provisions provided by the British ordinance on acquisition of Somaliland citizenship at the date of independence in 1960 was one of the few examples anywhere of an attempt to acknowledge these issues. Although place of birth was important for automatic acquisition of citizenship, a person who “normally resided” in Somaliland was given the right to apply for citizenship if not qualified for automatic acquisition. And “normally reside” was defined to include “a person who from time to time temporarily absents himself from the territory for the purposes of grazing or herding livestock or in pursuit of his vocation, occupation, employment or education or for recreation.”²¹⁹ The current nationality law provides for Somaliland citizenship to be attributed to the descendants through the male line of pre-1960 residents of the territory,²²⁰ a definition which potentially encompasses this original transitional provision. As always, however, questions of proof are complex, and the status of those with connections to two territories (for example, Somaliland and Puntland, or Somaliland and Ethiopia) remains often unresolved.²²¹

This is also true in the other countries of the region. In Ethiopia, if a Somali-Ethiopian applies for a passport, a kebele ID will not be sufficient, as it is for members of ethnic groups traditionally found only in Ethiopia. The applicant will in addition need confirmation from a committee sitting in Jijiga, the capital of the Somali region, that he or she is Ethiopian.²²²

Pastoralist livelihood vulnerability is increasing, under threat from climate change, changing land tenure and increasing pressure on land, breakdown of traditional governance structures, the proliferation of weapons, and the conflict that has afflicted Somalia in particular over the past three decades.²²³ In this

²¹⁶ *Accord de paix et de réconciliation nationale*, Djibouti, *Journal Officiel Spécial* No.1 du 26 décembre 1994; *Accord de réforme et de concorde civile*, *Journal Officiel Spécial* No.3 du 15 mai 2001. Both discussed in Simon Imbert-Vier, ‘Identifier les nationaux à Djibouti (1946-2004)’, *Le Mouvement Social* 273, no. 4 (2020): 129–45.

²¹⁷ Johnathan B. Bascom, ‘Border Pastoralism in Eastern Sudan’, *Geographical Review* 80, no. 4 (1990): 416, <https://doi.org/10.2307/215850>.

²¹⁸ UNHCR recommends 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.” UNHCR, *Guidelines on Statelessness* No. 4, paragraph 42.

²¹⁹ *Somaliland Nationality and Citizenship Ordinance* No.15 of 1960, 23 June 1960.

²²⁰ *Somaliland Citizenship Law* No.22 of 2002, art.2(1): “A Somaliland citizen by birth is anyone whose father is a descendent of persons who resided in the territory of Somaliland on 26 June 1960 and before.”

²²¹ Rader, ‘Verification and Legibility in Somaliland’s Identity Architecture’, 108–9.

²²² According to research carried out for UNHCR in 2009, the members of this body at that time included representatives of the Federal Immigration and Nationality Affairs Department, and the regional police and security departments. Ato Getachew Assefa, Ato Seyoum Yohannes and Ato Wondwossen Demissie, “Statelessness in Ethiopia” *Draft Study for UNHCR*, March 2010.

²²³ *Ibid.*; see also Sara Pavanello, ‘Pastoralists’ vulnerability in the Horn of Africa: Exploring political marginalisation, donors’ policies and cross-border issues – Literature review’, Overseas Development Institute, London, 2009 <https://odi.org/en/publications/pastoralists-vulnerability-in-the-horn-of-africa-exploring-political-marginalisation-donors-policies-and-cross-border-issues/>.

context, access to official recognition as a citizen of a particular state – able to call on the state resources for protection and support – becomes more important.

A further category of border populations at risk of statelessness are those living in areas of contested borders—in the Horn of Africa often also the areas mainly populated by pastoralist groups. A border dispute between Ethiopia and Sudan over the fertile agricultural region of Fashaqa, recently re-ignited into conflict.²²⁴ Other border disputes have also erupted into war: between Ethiopia and Somalia border in 1977-78 and between Ethiopia and Eritrea in 1998. The “Ilemi triangle”, a zone of grazing land half the size of Djibouti on the Kenya-South Sudan-Ethiopia border, was never clearly delineated during the colonial period and is claimed by all three countries.²²⁵ The borders between Somaliland and Puntland are also contested.²²⁶ Most often, the concern of states in these contexts is to focus on control of the land, rather than the rights of those who live there, including their recognition as nationals of one or other state.

Long-term refugees and their descendants

The Horn of Africa hosts a very large number of refugees, of whom most live in refugee camps. The ongoing lack of security in Somalia means that, despite some returns in recent years, there remain more than 640,000 Somali refugees outside the country (including approximately 270,000 in Kenya, 211,000 in Ethiopia, 47,000 in Uganda, and 112,000 in Yemen); as well as some 2.9 million IDPs.²²⁷ Eritrea hosts only a handful of refugees, but there are hundreds of thousands of Eritrean refugees in other countries, including 145,000 in Ethiopia. Ethiopia is the third-largest refugee-hosting state in Africa, with more than 785,000 refugees as of June 2021, including 373,000 refugees from South Sudan and 45,000 from Sudan, as well as those from Somalia and Eritrea, some of these residents for many decades.²²⁸ Djibouti is primarily a transit country for migrants, but it also hosts around 30,000 refugees, mainly from (in order of size of population) Somalia, Ethiopia, Yemen, and Eritrea.²²⁹

Long-term refugees, and especially their descendants born in exile, may be at risk of statelessness; above all if they have never registered with UNHCR or formally claimed refugee status through a national

²²⁴ See entry “El-Fashaqa - 14°N 36°E” in “International Disputes” at Global Security website, <https://www.globalsecurity.org/military/world/war/fashaqa.htm>; “The long history behind the current Sudanese-Ethiopian border clash”, Eritrea Hub, 19 December 2020 <https://eritreahub.org/the-long-history-behind-the-current-sudanese-ethiopian-border-clash>; Mulatu Wubneh, ‘This Land Is My Land: The Ethio-Sudan Boundary and the Need to Rectify Arbitrary Colonial Boundaries’, *Journal of Contemporary African Studies* 33, no. 4 (2015): 441–66, <https://doi.org/10.1080/02589001.2016.1143602>.

²²⁵ Members of five ethno-linguistic communities – the Turkana, Didinga, Toposa, Inyangatom, and Dassanech; who are also variously found in Ethiopia, Kenya, Uganda, or Sudan – traditionally migrate to graze in the triangle: Nene Mburu, ‘Delimitation of the Ilemi Triangle: A History of Abrogation of Responsibility’, *African Studies Quarterly* 7, no. 1 (2003): 15–37; see also Gilbert M. Khadiagala, ‘Boundaries in Eastern Africa’, *Journal of Eastern African Studies* 4, no. 2 (July 2010): 266–78.

²²⁶ Omar S. Mahmood, “Overlapping claims by Somaliland and Puntland: The case of Sool and Sanaag”, Institute for Security Studies (South Africa), November 2019 https://media.africaportal.org/documents/Overlapping_claims_by_Somaliland_and_Puntland.pdf

²²⁷ Information from UNHCR collated at <https://data2.unhcr.org/en/situations/horn> and from the Internal Displacement Monitoring Centre at <https://www.internal-displacement.org/countries/somalia>.

²²⁸ UNHCR Ethiopia Fact Sheet, June 2021 <https://data2.unhcr.org/en/documents/details/87839>.

²²⁹ “Guide du CRRF – note conceptuelle: opération de Djibouti”, UNHCR Djibouti and Ministère de l’Intérieur-ONARS, January 2019. <https://www.globalcompactrefugees.org/sites/default/files/2019-12/Guide%20to%20the%20comprehensive%20refugee%20response%20in%20Djibouti%20%282019%29.pdf>; see also <https://reporting.unhcr.org/djibouti>.

process, or if births are not registered by the authorities of the country of birth. Those at risk of statelessness in the Horn of Africa include both refugees hosted by the region (whether from other countries included in this study, or other neighbouring states, or further afield); and refugees from the region in neighbouring countries, of which the largest groups are in Kenya, South Sudan, Sudan, and Uganda. Some populations have been displaced back and forward across borders many times.

