

African Union, African Regional Bodies

African Charter on Human and Peoples' Rights

Protocol to the African Charter on Human and Peoples' Rights Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa

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African Union

African Charter on Human and Peoples' Rights

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WE, HEADS OF STATE AND GOVERNMENT OF THE AFRICAN UNION:

CONSIDERING that Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of the Charter;

DRAWING INSPIRATION from the Universal Declaration of Human Rights of 1948, mentioned in the African Charter on Human and Peoples' Rights, of which Article 15 provides that "everyone has the right to a nationality" and that "no one shall be arbitrarily deprived of his [or her] nationality nor denied the right to change his [or her] nationality";

MINDFUL that the 1966 International Covenant on Civil and Political Rights and the 1989 United Nations Convention on the Rights of the Child provide that every child has the right to acquire a nationality;

RECALLING the provisions of the 1990 African Charter on the Rights and Welfare of the Child and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

RECALLING the commitment in the 50th Anniversary Solemn Declaration adopted by the Assembly of Heads of State and Government of the African Union on 26 May 2013 to realise the aspirations of the African people for an African citizenship, in line with the Agenda 2063;

TAKING NOTE of the commitments made in the Abidjan Declaration of Ministers of Member States of the Economic Committee of West African States on the Eradication of Statelessness adopted in 2015, and the Declaration of the International Conference on the Great Lakes Region on the Eradication of Statelessness adopted in 2017 to take all measures to eradicate statelessness and to support the adoption by the African Union of a Protocol to the African Charter on Human and Peoples' Rights on the eradication of statelessness in Africa;

RECOGNISING that the right to a nationality is a fundamental condition for the protection and effective exercise of the full range of other human rights;

ALSO RECALLING the pioneering role played by the Regional Economic Communities of the African Union in the development of new frameworks for citizenship at the regional level as a means of accelerating the integration of Africa's peoples;

REAFFIRMING that States have the primary responsibility for the prevention and eradication of statelessness and that in relation to nationality the legitimate interests both of States and of individuals must be taken into account;

TAKING NOTE of the decisions and resolutions of the African Commission on Human and Peoples Rights and of the African Committee of Experts on the Rights and Welfare of the Child recognizing and protecting the right to a nationality and condemning arbitrary deprivation of nationality;

CONSIDERING that the prevention and eradication of statelessness can contribute to the collective effort of nation-building and the strengthening of peace and security on the continent;

AFFIRMING that statelessness is contrary to respect for the right to human dignity and to legal status enshrined in Article 5 of the African Charter on Human and Peoples' Rights;

MINDFUL ALSO of the deep interest of African States to regulate the status of stateless persons so that they may enjoy their fundamental rights and freedoms, in accordance with their national law and the relevant legal instruments of the United Nations and the African Union;

EMPHASISING the importance of effective civil registration systems for the eradication of statelessness, and the particular need to facilitate the registration of border communities and nomadic populations, where applicable;

CONSCIOUS that the history of the African continent, especially the initial establishment of borders by colonial powers, has given particular characteristics to questions of nationality and statelessness in our States that are not sufficiently taken into account by the existing African and international instruments;

RESOLVED to eradicate statelessness in Africa by taking effective steps to ensure that everyone has the right to a nationality, including through the adoption of voluntary agreements to settle questions relating to nationality, the harmonisation of nationality laws, access of all to civil registration, and the prohibition of arbitrary deprivation or denial of nationality:

HAVE AGREED AS FOLLOWS:

Article 1 – Definitions

For the purpose of this Protocol:

“**Acquisition of nationality**” means the grant of nationality following an application made by a person, or his or her representative, to the competent authorities of a State, in conformity with national law;

“**African Charter**” means the African Charter on Human and Peoples' Rights;

“**African Commission**” means the African Commission on Human and Peoples' Rights established under the African Charter;

“**African Committee of Experts**” means the Committee of Experts established under the African Charter on the Rights and Welfare of the Child;

“**African Court**” means the African Court on Human and Peoples' Rights or any successor institution to the Court;

“**Appropriate connection**” means a connection by personal or family life to a State, including by one or more of the following attributes: birth in the relevant State; descent from or adoption or kafala by a national of the State; habitual residence in the State; marriage to a national of the State; birth of a person's parent, child or spouse in the State's territory; the State's being the location of the person's family life; or, in the context of succession of States, a legal bond to a territorial unit of a predecessor State which has become territory of the successor State, occurring in conformity with and fulfilment of international law;