The great majority of refugees in Africa cannot obtain the nationality of the country where they have now established their lives and families; naturalisations of refugees and former refugees are very rare in the region, even if the law permits naturalisation on the same or similar terms as other foreigners. Among the exceptions are several hundred Somalis of Bantu origin (the Zigua) who fled to Tanzania (their ancestral home) after the collapse of the Somali state and to whom there was an outreach programme; but not even all the Bantu Somalis resident in Tanzania accessed this process, which is now closed.²³⁰

So long as a person is recognised as a refugee, and able to access services and exercise rights using a refugee registration document, it may not be urgent to resolve nationality status. However, the question of nationality becomes urgent if refugee status is ceased or revoked. Although a refugee document issued by another country showing a person's country of origin is usually accepted as the basis for a person to re-establish nationality in the country of origin if and when return is possible, or the "ceased circumstances" clause of the UN Refugee Convention is invoked, this is not always the case.²³¹ There are also many refugees who have never enjoyed formal recognition of nationality in the state of previous residence. They, and especially their children born in a different country, are at great risk of statelessness. Among those in this group are, for example, people of mixed Eritrean-Ethiopian heritage, who have sought refuge in neighbouring countries without formally being registered as refugees (see also below, Ethiopians of Eritrean descent).

The children of long-term refugees born in exile are at particular risk of statelessness, even if births are registered. In Ethiopia, for example, a birth certificate records the nationality of the child.²³² In the case of children of parents of mixed nationality or of refugees or other foreigners, the parents declare what nationality should be recorded for the child, without reference to the relevant nationality law(s). If the parents cannot agree (because they are of different nationalities), the nationality field may be left blank.²³³ In the case of children of one refugee parent and one parent who is a national, however, the civil status officer has authority to record Ethiopian nationality. Refugee registration often brings

²³⁰ Bronwen Manby, 'Citizenship and Statelessness in the East African Community' (Geneva: UNHCR, November 2018), p.66, <https://data2.unhcr.org/en/documents/download/66807>; Bronwen Manby, 'Citizenship and Statelessness in the Member States of the Southern African Development Community' (Geneva: UNHCR, 2020), pp.77-78 <https://www.refworld.org/docid/6012a0d44.html>.

²³¹ In West Africa, when the "ceased circumstances" clause was invoked in relation to Sierra Leone and Liberia, UNHCR signed tripartite agreements with the countries of asylum and origin for the voluntary repatriation of the refugees. More than one thousand former Liberian refugees registered with UNHCR were not accepted as Liberian nationals during vetting processes by the Liberian authorities conducted as part of this process. See discussion in 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>.

²³² Section 24 of Proclamation No. 760/2012 provides rather for the nationality of the parents to be recorded; however the previous practice appears to be continued, where the nationality of the child is recorded. See also Birth Registration: A Comparative Report, DLA Piper / UNICEF, May 2016, available at <http://citizenshiprightsafrika.org/birth-registration-a-comparative-report-prepared-for-unicef-2/>.

²³³ Interview, statelessness focal point, INVEA, 8 February 2021.

advantages in terms of access to health and education services and other support, and thus parents in this situation may wish their children to be registered as refugees. However, such registration places the child's future right to nationality of the country of birth at risk, even if one parent is a national of that state.²³⁴ Even if the child may ultimately wish to have recognition of the nationality of the refugee parent, the country of origin of that parent is under no obligation to recognise the nationality recorded in a birth certificate issued by Ethiopia; while the failure to record Ethiopian nationality means that the child may also not be able to access Ethiopian identity documents at adulthood, despite having an Ethiopian parent and entitlement to Ethiopian nationality.

An Egyptian-Sudanese-Ethiopian-Eritrean stateless woman in Egypt

"Mary was born and raised in Sudan. Her father, who was a Sudanese Christian of Egyptian heritage, abandoned the family when she was eleven. Mary's mother was of mixed Ethiopian-Eritrean origin and had never formally elected a nationality after Eritrea's secession. Mary never possessed a birth certificate or any formal identity documents. When she tried to acquire documents by formally applying for Sudanese nationality her request was denied as she was unable to produce any evidence of her father's nationality. She was denied Ethiopian nationality after the Ethiopian Embassy determined her mother to be Eritrean and denied Eritrean nationality as she was unable to fulfil the evidence requirements. Mary is therefore stateless. She has no legal right to reside in any country and is thus at risk of immigration-related detention. She is unable to enrol in public education facilities or take up legal employment and is therefore forced to risk taking up potentially exploitative, informal work. Mary's application for refugee status in Egypt was denied, as she had no well-founded fear of persecution."

Case study 3 from Eirwen-Jane Pierrot, "A responsibility to protect: UNHCR and statelessness in Egypt", UNHCR, January 2013

People without a regularised immigration status

The Horn of Africa is a zone of transit as well as origin for migrants, especially for those seeking work in the Arabian Peninsula.²³⁵ In most cases, even a person without documents will be able to re-establish recognition of nationality by a country of origin. However, this is not true of all, and lack of access to consular assistance greatly increases risks of statelessness. The children of irregular migrants born in another country, whose birth is registered neither with the state of birth nor with consular authorities, are at significantly increased risk of future statelessness.²³⁶

Another category at great risk of statelessness is made up of people expelled from one country where they are alleged to have been in irregular status (even if this is not the case), to another where they also

²³⁴ This has been the case in case of the "double registered" Kenyan Somalis who were also registered as refugees. See Manby, 'Citizenship and Statelessness in the East African Community'; Keren Weitzberg, *We Do Not Have Borders: Greater Somalia and the Predicaments of Belonging in Kenya* (Athens, OH: Ohio University Press, 2017).

²³⁵ Tuemay Aregawi Desta, "Human Trafficking and Smuggling in the Horn of Africa: Patterns, Dynamics, and Criminal Networks" *Life and Peace Institute*, Uppsala, September 2016 <http://aigaforum.com/article2017/Human-Trafficking-and-Smuggling-Horn-of-Africa.pdf>

²³⁶ See discussion in Manby, 'Preventing Statelessness among Migrants and Refugees'.

do not hold or cannot establish nationality. For example, Djibouti expelled an estimated 80,000 people from its territory in 2003,²³⁷ as part of “an attempt to weed out potential terrorists”.²³⁸ Presented as recent illegal migrants, the expellees were mostly Djiboutian nationals without papers from families who had been in the country since independence.²³⁹ Similarly, since the 1990s, the Somaliland government has periodically rounded up non-Somali Ethiopians and deported them back across the border, although some of them have been resident in the territory of Somaliland for many decades.²⁴⁰

A 2015 report by the International Refugee Rights Initiative highlighted the situation of Africans expelled by Israel. More than 1,500 failed asylum seekers believed to be from Eritrea and Sudan were sent to officially unidentified “third countries” since they were not willing to return to their country of origin – including especially Eritreans.²⁴¹ The Rwandan government denied the report’s claim that these deportees were mainly sent to Rwanda.²⁴² Without legal status and recognised nationality, these deportees – and especially their children born in different countries – are at high risk of statelessness.

Minorities in Somalia

Somalia is one of the small number of countries in Africa to have a dominant majority culture and language, host to minority communities. Neighbouring Djibouti, though far smaller, has two dominant groups – the Issa-Somali and the Afar. Ethiopia and Eritrea, like most states in Africa, are made up of numerous different ethnic groups. While there are some ethnicities that are more dominant than others, there is no clear majority.

In Somalia, the majority of the population belongs to traditional Somali clan structures, divided among several different branches of a related family tree. The four main clan branches are the Hawiye, Darod, Isaaq, and Dir. Minority communities who do not belong to one of these clans face significant disadvantage in society, including in access to political and economic participation, access to justice, and physical harassment. The Somali citizenship law of 1962 confirms a conception of Somali citizenship that is based on membership of one of the main clan branches, defining “Somali” as “any person who by origin, language or tradition belongs to the Somali Nation” (see above, Nationality based on descent). The Provisional Constitution of 2012 and many of the constitutions of the federal member states prohibit discrimination and provide for minority rights.²⁴³

²³⁷ Simon Imbert-Vier, *Tracer des frontières à Djibouti: des territoires et des hommes aux XIXe et XXe siècles* (Paris: Éditions Karthala, 2011), 344; Imbert-Vier, ‘Identifier les nationaux à Djibouti’, 144.

²³⁸ Africa Overview in “Patterns of Global Terrorism – 2003”, Office of the Coordinator for Counterterrorism, US State Department, 29 April 2004 available at <https://2009-2017.state.gov/j/ct/rls/crt/2003/index.htm>.

²³⁹ Samson A. Bezabeh, ‘Citizenship and the Logic of Sovereignty in Djibouti’, *African Affairs* 110, no. 441 (2011): 587–606; Imbert-Vier, ‘Identifier les nationaux à Djibouti’.

²⁴⁰ Rader, ‘Verification and Legibility in Somaliland’s Identity Architecture’, 110.

²⁴¹ “I was left with nothing”: “Voluntary” departures of asylum seekers from Israel to Rwanda and Uganda, International Refugee Rights Initiative, September 2015.

²⁴² Rwanda government focal point on statelessness, “Comments on the Draft Study on Citizenship and Statelessness in EAC”, April 2018.

²⁴³ See discussion in Minority Rights Group, *Minority inclusion learning review of the Ministry of Foreign Affairs of Switzerland – Programmes in the Horn of Africa*, 13 July 2021, pp.23 – 24 <https://minorityrights.org/publications/swiss-mfa-review/>.

The best known of the minorities have come to be collectively known as “Bantu” Somalis, made up of a number of sub-groups of different origins.²⁴⁴ These communities live mainly in the southern Juba and Shabelle states. Some are the descendants of people who were victims of the slave trade from Africa to the Arabian Peninsula during the period of the Zanzibar Sultanate, and were themselves enslaved by the majority Somali clans; others are the traditional land-holders in southern Somalia, whose river-valley land was expropriated by the Italians for agricultural enterprises in which they were then forced to work.²⁴⁵

Another set of minority communities are collectively known as the Benadiri, mercantile communities of mixed African, Arab and Asian origin. They include groups who speak dialects of the Somali language, including the Rer Hamar, living in Mogadishu, and the traditional residents of Merca port. Other Benadiri groups speak dialects of kiSwahili, including the Barawani, who live in the coastal city of Brava; and the Bajuni, a low-status and poor fishing community, traditionally living in the southern port of Kismayu and the offshore Bajuni islands near the Kenyan border, and along the coast into Kenya as far south as Lamu. Finally, there are “occupational” minorities present throughout the territory, collectively known as the Midgan or Gaboye, with each group having its own name derived from a traditional occupation that is regarded as being unclean (such as leatherworkers). Although all are Somali in origin, the occupational groups have come to represent distinct and stigmatised communities and are excluded from the traditional clan lineages.²⁴⁶

The subordinate status of the minority communities is encoded in the current Somali political settlement known as the “4.5 system”, first proposed at a reconciliation conference held in Arta in Djibouti in 2000, and confirmed in the Eldoret Declaration issued in Kenya in 2002, as a temporary measure to enable the establishment of an interim government.²⁴⁷ Under the 4.5 formula, a residual category of “minority groups” receives one-half of the parliamentary seats and other public offices accorded to each of the four major clan branches. The Transitional Federal Charter provided for indirect election of parliamentarians by clan leaders, permitting this arrangement to enter into effect.²⁴⁸ The system remains in place, although the 2012 Provisional Constitution does not specify any particular electoral system²⁴⁹;

²⁴⁴ This information is summarised from the Somalia entry in the *Minority Rights Group World Directory of Minorities and Indigenous Peoples*, available at <https://minorityrights.org/country/somalia/>. See also Martin Hill, “No redress: Somalia’s forgotten minorities”, Minority Rights Group, 2010 <https://minorityrights.org/wp-content/uploads/old-site-downloads/download-912-Click-here-to-download-full-report.pdf>; “Looma Ooyaan – No One Cries for Them: The Predicament Facing Somalia’s Minority Women”, Minority Rights Group, 2015 https://minorityrights.org/wp-content/uploads/old-site-downloads/mrg_report_somalia_jan2015.pdf; “Report on minority groups in Somalia: Joint British, Danish and Dutch fact-finding mission to Nairobi, Kenya, 17 – 24 September 2000”, <https://www.ecoi.net/en/document/1412772.html>; Derek Nurse, “Review of the Bajuni sections of the Report on Minority Groups in Somalia, by a Joint British, Danish and Dutch fact-finding mission to Nairobi, Kenya, 17-24 September 2000”, Memorial University of Newfoundland, Canada, 2010 (updated 2013), available with other relevant information at <https://www.mun.ca/faculty/dnurse/Refugees/>.

²⁴⁵ Catherine Besteman, ‘Translating Race across Time and Space: The Creation of Somali Bantu Ethnicity’, *Identities* 19, no. 3 (2012): 285–302; Mohamed A. Eno, ‘A Tale of Two Minorities: The State of the Gaboye and Bantu Communities of Somalia’, in *Minorities and the State in Africa*, ed. Michael U. Mbanaso and Chima J. Korieh (Amherst, New York: Cambria Press, 2010).

²⁴⁶ The occupational minorities are present in Somaliland to a greater extent than the other groups mentioned here.

²⁴⁷ The 4.5 formula is explained in “Salvaging Somalia’s Chance For Peace”, Africa Briefing No.11, International Crisis Group, 9 December 2002 <https://www.crisisgroup.org/africa/horn-africa/somalia/salvaging-somalias-chance-peace>.

²⁴⁸ Transitional Federal Charter 2004, art. 30. See also “Somalia: Continuation of War by Other Means?”, Africa Report No.88, International Crisis Group, 21 December 2004 <https://www.crisisgroup.org/africa/horn-africa/somalia/somalia-continuation-war-other-means>.

²⁴⁹ Provisional Constitution, 2012, art. 47.

proposals to introduce a system of universal suffrage for the elections originally scheduled for 2020 were abandoned.²⁵⁰ This arrangement is criticised for granting “more citizenship rights and opportunities to a Somali born and bred in neighboring Kenya, Ethiopia, and Djibouti or in any other country than an autochthonous Jareer/Bantu born and bred in Somalia”.²⁵¹ In the absence of any census, the percentage of the population that is identified as of “Bantu” origin is highly contested.²⁵² Many have been driven from their land and out of Somalia during the course of the civil war; many others are internally displaced.

Since there is currently no national system of civil registration or identity documents that confirm nationality, it cannot be stated that members of minority groups are currently stateless, if resident in Somalia. However, members of minority groups face significant discrimination across all areas of life. Members of minority groups who are IDPs may face particular difficulties²⁵³, including struggling to gain access to identity documents issued by some of the federal member states (for example, by Bosaso and other municipalities in Puntland); without such documents they cannot receive remittances from family members abroad. They also face difficulties in obtaining Somali passports.²⁵⁴ It can be presumed that members of minority groups would face similar difficulties under any future citizenship law or identification regime in which citizenship continues to be defined primarily on ethnic grounds. To avoid the creation of statelessness, enrolment procedures would require detailed negotiation and careful design to provide for other forms of evidence than testimony from a (majority) clan leader that a person is entitled to be recognised as a Somali citizen; this would include evidence of birth and long-term residence in Somalia, especially over multiple generations. Appeal processes should be specified to contest an initial decision.

Members of minority ethnic groups who were not born or raised in Somalia – but, for example, in a refugee camp in a neighbouring country – are at particular risk of statelessness if they cannot acquire the nationality of the country of refuge.²⁵⁵ A recent article concerning Somali Bantu deported from the US found that on arrival in Somalia “most were kidnapped and tortured for ransom by uniformed Somali police or armed groups that the Somali Government was unwilling or unable to control”, sometimes even on arrival at Mogadishu airport.²⁵⁶

²⁵⁰ “Staving off Violence around Somalia’s Elections” Africa Briefing No.163, International Crisis Group, 10 November 2020 <https://www.crisisgroup.org/africa/horn-of-africa/somalia/b163-staving-violence-around-somalias-elections>.

²⁵¹ Mohamed A. Eno, *The Bantu Jareer Somalis: Unearthing Apartheid in the Horn of Africa* (London: Adonis and Abbey Publishers Ltd, 2008), 200. “Jareer” is a term meaning hard hair, by contrast to “Jileec”, meaning soft hair. Both may have pejorative overtones.

²⁵² Eno, 205–9; Daniel J. Van Lehman and Risa S. Proehl, ‘Population Estimates of Somali Bantu with East African Slave Ancestry’, *Journal of Somali Studies* 2, no. 1 & 2 (2015): 47–66.

²⁵³ See generally, “Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia”, Human Rights Watch, March 2013 <https://www.hrw.org/report/2013/03/28/hostages-gatekeepers/abuses-against-internally-displaced-mogadishu-somalia>; “Voices Unheard: Participation of Internally Displaced Persons in Peace- and State-Building Processes in Somalia,” UNSOM, September 2019 https://unsom.unmissions.org/sites/default/files/voices_unheard_english_final.pdf.

²⁵⁴ Interviews with various sources in Somalia, February – March 2021.

²⁵⁵ For the population of Somali descent in Tanzania, see Manby, ‘Citizenship and Statelessness in the East African Community’.