“**Arbitrary**” means the character of an action undertaken or decision taken in violation of national law or the relevant provisions of the African Charter;

“**Attribution of nationality**” means the automatic transmission of a country's nationality to a person;

“**Child**” means any person below the age of eighteen years;

“**Constitutive Act**” means the Constitutive Act of the African Union;

“**Cross-border communities**” means communities found on either side of the recognised borders of two or more States, where applicable;

“**Deprivation of nationality**” means withdrawal of nationality initiated by the authorities of the State;

“**Discrimination**” means any distinction, exclusion or restriction which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field;

“**Kafala**” means a voluntary commitment made by a person (kafeel), according to the national law of the State Party, where applicable, to undertake 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;

“**Loss of nationality**” means withdrawal of nationality which is automatic, by operation of law;

“**National**” means a person who has the nationality of the State concerned;

“**Nationality**” means a legal bond between a person and a State, and does not indicate a reference to the ethnic or racial origin of the person;

“**Parent**” means the biological mother or father of a person or any person to whom family relationship with similar effects is established or recognised by law of the State Party concerned;

“**Person**” means a natural person;

“**Recovery of nationality**” means re-establishment of nationality by a person who was previously a national;

“**Renunciation of nationality**” means the voluntary relinquishment of nationality by a person, in accordance with national law;

“**Spouse**” means a husband or wife as recognised under the laws of the State Party concerned;

“**Stateless person**” means a person who is not considered as a national by any State under the operation of its law;

“**State succession**” means the replacement of one State by another in the responsibility for the international relations of a territory occurring in conformity with and fulfilment of international law.

Article 2 – Objectives

The objectives of this Protocol are to:

- a. Promote, protect and ensure respect for the right to a nationality in Africa;
- b. Ensure that statelessness in Africa is prevented and eradicated;
- c. Determine the general principles for the prevention, the elimination of the risk of statelessness and eradication of statelessness in Africa;
- d. Promote the aspirations of the African people for an African citizenship.

Article 3 – General principles

1. It is for each State Party to determine, in accordance with its national law, who are its nationals, taking into due account the provisions of this Protocol and relevant international conventions that it has ratified, and the principles of international law generally recognised with regard to nationality.
2. The States Parties agree and recognize that:
 - a. Every person has the right to a nationality;
 - b. No one shall be arbitrarily deprived or denied recognition of his or her nationality nor denied the right to change his or her nationality;
 - c. States shall take steps, individually and collectively, to eradicate statelessness and to ensure that every person has the right to the nationality of at least one state where he or she has an appropriate connection;
 - d. In all actions undertaken by any person or authority concerning the nationality of a child, the best interests of the child shall be the primary consideration.

3. The rules and practices of a State Party relating to nationality shall not include any discrimination based on race, ethnic group, colour, sex, language, religion, political or any other opinion, national or social origin, fortune, disability, birth or other status, except for public order rules and as provided in this Protocol.

Article 4 – Non-discrimination

1. In determining the nationality of a child, the law shall not distinguish between those born in and out of wedlock, without prejudice to public order.
2. A State Party shall grant women and men equal rights to acquire, transmit, change or retain their nationality, and with respect to the nationality of their children in accordance with national law.
3. Notwithstanding the provisions in paragraph 1 of this Article, a State Party may preserve the right to make distinctions among its nationals, if at the time of signature, ratification or accession to this Protocol it specifies its retention of such right, for either of the following purposes, being provisions existing in its national law at that time:
 - a. To limit access to functions and professions specifically designated by the State Party concerned to persons who were attributed its nationality at birth or who have exclusive nationality of that State; or
 - b. To provide, subject to the provisions of Article 15 of this Protocol, for different criteria for deprivation of nationality from those nationals who were attributed nationality at birth and those who have acquired it later.