²⁵⁶ Daniel J. Van Lehman and Estelle M. McKee, ‘Removals to Somalia in Light of the Convention against Torture: Recent Evidence from Somali Bantu Deportees’, *Georgetown Immigration Law Journal* 19, no. 3 (2019): 357–97.

The negotiations over the different constitutions for the Federal Republic of Somalia (see heading above: The Federal Member States of Somalia and the status of Somaliland) have debated different views of who should be a Somali citizen. The reconciliation conference held in 2003, for example, included two drafting committees for what became the Transitional Federal Charter of 2004, one of which proposed an ethnic basis for citizenship (aiming to include the large Somali diaspora) and the other proposed rights based on birth and residence in Somalia.²⁵⁷ A decade later, a draft new citizenship law was prepared during 2015 and 2016 by the Ministry of the Interior, with assistance from UNHCR and the NGO Legal Action Worldwide (LAW). The draft was discussed during a three-day public consultation process held in July 2016 with representatives from across Somalia. These consultations revealed similar strong differences of opinion about the basis for Somali citizenship, including gender equality, the place of the Muslim religion, and the role of ethnicity.²⁵⁸

The draft citizenship bill was presented to the Council of Ministers together with a summary of the public feedback. The draft reforms the existing law by moving somewhat away from an ethnic basis for citizenship to include rights based on birth in Somalia, providing a more secure status for the non-Somali ethnic minorities in Somalia – although it would not remove all risks of statelessness. The bill would still define “Somali” as “any person who by origin, language or tradition belongs to the Somali Nation”, and a person who is “Somali” would acquire citizenship by operation of law (whether resident in Somalia or not). However, the bill also provides for equal rights for men and women to transmit nationality to their children and spouses, and for a person born in Somalia to acquire citizenship if one parent was also born in Somalia, or if he or she would otherwise be stateless. Foundlings are presumed to be citizens (a provision already included in the law). Dual citizenship is permitted, in line with the 2012 constitution.²⁵⁹ The draft was not formally approved by the Council of Ministers, and no further progress has been made towards adoption of a new law.

In June 2021, Somalia adopted a national action plan to end statelessness. The action plan focuses on six priority areas linked to UNHCR’s Global Action Plan to End Statelessness (2014-2024), including ending discrimination based on sex or ethnicity, and ensuring that no child is born stateless. The plan drew on the current study to highlight the risks of statelessness for members of minorities.²⁶⁰

Ethiopians of Eritrean descent

The population at risk of statelessness that has received the most attention in Ethiopia over the past two decades are Ethiopians of Eritrean origin, many of whom were denationalised following the crisis of 1998. The initial separation of Eritrea from Ethiopia in 1993 was amicably agreed between the former

²⁵⁷ Eno, *The Bantu Jareer Somalis*, 220–21.

²⁵⁸ *Technical Workshop to Incorporate Feedback from Public Consultation into Citizenship Bill*, Minutes, Legal Action Worldwide (LAW), August 2016.

²⁵⁹ *Draft Somali Citizenship (Amendment) Bill 2016*. Reforms summarized at <https://www.legalactionworldwide.org/where-we-work/somalia/somali-citizenship-bill/>.

²⁶⁰ The six priorities are 1: Ensure no child is born stateless; 2: Remove gender discrimination from nationality laws; 3: Prevent denial, loss or deprivation of nationality on discriminatory grounds; 4: Ensure birth registration for the prevention of statelessness; 5: Accede to the UN Statelessness Conventions; 6: Improve qualitative and quantitative data on stateless populations. The national action plan for Somalia is available at <http://citizenshiprightsafrika.org/national-action-plan-to-end-statelessness-in-somalia-2021-2024/>. The Global Action Plan is available at <https://www.unhcr.org/protection/statelessness/54621bf49/global-action-plan-end-statelessness-2014-2024.html>.

allies in the coalition against the previous Ethiopian regime. However, tensions between the two governments, including over border demarcation, led to war in 1998, formally ended by a peace agreement signed in December 2000.²⁶¹ It was only in July 2018, however, that a declaration was signed to define the border between the two states.²⁶²

At the outbreak of the war, there were still around half a million people of Eritrean origin living in Ethiopia, including approximately 200,000 living in the Tigray border region. An estimated 100,000 Ethiopians were living in Eritrea. In June 1998, approximately one month after the war began, Ethiopia issued a policy statement that the “550,000 Eritreans residing in Ethiopia” could continue to live and work in the country, although politically active individuals were ordered to leave the country.²⁶³ Despite this reassurance, the very next day saw the first wave of arrests and expulsions of prominent individuals of Eritrean origin, and dismissals of those in government jobs. As the arrests and expulsions continued into 1999 and 2000, those affected were increasingly ordinary people with no particular status to attract the authorities’ attention. Ultimately, the Ethiopian authorities arrested, detained and deported some 75,000 people of Eritrean origin.

Figures collated by the ICRC and UN ultimately indicated that around 70,000 people were expelled or repatriated from Eritrea to Ethiopia, just less than the mirroring figure, despite the Eritrean government continuing to deny it had any policy of expulsion.²⁶⁴ Individuals of Ethiopian descent still living in Eritrea who had not sought nationality by the time the war broke out in 1998 were considered aliens, dealt with according to the normal rules applicable to citizens of other countries living in Eritrea.

In 2004, the Claims Commission established under the December 2000 peace agreement adjudicated on the nationality of the citizens of Ethiopia and Eritrea after the splitting of the two countries in 1993. Ethiopia had tried to justify the de-nationalizations and forced population transfers during the war by arguing that those Ethiopians who registered as Eritreans for the referendum in 1993 had thereby lost their nationality. Eritrea argued that they could not have done so because there was no Eritrea in existence at that point. The Claims Commission found that, under the “unusual transitional circumstances” around the creation of Eritrea, those who qualified to participate in the referendum in fact acquired dual nationality.²⁶⁵ The outbreak of the war did not of itself suspend this dual nationality,

²⁶¹ The information in this section is largely derived from Manby, *Citizenship in Africa*, chap. 8.1; see also John Campbell, *Nationalism, Law and Statelessness: Grand Illusions in the Horn of Africa*, 2015; Daniel Mekonnen, ‘The Right to Cross-Border Identity of Individuals with Eritrean and Ethiopian Ancestry: International and Comparative Law Perspectives’, *Ethiopian Yearbook of International Law*, 2019, 49–79, https://doi.org/10.1007/978-3-030-55912-0_4.

²⁶² *Joint Declaration of Peace and Friendship between Eritrea and Ethiopia*, 9 July 2018 (published with commentary by Scott W. Lyons in *International Legal Materials* vol. 58, no. 1 (2019): 237–39. doi:10.1017/ilm.2019.4).

²⁶³ *Ethiopian Herald* of 13 June 1998, cited in Human Rights Watch, ‘The Horn of Africa War: Mass Expulsions and the Nationality Issue (June 1998–April 2002)’.

²⁶⁴ Human Rights Watch, ‘The Horn of Africa War’.

²⁶⁵ *Award of the Eritrea-Ethiopia Claims Commission in Partial Award (Civilian Claims: Eritrea’s Claims 15, 16, 23 & 27–32)*, 44 ILM 601 (2005) (award of 17 December 2004) at para.51, available at the website of the Permanent Court of Arbitration, which acted as registry for the process. “Taking into account the unusual transitional circumstances associated with the creation of the new State of Eritrea and both Parties’ conduct before and after the 1993 Referendum, the Commission concludes that those who qualified to participate in the Referendum in fact acquired dual nationality. They became citizens of the new State of Eritrea pursuant to Eritrea’s Proclamation No. 21/1/1992, but at the same time, Ethiopia continued to regard them as its own nationals.”

and Ethiopia's action in denying recognition of its nationality to the dual nationals had been arbitrary and unlawful.²⁶⁶

This was not the interpretation of the Ethiopian government, however. In July 1999, the Ethiopian authorities issued a press release stating that the Ethiopians of Eritrean origin who had registered to vote in the 1993 referendum on Eritrea's independence had thus assumed Eritrean citizenship. Since Ethiopian nationality law does not permit dual nationality, the consequence was that they had lost Ethiopian nationality. A 2002 law which bestowed special rights and privileges on "foreign nationals of Ethiopian origin", singled out Eritreans who had forfeited Ethiopian nationality and expressly excluded them from enjoying the new rights and privileges.²⁶⁷

The new Ethiopian Proclamation on Ethiopian Nationality adopted in 2003 eased the situation of those of mixed parentage, by removing gender discrimination in transmission to spouses and children, allowing those of with Ethiopian mothers and fathers of Eritrean origin to claim citizenship for the first time.²⁶⁸ The immigration authorities also adopted a directive on the residence status of Eritrean nationals living in Ethiopia.²⁶⁹ According to the directive, Eritrean nationals could apply for permanent residence in Ethiopia; a person of Eritrean origin who had "not opted for Eritrean nationality" (that is, by registering to vote in the referendum) was to be deemed to retain Ethiopian nationality.

Problems continued to be reported in obtaining national identification cards.²⁷⁰ Among those affected by these issues were individuals who had been expelled from Ethiopia to Eritrea in 1998 but had since then fled Eritrea's highly repressive government and returned to Ethiopia. Though it should have been possible for them to reacquire Ethiopian citizenship under the law (see above, heading on Renunciation and reacquisition), it was reported that none of those who applied were successful.²⁷¹ Ethiopians of Eritrean origin in other countries were also unable to reacquire Ethiopian documents.²⁷²

There is little reporting of the current situation. However, although Eritrean-Ethiopians are the best-known group at risk of statelessness, the kebele identity card system creates similar problems for other communities. Those facing such difficulties include members of groups that were forcibly moved during the Derg era, and minorities that are dispersed across geography.²⁷³

²⁶⁶ See also Sean D. Murphy, Won Kidane, and Thomas R. Snider, *Litigating War: Arbitration of Civil Injury by the Eritrea-Ethiopia Claims Commission* (Oxford: Oxford University Press, 2013), 311–19.

²⁶⁷ Proclamation to Provide Foreign Nationals of Ethiopian Origin with Certain Rights to be Exercised in their Country of Origin (270/2002), 5 February 2002.

²⁶⁸ Proclamation 378/2003 on Ethiopian Nationality, sections 3, 5, 6 and 18.

²⁶⁹ Directive issued to determine the residence status of Eritrean nationals residing in Ethiopia, 2004, available at <https://www.refworld.org/docid/48abd56c0.html>.

²⁷⁰ Maureen Lynch and Katherine Southwick, 'Ethiopia-Eritrea: Stalemate Takes Toll on Eritreans and Ethiopians of Eritrean Origin' (Washington, D.C.: Refugees International, 30 May 2008). See also Katherine Southwick, 'Ethiopia-Eritrea: Statelessness and State Succession', *Forced Migration Review* 32 (April 2009): 15–17.

²⁷¹ Amsale Getnet Abera, 'Ethiopians in Limbo: from statelessness to being a refugee in one's own country', *ECADF Ethiopian News*, 14 February 2014.

²⁷² See, for example, Louise Thomas, 'Refugees and Asylum Seekers from Mixed Eritrean-Ethiopian Families in Cairo' (Cairo: Programme for Forced Migration and Refugee Studies, American University in Cairo, June 2006).

²⁷³ Fiseha, 'Ethiopia's Experiment in Accommodating Diversity'.

6. International and African law

The right to a nationality in international law²⁷⁴

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.²⁷⁵

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 24,²⁷⁶ 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 particular where the child would otherwise be stateless.²⁷⁷ 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

²⁷⁴ This section is substantially the same as the text published in previous reports by the author for UNHCR on statelessness in East and Southern Africa.

²⁷⁵ 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.’

²⁷⁶ 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.”

²⁷⁷ 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.”

nationality to their spouses and children.²⁷⁸ 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.²⁷⁹

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”.²⁸⁰ 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”.²⁸¹ 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”.²⁸² In general, the trend in international law is to restrict such discrimination.²⁸³

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.

²⁷⁸ 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”.

²⁷⁹ 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.”

²⁸⁰ 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.”

²⁸¹ CERD, Article 1(1) and 1(2).

²⁸² Committee on the Elimination of Racial Discrimination, General Recommendation No. 30: Discrimination against Non-citizens, 2005.

²⁸³ 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/amerjintlaw.105.4.0694>; Michelle Foster and Timnah Rachel Baker, ‘Racial Discrimination in Nationality Laws’, *Columbia Journal of Race and Law*, 2021, 83–146 Pages, <https://doi.org/10.7916/CJRL.V11i1.8018>.

The Human Rights Council has elaborated on states' obligations to prevent statelessness and remove discrimination in a number of resolutions on the right to a nationality, including on the rights of women and children in 2012²⁸⁴ and on women's equal nationality rights in 2016.²⁸⁵ Extensive additional guidance, as well as on the actions taken within the #IBelong Global Campaign to End Statelessness by 2024, is available at the UNHCR website resource page on statelessness.²⁸⁶

Among the states considered in this report, all are parties to the ICCPR and CRC; Djibouti, Eritrea and Ethiopia are parties to CEDAW; Djibouti, Ethiopia and Somalia are parties to the CRPD. None are parties to CERD or CMW, or to either of the statelessness conventions. Somalia, however, pledged in 2019 to accede during 2020 to both the 1954 Convention Relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness (see Annex 2).

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.²⁸⁷

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".²⁸⁸ This presumption is restated and strengthened by the comprehensive Articles on Nationality of Natural Persons in Relation to the Succession of States adopted in 1999 by the International Law Commission.²⁸⁹ The 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).

²⁸⁴ UN Human Rights Council Resolution 20/4: The right to a nationality: Women and children, A/HRC/RES/20/4, 16 July 2012 <https://www.refworld.org/docid/503dd5422.html>.

²⁸⁵ UN Human Rights Council Resolution 32/7: Women's equal nationality rights in law and in practice, A/HRC/RES/32/7, 18 July 2016 <https://www.refworld.org/docid/57e910044.html>.

²⁸⁶ See resource page at: <https://www.refworld.org/statelessness.html>

²⁸⁷ Paul Weis, *Nationality and Statelessness in International Law*, 2nd ed. (Leiden: Brill, 1979), chap. 11; Ruth Donner, *The Regulation of Nationality in International Law* (Irrington-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).

²⁸⁸ James Crawford, *The Creation of States in International Law*, 2. ed (Oxford: Clarendon Press, 2007), 53.

²⁸⁹ 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).

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.²⁹⁰

In 2011, a UN General Assembly resolution “Emphasized the value of the [ILC] 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”.²⁹¹ 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.

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

²⁹⁰ *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.

²⁹¹ 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”.

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 2020.²⁹²

Naturalisation

Although the grant of nationality through naturalisation has historically been within the discretion of states, there have been moves to reduce that discretion. At the regional level, the European Convention on Nationality 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.²⁹³ 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.*²⁹⁴

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 Persons.²⁹⁵ 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 UN Refugee Convention (excluding only Eritrea among the countries studied for this report),²⁹⁶ and the great majority to the African Refugee Convention (although they exclude Eritrea and Somalia).²⁹⁷

²⁹² 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).

²⁹³ European Convention on Nationality Art. 6(4).

²⁹⁴ UNHCR, Guidelines on Statelessness No. 4, para. 42.

²⁹⁵ Convention relating to the Status of Stateless Persons, 1954, Art. 32.

²⁹⁶ 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.

²⁹⁷ Also excluded are: Madagascar, Mauritius, Morocco, Namibia, 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>. Note that Djibouti passed a law ratifying the 1969 Convention in 2006, although this is not recorded on the AU website: Loi n°150/AN/06/5ème L portant ratification de la Convention de l’OUA sur les réfugiés <https://www.presidence.dj/PresidenceOld/jo/2006/loi150an06.htm>.

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.²⁹⁸ 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.

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.²⁹⁹

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."³⁰⁰ Similarly, the Commission has found against Botswana, Zambia and Côte d'Ivoire in cases concerning the retroactive refusal to recognise the citizenship of opposition politicians challenging an incumbent.³⁰¹

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

²⁹⁸ 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.

²⁹⁹ Amnesty International v. Zambia, para. 33.

³⁰⁰ 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).

³⁰¹ Modise v. Botswana, Communication No.97/93, African Commission on Human and Peoples' Rights, 2000;; Amnesty International v. Zambia, Communication No. 212/98, African Commission on Human and Peoples' Rights, 1999; Legal Resources Foundation v. Zambia, Communication No.211/98, African Commission on Human and Peoples' Rights, 2001; Mouvement ivoirien des droits humains (MIDH) v. Côte d'Ivoire, Communication No. 246/02, African Commission on Human and Peoples' Rights, 2008.