Article 5 – Attribution of nationality

1. A State Party shall, subject to any exceptions that may be provided in its national law, attribute nationality by operation of law from the moment of birth to the following persons:
 - a. A child born in its territory one of whose parents had the nationality of that State at the time of the child's birth;
 - b. A child born outside its territory one of whose parents had the nationality of that State at the time of the child's birth subject to any exceptions which may be provided for by its national law as regards children born abroad. A State shall, however, always provide for the attribution of nationality to a child born abroad if:
 - i. either of the child's parents has its nationality and was born in its territory, or
 - ii. the child would otherwise be stateless.
 - c. A child born in the territory of the State of one parent also born there;
 - d. A child born in the territory of the State of parents who are stateless or of unknown nationality or in other circumstances in which the child would otherwise be stateless.
2. A State Party shall also attribute nationality, in accordance with its national law, to a child found in its territory of unknown parents, who shall be considered to have been born in its territory of parents possessing the nationality of that State, unless his or her parentage is established during his or her minority and he or she acquires the nationality of one parent.
3. A State Party shall ensure that its national law relating to the attribution of nationality, to children born within and outside its territory, do not result in statelessness.
4. If the application of a State Party's laws relating to the attribution of nationality result in statelessness, the State Party should waive its requirements, in favour of the person who would otherwise be stateless.

Article 6 – Acquisition of nationality

1. A State Party shall provide in its national law for the possibility of acquisition of its nationality by
 - a. persons who have established their habitual residence there;
 - b. a person born in the territory of the State who has remained habitually resident there during a period of his or her childhood, as determined by national law;
 - c. a child adopted by a national, where adoption is provided for in national law;
 - d. a child taken care of by a kafeel, where kafala is provided for in national law.
2. A State Party shall facilitate acquisition of its nationality, in accordance with the conditions established in its national law, by a person, especially a child, who would otherwise be stateless.
3. A State Party shall not make the renunciation of another nationality a condition for the acquisition of its nationality where such renunciation exposes the person to statelessness.
4. In cases where a State Party confers its nationality on persons who are not habitually resident in its territory, it should ensure that such a conferral of nationality respects the principles of friendly, including good neighbourly, relations and territorial sovereignty.

Article 7 – Habitual residence

A State Party may provide in national law, according to the conditions that it defines, that residence must be lawful or continuous for the acquisition of its nationality.

Article 8 – Nomadic and cross-border communities

1. In the case of persons whose habitual residence is in doubt, notably persons who follow a pastoralist or nomadic lifestyle and whose movements cross borders, or who are members of cross-border communities, the States Parties concerned shall cooperate to take all appropriate measures, in accordance with national law, to ensure that such persons have the right to the nationality of at least one of the States to which they have an appropriate connection and are issued, including at their request, documents that are proof of that nationality.
2. A State Party may take into consideration the following relevant factors that may be necessary as evidence of an appropriate connection:
 - i. place of birth;
 - ii. place of marriage;
 - iii. repeated residence in the same location;
 - iv. the presence of family members in that location;
 - v. the cultivation of crops on an annual basis at that location;
 - vi. the use of water points and seasonal grazing sites;
 - vii. the burial sites of family members;
 - viii. the testimony of other members of the community;
 - ix. well-known public facts attested by the competent authorities;
 - x. the person's contribution to the State.

Article 9 – Marriage

A State Party shall provide in law that:

- a. Marriage or the dissolution of a marriage between a national and a non-national shall not automatically change the nationality of either spouse nor affect the capacity of the national to transmit his or her nationality to his or her children.
- b. The change of nationality of one spouse during marriage shall not automatically affect the nationality of the other spouse or of the children.

Article 10 – Children's rights

1. A State Party shall, in accordance with its national law, ensure that:
 - a. the birth of every child is immediately registered;
 - b. every child is attributed a nationality at birth or acquires a nationality as soon as possible thereafter.
2. A State Party shall ensure that in all judicial or administrative proceedings affecting the nationality of a child who is capable of communicating his or her own views, an opportunity shall be provided for the views of the child to be heard, either directly or through a representative, as a party to the proceedings, and those views shall be taken into consideration by the competent authority in accordance with the provisions of appropriate national law.

Article 11 – Evidence of entitlement to a nationality

1. A State Party shall provide in its national law that every person has the right to official copies of the official documents required to establish that person's entitlement to nationality at birth or the conditions for acquisition of its nationality.
2. A State Party shall provide in law for proof of the facts establishing entitlement to nationality at birth or the conditions for acquisition of nationality by oral testimony or other appropriate means, in accordance with its national law on evidence where documentary evidence is not available or cannot reasonably be demanded.