*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.*³⁰²

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.³⁰³ A year later, the Commission formally approved a study on nationality prepared in accordance with this resolution³⁰⁴ and decided to draft a protocol to the Charter on the right to a nationality for adoption by heads of state.³⁰⁵ In July 2015, in accordance with its resolutions of the previous two years, and following expert meetings to draft the text, 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;³⁰⁶ following discussion by state experts, a modified draft text was adopted by the AU's Specialised Technical Committee (STC) on Migration, Refugees and Displaced Persons in late 2018.³⁰⁷ The text was to have been considered by the STC on Justice and Legal Affairs in early 2020, before proceeding to the Executive Council of the AU, but the debates were delayed by the COVID pandemic.

The 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) supplements the protection in Article 24(3) of the ICCPR and Article 7 of the CRC by adding a specific obligation, inspired by the 1961 Convention on the Reduction of Statelessness to grant nationality to a child born in the territory who would otherwise be stateless:

*"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."*³⁰⁸

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.³⁰⁹

³⁰² *The Nubian Community v. Kenya*, Communication No. 317/06, African Commission on Human and Peoples' Rights (2015).

³⁰³ Resolution No. 234 on the Right to Nationality, adopted at the 53rd Ordinary Session 9-23 April 2013.

³⁰⁴ *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.

³⁰⁵ 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.

³⁰⁶ Decision on the Report of the Activities of the African Commission on Human and Peoples' Rights (ACHPR), Doc. EX.CL/968(XIX), 15 July 2016, paragraph 5.

³⁰⁷ 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.

³⁰⁸ African Charter on the Rights and Welfare of the Child, Art. 6.

³⁰⁹ 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), <https://www.acerwc.africa/general-comments/>.

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.³¹⁰ 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 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.*³¹¹

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.³¹²

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:

³¹⁰ 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').

³¹¹ Kenyan Nubian Children's case, paragraph 42.

³¹² 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.

*[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.*³¹³

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.*³¹⁴

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.”³¹⁵

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.³¹⁶

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 the same articles as the right to a nationality in the treaties listed above.³¹⁷ General Comments interpreting the treaties also emphasise the importance of birth registration for the rights of children.³¹⁸

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

³¹³ *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): 170–76.

³¹⁴ *Ibid.*, paras. 115 and 116.

³¹⁵ *Ibid.*, para. 132 (viii).

³¹⁶ *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 (Judgment) (African Court on Human and Peoples' Rights, App No.013/2015, 28 November 2019)’, *Statelessness and Citizenship Review* 2, no. 1 (2020): 172–78.

³¹⁷ 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.

³¹⁸ 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.

assistance to re-establish a child's identity where it has been illegally deprived.³¹⁹ 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.³²⁰

The obligations for the issue of identity documents, including birth registration, are specifically stated to apply equally to refugees, stateless persons, and internally displaced persons, under both international and African law.³²¹

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.³²²

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.³²³

Sub-regional standards

Intergovernmental Authority on Development

The Intergovernmental Authority on Development (IGAD) is a regional organisation with headquarters in Djibouti (originally created in 1986 as the Intergovernmental Authority on Drought and Development). Its eight members include Djibouti, Eritrea, Ethiopia, and Somalia, as well as Sudan, South Sudan, Kenya and Uganda. IGAD has undertaken no specific initiatives in relation to statelessness. However, the Nairobi Declaration on Somali Refugees adopted in 2017 did commit states to pursuit of “a comprehensive regional approach to deliver durable solutions for Somali refugees” to include both

³¹⁹ *Convention on the Rights of the Child*, art. 8.

³²⁰ *African Committee of Experts on the Rights and Welfare of the Child*, ‘General Comment on Article 6’.

³²¹ 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 relating to the Status of Stateless Persons*, 1954, 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.

³²² “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.

³²³ Held in Addis Ababa, Ethiopia, 2010; Durban, South Africa, 2012; Yamoussoukro, Côte d’Ivoire, 2015; Nouakchott, Mauritania, 2017; Lusaka, Zambia, 2019: for details of the Africa Programme on Accelerated Improvement of Civil Registration and Vital Statistics (APAI-CRVS), see website of the UN Economic Commission for Africa at <https://www.uneca.org/data-and-statistics>.

“protection and promoting self-reliance in the countries of asylum” as well as facilitating “the voluntary return of Somali refugees in safety and dignity”. The declaration included specific commitments to provide civil registration and documentation to refugees.³²⁴ Under the associated plan of action, Ethiopia pledged to “allow for local integration for protracted refugees who have lived in Ethiopia for 20 years or more”, including at least 13,000 refugees already identified by the Administration of Refugee and Returnee Affairs.³²⁵

League of Arab States

Djibouti and Somalia are both members of the League of Arab States. In 2017, a conference convened by the League – in collaboration with UNHCR, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Children’s Fund (UNICEF), and the Global Campaign for Equal Nationality Rights – adopted a Declaration on Women’s Nationality Rights. The declaration established as one of its objectives that Member States should:

*put an end to all forms of discrimination in the area of nationality and to take concrete steps to amend laws and legislation relating to nationality in order to grant women and men equal rights in conferring nationality to children and spouses and to acquire, change or retain nationality in conformity with international standards and not contrary to national interests.*³²⁶

In 2018, the League adopted the Arab Declaration on Belonging and Legal Identity which, among other things urged Member States to review and enforce their national laws on nationality in order to:

*ensure, without exception, that all children, including unaccompanied children are registered upon birth and are able to acquire a nationality, in particular by promoting laws enabling women to pass their nationalities to their children in compliance with the relevant international Conventions and Covenants.*³²⁷

Organisation of Islamic Cooperation

Djibouti and Somalia are also members of the Organisation of Islamic Cooperation (OIC). In 2005, the 32nd conference of foreign ministers convened by the OIC adopted a Covenant on the Rights of the Child in Islam.³²⁸ Article 7 on “identity” provides that:

1. *A child shall, from birth, have the right to a good name, to be registered with the authorities concerned, to have his or her nationality determined, and to know his/her, parents, all his/her relatives and foster mother.*

³²⁴ Nairobi Declaration on Somali Refugees, 25 March 2017, Section II, para 1; Section III, para 1; and Section IV, paras 5 and 9.

<https://iqad.int/communiqu/1519-communique-special-summit-of-the-igad-assembly-of-heads-of-state-and-government-on-durable-solutions-for-somali-refugees>.

³²⁵ Nairobi Comprehensive Plan of Action for Durable Solutions for Somali Refugees (Annex to the Declaration), para 4.2.6.

<https://iqad.int/attachments/article/1519/Annex%20to%20the%20Declaration%20-%20Final%20Plan%20of%20Action%2011.04.2017.pdf>.

³²⁶ League of Arab States, The First Arab Conference on Good Practices & Regional Opportunities to Strengthen Women’s Nationality Rights, League of Arab States Secretariat General, 1-2 October 2017 - Final Declaration, 2 October 2017, available at: <https://www.refworld.org/docid/5a256c4a.html>

³²⁷ League of Arab States, Arab Declaration on Belonging and Legal Identity, 28 February 2018, available at: <https://www.refworld.org/docid/5a9ffbd04.html>

³²⁸ Organization of Islamic Cooperation (OIC), Covenant on the Rights of the Child in Islam, June 2005, available at: <https://www.refworld.org/docid/44eaf0e4a.html>.

2. *States Parties to the Covenant shall safeguard the elements of the child's identity, including his/her name, nationality and family relations in accordance with their domestic laws, and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.*
3. *The child of unknown descent or who is legally assimilated to this status shall have the right to guardianship and care but without adoption. He shall have a right to a name, title, and nationality.*

7. Conclusions: Statelessness in the Horn of Africa

This concluding section consists of reflections on the application of the concept of statelessness in the Horn of Africa, and the approaches that may be most fruitful in ensuring that all have the right to a nationality.

When asked to address the problem of statelessness it is common for states to ask for the number of stateless people within their territories, so that the scale of the problem can be understood before measures to prevent and reduce statelessness can be considered. In the context of the Horn of Africa this request is impossible to fulfil. As the profile of the groups at risk of statelessness shows, the question of who is or is not stateless – “a person not considered as a national by any state under the operation of its law” – is often very difficult to answer (see also the heading at the start of this report: A note on terminology). In the context of a region where a very large number of people have no identity documents of any kind (including birth certificates) that recognise either their place of birth and identity of their parents or their formal membership of a state; where the internationally recognised state of Somalia has had no central government in full control of its territory for three decades; where borders are porous and often unmarked; where many children have been separated from their families by conflict; where nomadism and cross-border migration have always been common; and where there is significant decentralisation of the practical systems for determination of membership of society and eligibility for the benefits of citizenship, the very meaning of statelessness is unclear. Thus, no census could possibly provide an answer to the number of those who are stateless.

Not everyone who lacks an identity document confirming his or her nationality is stateless. Risks of statelessness are increased for the undocumented, especially over several generations, but a person who is a member of an ethnic group generally recognised to “belong” to the particular state, whose parents are both from the same community and married in whatever form is legally recognised by the state, and who is born within a stable community untroubled by forced displacement, will in general face only bureaucratic hurdles if and when it becomes necessary to establish formal recognition of status. However, an undocumented person who in addition falls within one of the groups outlined above is at high risk of statelessness; whether he or she is in fact stateless will only be revealed on application for a document recognising nationality, when additional demands are placed for different types of proof that the person “really” belongs, and the application is rejected or left pending indefinitely despite numerous attempts to satisfy these demands.

There is a major push to improve identification systems in the Horn of Africa, as in other regions, with important initiatives to improve birth registration and to establish new national population databases. These efforts are undertaken in recognition of the principle that identity registration has been a

necessary infrastructure system for any functioning government. Perhaps the most important recommendation of this report would be that the initiatives to strengthen identification systems should pay careful attention to the protection of the right to a nationality and the reduction of statelessness right from the moment of design. This will include law reform to provide minimum protections against statelessness, rights of review and appeal, and legal assistance for those who face difficulties proving their nationality.

Universal birth registration is particularly important to the establishment of the right to a nationality for every child (either of the state of birth or of the state of origin of one of the parents). There is extensive international guidance available on the establishment of civil registration systems.³²⁹ Birth registration does not, however, provide a complete solution to the problem of statelessness unless it is accompanied by law and policy reform to provide at least the minimum rights to nationality outlined in international law, including the right to nationality of the state of birth if the child would otherwise be stateless; and to establish child protection systems that ensure that children at risk of statelessness are in practice recognised and documented as nationals of the state of birth or, where appropriate, the state of origin of their parents.³³⁰

In a context where civil registration is currently very incomplete, the achievement of universal birth registration would, in any event, only create a documentary record of all adult residents after a delay of 70 years or more. Adult registration processes are therefore required for registration to be completed. In some countries where birth registration was low, registration rates have been rapidly increased by processes to establish late registration of birth, fully integrated into existing civil registration systems.³³¹ In others, there have been free-standing adult registration drives, in which a range of different types of evidence have been accepted that a person is a national.

The proposal in Somalia for the creation of a biometric database of all residents, without distinction as to nationality or not, is loosely based on the biometric identity system in India known as the “Aadhaar” number, rolled out for all residents of India. This proposal has a certain attraction in a state where existing identity infrastructure is weak, and where the nationality status of many is uncertain. However, there is a need for careful debate and consideration as to whether an identity register delinked from civil registration, voter registration, nationality administration and other efforts to (re)constitute the state and effective government is the best solution to the most pressing problems related to identification in Somali society. The status of minorities in Somalia as full citizens of the modern state has been controversial for many decades. Their future ability to participate in politics and society will depend ultimately on their

³²⁹ UN Statistics Division, ‘Handbook on Civil Registration and Vital Statistics Systems: Preparation of a Legal Framework’, *Studies in Methods, Series F* (New York: United Nations, 1998), https://unstats.un.org/unsd/publication/SeriesF/SeriesF_71E.pdf; UN Statistics Division, ‘Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management; Second Draft’ (New York: United Nations, January 2019), https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf; UN Statistics Division, ‘Principles and Recommendations for a Vital Statistics System, Revision 3’, *Statistical Papers, Series M* (New York: United Nations, 2014), <http://unstats.un.org/unsd/demographic/standmeth/principles/M19Rev3en.pdf>.

³³⁰ Manby, ‘“Legal Identity for All” and Statelessness’.

³³¹ This was the case in South Africa, for example. Jaap van der Straaten and Anna Zita Metz, ‘South Africa ID Case Study’, *Identification for Development Initiative* (World Bank, 2019), <http://documents.worldbank.org/curated/en/315081558706143827/South-Africa-ID-Case-Study>.

legal recognition as nationals (though legal nationality is never a sufficient solution to social and political exclusion, it is almost always a necessary starting point). The design of identification systems – including those intended to avoid these problems by postponing a decision on nationality – is thus highly sensitive. There is a need for careful attention to detail, and efforts to establish political consensus, in order to avoid reinforcing existing exclusions or creating new ones. While Somalia is perhaps the most challenging environment, the same issues arise in all countries of the region.

Any discussion of the best institutional arrangements to manage these issues must therefore focus on the reality that in contexts where a very large percentage of people currently do not have a birth certificate or any other official identity document, alternative systems for proof of identity are necessary for initial enrolment to take place. Important lessons can be drawn for identity registration from the history of establishing independent electoral commissions, responsible for voter registration in many African states. In the Horn of Africa in particular, where existing identity infrastructure is weak, and adult enrolment processes require many individual decisions over who is eligible for nationality, the establishment of independent identity commissions could play a critical role in ensuring that statelessness is prevented and reduced as identification systems are strengthened.

It is particularly important that the regulatory framework for determination of nationality clearly establishes the evidence – including witness testimony where no documents are available -- that must be provided for a previously undocumented person to be recognised as a citizen or not, and sets out the ways in which a decision to deny nationality may be challenged both administratively and in the courts.³³² If such protections are built in as new systems are rolled out, with the political backing for their inclusion, the inadvertent creation of stateless populations can be avoided.

What is required is a procedure that first identifies those individuals and groups that are of undetermined nationality and confirms an existing nationality or facilitates their acquisition of nationality through naturalisation. As a secondary protection, suitable especially for individuals who are not in the country of their birth, the status of stateless person may be granted, as an interim status pending acquisition of nationality. The prevention and reduction of statelessness thus requires both the creation of legal routes to acquire nationality based on birth in the territory or long residence, and the adoption of procedures to ensure their implementation in practice.

³³² Bronwen Manby, *The Sustainable Development Goals and “Legal Identity for All”: “First, Do No Harm”*, *World Development* 139 (2021), <https://doi.org/10.1016/j.worlddev.2020.105343>.

8. Recommendations

Recommendations to states

Accessions to and implementation of UN, AU, and Arab League treaties and standards

- **All states** covered by this report should take steps to accede to relevant UN 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 Statelessness No. 4 on Prevention of Childhood Statelessness, and Guidelines on Statelessness No. 5 on Loss and Deprivation of Nationality.
- **Djibouti, Eritrea** and **Ethiopia** 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. In particular, all three states should incorporate into their nationality laws the provision required by Article 6(4) of the Charter that a child born in the territory shall acquire the nationality of the state of birth if not granted nationality by any other state at the time of birth.
- **Somalia** signed the African Charter on the Rights and Welfare of the Child in 1991, and should move towards accession to the treaty, and adoption in national law of the safeguards against statelessness provided in Article 6(4).
- **Somalia** and **Djibouti** are member states of the Arab League and OIC. **Somalia** should reform its law to provide for the equal rights of men and women to transmit nationality to their children, in line with the Arab League Declaration on Women's Nationality Rights of 2017 and the Declaration on Belonging and Legal Identity of 2018. Both **Somalia** and **Djibouti** should seek to develop practical systems (considering relative state capacity) "to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory", in line with the OIC Covenant on the Rights of the Child in Islam.

An integrated approach to nationality systems

There is a need to 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 provide identity 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. Procedures for recognition and registration of status should be designed to respect basic rules of due process, including independent oversight and judicial appeal of administrative decisions, and to allow for the integration and documentation (as nationals) of those who have no plausible connection to any other state. As initiatives are undertaken to improve registration and recognition of legal identity, the following recommendations should be taken into account.