Article 12 – Documentation of nationality

1. A State Party shall provide in its national law for the right to a certificate of nationality or other appropriate document that is proof of a person's nationality and shall define the authorities and procedures to obtain that document.
2. A State Party shall issue to every national on application after satisfaction of the administrative formalities established in national legislation, the documents legally accepted as proof of nationality.
3. A State Party shall take all appropriate measures to ensure that unaccompanied and separated children obtain the documents accepted as proof of nationality, whether of the State where the child is present or, where relevant, another State, which shall be issued in their own names.
4. A State Party shall prohibit all arbitrary acts of cancellation, non-renewal, confiscation or destruction of the documents referred to in this article belonging to any person.
5. When a person holds a document issued by the competent State authorities indicating that he or she is the national of a State, the burden shall be on the institution that asserts that he or she is not a national to prove that the person does not have the nationality to which he or she claims to be entitled.

Article 13 – Renunciation of nationality

A State Party shall not prohibit its national from renouncing his or her nationality, unless such renunciation would render the person stateless, in accordance with national law.

Article 14 – Loss of nationality

If a State Party does not permit multiple nationality, it may provide for the loss of its nationality in case of voluntary acquisition by a national of another nationality.

Article 15 – Deprivation of nationality

1. If a State Party does not permit multiple nationality, it may provide for deprivation of nationality from a national who has been attributed more than one nationality, if the person does not opt for its nationality within a set period after majority, provided that it shall be confirmed that the person does in fact hold another nationality.
2. A State Party may provide for the deprivation of its nationality from a person who has been attributed nationality in cases where recognition of its nationality has been obtained by means of fraud or false representation or concealment of any relevant fact attributable to that person.
3. A State Party may provide for the deprivation of nationality by acquisition if:
 - a. The person acquired its nationality by means of fraud or false representation or concealment of any relevant fact attributable to the applicant;
 - b. The person voluntarily serves in the military forces of another State against the State Party;
 - c. The person is convicted of a crime that is seriously prejudicial to the vital interests of the State Party; or
 - d. For any other reason provided for in the national law of the State Party, taking into account its obligations under international law including the provisions of this Protocol.
4. A State Party shall not arbitrarily deprive any person or group of persons of their nationality, including on racial, ethnic, religious or political grounds or on grounds related to exercise of rights established by the African Charter.
5. When a State Party deprives a person of his or her nationality, the decision shall not automatically affect the nationality of the person's spouse or children.
6. A State Party shall not deprive a person of nationality if that person would thereby become stateless.

Article 16 – Recovery of nationality

1. A State Party shall provide in its national law for the recovery of nationality by its former nationals.
2. If a State Party does not permit multiple nationality, it may require renunciation of other nationalities before nationality is recovered.

Article 17 – Limitations on expulsion

1. A State Party shall not expel a person while a challenge or review of a decision to deny recognition of or to deprive that person's nationality is pending before a competent administrative or judicial authority.

2. A State Party shall not expel a stateless person lawfully in its territory except on the ground of national security or public order.

Article 18 – Recognition and protection of stateless persons

1. A State Party shall provide in law for the criteria for the attribution of the status of stateless person, as an interim measure.
2. A State Party shall guarantee to stateless persons in its territory humanitarian assistance and protection of universally recognised human rights, in conformity with its obligations under the African Charter and the human rights instruments of the United Nations.
3. A State Party shall provide to persons with the status of stateless person identity and travel documents, unless there are overriding issues of national security.

Article 19 – Succession of states and nationality

1. In case of State succession, States Parties shall endeavour to regulate matters relating to nationality through international co-operation and bilateral and multilateral agreements.
2. A State Party shall take appropriate measures to prevent persons who, at the time of a State succession, had the nationality of a predecessor State, from becoming stateless as a result of the succession.
3. A State Party shall adopt rules and procedures to facilitate the recognition of nationality of persons who had the nationality of a predecessor State, during a transition period following State succession, based on the following principles:
 - a. Every person who had the nationality of a predecessor State has the right to nationality of at least one of the successor States;
 - b. Persons having their habitual residence in a territory affected by the succession of States shall be presumed to acquire the nationality of the relevant successor State on the date of such succession, subject to any agreement to the contrary by the States concerned;
 - c. Persons who are qualified to acquire the nationality of two or more successor States shall, if not permitted to hold both nationalities, have a right of option.
4. A predecessor State shall not arbitrarily withdraw its nationality from a person before he or she acquires confirmation of the nationality of a successor State.
5. In determining matters relating to nationality, a State Party shall take into consideration, amongst other criteria, the will of the person concerned.