Nationality law reform

- **Somalia** should remove provisions from the nationality law that discriminate 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.³³³
- **Somalia** should review provisions of its nationality law that create preferential access to citizenship on the basis of ethnicity, to ensure that they comply with international and African norms and standards, and in particular to avoid the risk of statelessness for those born in the country who are not members of the preferred group or groups. As proposed in the draft citizenship law presented to the Council of Ministers in 2016 (see above, under the heading Minorities in Somalia), citizenship could also be attributed to any person born in Somalia of one parent was also born in Somalia, or if he or she would otherwise be stateless.
- **All countries** should amend their nationality laws to ensure that every child has the right to a nationality, including through provisions that:
 - Provide equal rights for men and women to transmit nationality to their children, and ensure that procedures (for instance surrounding birth registration) respect this right in practice. **Somalia** in particular should remove discrimination based on sex from their nationality laws.
 - 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 are otherwise stateless, or children found in the country whose parents are unknown. **Ethiopia** should reform or clarify the application of its law to ensure that not only “infants” but also older children may benefit from this protection.
 - Provide for additional protections against statelessness by widening access to nationality based on birth in the territory, in particular for a child born in the territory who has one parent also born there, and for a child born in the territory who remains there during childhood and until majority.
 - Provide for recognition or acquisition of nationality in case of children who are looked after by a family other than their birth family, whether there has been formal adoption or not.
- Provide for such recognition of nationality on such grounds to be accessible retroactively in case of those who are now adults.
- Provide that minor children may be included within the application of an adult for naturalisation, and acquire nationality at the same time as the parent.
- Review the conditions for naturalisation and provide limits to the discretion to grant or refuse naturalisation, in order to make naturalisation accessible to a far wider number of people, including refugees, former refugees, and persons who are stateless or of undetermined nationality. 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.
- Review laws to ensure access to nationality for nomadic and border populations, drawing on the provisions in the Draft Protocol to the African Charter on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa.

³³³ This report takes no position on the status of Somaliland in international law. However, Somaliland adopted its own nationality law and the recommendations made to Somalia also apply to the citizenship legislation and procedures in Somaliland.

- 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.
- Provide in law for any vetting systems to verify a person's nationality, ensuring that they apply to all applicants equally, have clear criteria and procedures, allow the right to be heard in person or by a representative, and issue a decision within a reasonable period, with a negative response to be reasoned and delivered in writing.
- Provide in law for administrative review of decisions relating to determination or certification of nationality, including issue of identity documents (complaints systems and independent oversight commissions), and also facilitate legal assistance and low-cost access to the normal courts responsible for similar matters.
- Establish a statelessness determination procedure, which can grant the status of stateless person as an interim measure to an individual whose nationality cannot be confirmed according to the previous procedures, and facilitate the naturalisation of stateless persons.
- Review regulations to ensure that they are aligned 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 finalisation of the draft Protocol to the African Charter on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa at the AU's Specialised Technical Committee on Justice and Legal Affairs and subsequent adoption of the Protocol by heads of state and government.

Nationality administration

States should adopt measures to increase accessibility, due process, transparency and efficiency in nationality administration, including by:

- Ensuring effective processes for administrative and judicial review of decisions relating to the issue of identity documents:
 - Independent oversight mechanisms that can provide a rapid and low-cost review, with a right to be heard and respect for principles of due process;
 - Clearly described procedures for access to the courts;
 - Legal and paralegal support for those whose status is in doubt.
- Establishing an accessible procedure for the confirmation or determination 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. If nationality of the country of residence cannot be confirmed, such procedures should seek to confirm with the relevant consular authorities if the person holds another nationality and so far as possible facilitate acquisition of documents confirming that status. If this is not possible, the person should be provided protection as a stateless person, as a temporary measure, with facilitated acquisition of nationality in line with the requirements of the Convention relating to the Protection of Stateless Persons. Such procedures should be rule-based, transparent, provide for witness and other forms of testimony as well as existing documentation, and the right to be heard and to be represented.
- Taking all necessary measures to ensure that all children born in the country are registered at birth, without discrimination (including discrimination based on the sex of the parent, children born in remote areas and in disadvantaged communities, children whose parents are unknown or of undetermined nationality, as well as those in the country as asylum-seekers, refugees,

stateless persons or migrants regardless of migratory status); and that those 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.
- Taking steps to facilitate access to consular assistance by nationals who are outside the country of nationality, so that they can renew identity documents and obtain copies of relevant civil status documents (such as birth, death or marriage certificates), enabling birth registration in the country of birth; and, if required for them to be valid in national law, transcribe birth and other civil status certificates issued by the country of birth into the records of the country of origin of the parents.
- Providing for alternative means of proof of identity and civil status events for asylum-seekers, refugees and stateless persons who cannot approach their consular authorities, or are not recognised by any consulate as a national (as required by Articles 25 and 27 of the Convention relating to the Status of Refugees and the Convention relating to the Status of Stateless Persons), in particular where such documents are required for parents to be able to register the births of children.
- Publishing annual statistics on issuance of official documents confirming identity and nationality, and percentage of applications refused, appeals granted, etc.
- Publishing annual statistics on acquisition of nationality by naturalisation or similar procedures, including country of original nationality (or stateless / undocumented status), and percentage of applications refused.
- Clarifying which department or agency is responsible for the consideration and resolution of cases of statelessness, and nominate a national focal point on statelessness as a liaison for other states and international agencies, including UNHCR. 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, in cooperation with UNHCR and those national institutions that provide legal assistance (whether state or non-state agencies) for those who are seeking proof of nationality, especially during periods when new procedures or law reforms are introduced.
- Ensuring that costs related to nationality administration and identification do not prevent people from obtaining the documents to which they are entitled in law and provide for waiver of costs in case of categories believed to be particularly at risk of statelessness.

Identification of populations at risk of statelessness, and prevention and reduction of statelessness

States should seek to identify and provide solutions for those persons who are stateless or at risk of statelessness, and in particular they should:

- Improve the collection of statistics on the numbers of people who are stateless, at risk of statelessness, and of undetermined nationality, in conjunction with UNHCR and the developing guidance on statistical reporting on statelessness (see chapeau to heading on Groups at risk of statelessness).

- 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 (as provided in the UN Guiding Principles on Internal Displacement). Where borders are crossed, 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.
- Where individuals cannot be confirmed to have a nationality under existing laws, provide them with a temporary protective status as a stateless person in accordance with the procedures required by the Convention relating to the Status of Stateless Persons, and facilitate their acquisition of nationality.

Recommendations to international and regional organisations

- **IGAD** should use its convening role to debate the question of statelessness and nationality law, and develop a political and programmatic framework for the eradication of statelessness, bringing laws in line with international and regional standards, inspired by discussions in other regional bodies in Africa, including in particular the Economic Community of West African States, as well as at the level of the African Union and Arab League.
- **UNHCR** should continue to support states in the region to identify and assist individuals and populations who are stateless or at risk of statelessness, to review and reform laws in light of international minimum standards, and to build the capacity development of the network of government focal points on statelessness in the Horn and East of Africa.

Annexes

Annex 1: Nationality laws in force

STATE	LAW
Djibouti	Loi n°003/AN/18/8ème L portant Code Civil
Eritrea	Constitution 1997 Eritrean Nationality Proclamation No. 21/1992
Ethiopia	Constitution 1995 Proclamation No. 378/2003 on Ethiopian Nationality
Somalia	Law No.28 of 22 December 1962 on Somali Citizenship Provisional Constitution 2012

Annex 2: Status of UN treaties

Dates of ratification/accession available at: <https://treaties.un.org/Pages/ParticipationStatus.aspx>; pledges in relation to accession to the treaties set out in “High-Level Segment on Statelessness: Results and Highlights”, UNHCR, 2019, available at <https://www.unhcr.org/ibelong/high-level-segment-statelessness/>.

Treaties relating to statelessness

STATE	Convention relating to the Status of Stateless Persons 1954	Convention on the Reduction of Statelessness 1961
Djibouti	-	-
Eritrea	-	-
Ethiopia	-	-
Somalia	2019 Pledge to accede	2019 Pledge to accede

Treaties with provisions on the right to a nationality

STATE	CERD	CCPR	CEDAW	CRC	CMW	CRPD
Djibouti	-	5 Nov 2002	2 Dec 1998	6 Dec 1990	-	18 Jun 2012
Eritrea	-	22 Jan 2002	5 Sep 1995	3 Aug 1994	-	-
Ethiopia	-	11 Jun 1993	10 Sep 1981	14 May 1991	-	7 Jul 2010
Somalia	-	24 Jan 1990	-	1 Oct 2015	-	6 Aug 2019

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

CRPD: Convention on the Rights of Persons with Disabilities, 2006

Annex 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
Djibouti	11/11/1991	02/02/2005	03/01/2011
Eritrea	14/01/1999	Signature only 25/04/2012	22/12/1999
Ethiopia	15/06/1998	18/07/2018	02/10/2002
Somalia	31/07/1985	Signature only 23/02/2006	Signature only 01/06/1991

Annex 4: Select bibliography

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