Article 20 – Rules and procedures relating to nationality

1. A State Party shall ensure that the normative, institutional and procedural framework governing attribution, acquisition, loss, deprivation, renunciation, recovery or certification of their nationality are clear and accessible.
2. A State Party shall ensure that administrative procedures relating to attribution, acquisition, deprivation, renunciation, recovery or certification of nationality, and for the issue of identity or nationality documents, are not arbitrary.
3. A State Party shall provide in law that all decisions relating to the nationality of a person shall be reasoned and notified to each person or his or her legal representative.

4. A State Party shall provide in law that all decisions affecting a person's nationality shall be subject to review by administrative and judicial institutions to which appeal can be made, in conformity with national law.

Article 21 – Monitoring and implementation

A State Party shall ensure implementation of this Protocol at national level and, in their periodic reports submitted in accordance with Article 62 of the African Charter, indicate the legislative and other measures undertaken for the full realisation of the rights recognised by this Protocol and their efforts to eradicate statelessness.

Article 22 – Interpretation

The African Commission on Human and Peoples' Rights and where applicable, the African Court on Human and Peoples' Rights shall be seized with matters submitted by State Parties concerning interpretation arising from the application and implementation of this Protocol.

Article 23 – Cooperation among States Parties and with international agencies

1. States Parties undertake to co-operate with one another, in particular within the framework of the African Union, and to create, where necessary, mechanisms to facilitate this cooperation in the determination of nationality, eradication of statelessness and harmonisation of the applicable laws and rules relating to nationality.
2. States Parties may enter into arrangements on the basis of reciprocity to share with any other States Parties information on the attribution, acquisition, loss and deprivation of their nationality.
3. States Parties may cooperate with relevant African and international agencies, that have a mandate relating to the matters considered in this Protocol.

Article 24 – Signature, ratification, and accession

1. This Protocol shall be open for signature, ratification and accession by the States Parties to the African Charter, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission of the African Union.

Article 25 – Reservations

1. A State Party may, when ratifying or acceding to this Protocol, submit a reservation with respect to any of the provisions of this Protocol.
2. A reservation shall not be incompatible with the objectives of this Protocol.
3. A reservation may be withdrawn at any time.
4. The withdrawal of a reservation must be submitted in writing to the Chairperson of the Commission of the African Union who shall notify other States Parties of the withdrawal accordingly.

Article 26 – Entry into force

1. This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15) instrument of ratification.

2. For a State Party that accedes to this Protocol after it comes into force, the provisions of the Protocol shall take effect for that State thirty (30) days after the date of deposit of the instrument of accession.
3. The Chairperson of the Commission of the African Union shall notify all Member States of the entry into force of this Protocol within fifteen (15) days.

Article 27 – Status of the present protocol

None of the provisions of the present Protocol shall affect more favourable provisions for the realization of the right to a nationality and the eradication of statelessness contained in the national law of States parties or in any other regional, continental or international conventions treaties or agreements applicable in these States Parties.

Article 28 – Amendment and revision

1. Any State Party may submit proposals for the amendment or revision of this Protocol.
2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the African Union who shall transmit the same to the States Parties, to the African Commission and to the African Union Commission on International Law within thirty (30) days of receipt thereof for their advisory opinion.
3. The Assembly, upon advice of the Executive Council, shall examine these proposals through the existing mechanisms of the African Union, within a period of one year following notification of States Parties under paragraph 2 of this article.
4. The Assembly may adopt amendments or revisions according to its rules of procedure.
5. The amendment shall come into force for a State Party that has accepted it thirty (30) days after the Chairperson of the Commission of the African Union has received notice of the acceptance.

Article 29 – Denunciation

1. Any State Party to this Protocol may, three years after the entry into force of this Protocol, denounce its provisions by a written notification to the Chairperson of the Commission of the African Union.
2. At the end of one year from the date of such notification, if not withdrawn, the Protocol shall cease to apply with respect to the denouncing State.
3. The denunciation does not affect obligations of State Parties incurred prior to its notification.