

SOUTH AFRICA: COUNTRY SURVEY (NOV 2022)

1. Ratification of International Instruments

IND	Q	Sub	Subtheme	Question	Relevant sources	Answer: YES/NO	Answer: N/A	Date of ratification/accession / Date of signature	Comment	Source used	Score available	Score achieved	Note on score
RATIFICATION OF INTERNATIONAL INSTRUMENTS (RII)					SOUTH AFRICA								
RII	1	a	1954 Convention relating to the Status of Stateless Persons	Is your country party to the 1954 Statelessness Convention (signed and ratified/acceded)? Yes/No. Provide date of ratification / accession.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	NO				https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	2	0	2 for yes
RII	1	b		If yes, did your country make any reservations? Yes/No/NA. Please list any relevant reservations in comment column.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en		N/A			https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	0	0	-1 for yes
RII	2	a	1961 Convention on the Reduction of Statelessness	Is your country party to the 1961 Statelessness Convention (signed and ratified)? Yes/No. Provide date of ratification / accession.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	NO				https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	2	0	2 for yes
RII	2	b		If yes, did your country make any reservations? Yes/No/NA. Please list any relevant reservations in comment column.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en		N/A			https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	0	0	-1 for yes
RII	3	a	African treaties	Is your country a party to the African Charter on Human and Peoples' Rights 1981? Yes/No.	https://au.int/en/treaties	YES		09-Jul-96		https://au.int/en/treaties	1	1	1 for yes
RII	3	b		Is your country a party to the African Charter on the Rights and Welfare of the Child 1990? Yes/No.	African Charter on the Rights and Welfare of the Child	YES		07-Jan-00		https://au.int/en/treaties	1	1	1 for yes

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RII	3	c		Is your country a party to the Protocol to the ACHPR on the Rights of Women 2003? Yes/ No.	https://au.int/en/treaties	YES		17-Dec-04		https://au.int/en/treaties	1	1	1 for yes
	3	d		If yes, did your country make any reservations? Yes/No/NA. Please list any relevant reservations in comment column.	https://au.int/en/treaties	YES			Art 6(h) which guarantees equal rights between men and women with respect to the nationality of their children. It may remove inherent rights of citizenships and nationality from children.	https://au.int/en/treaties	0	-1	-1 for yes
RII	3	e		Is your country party to the AU Protocol on free movement of persons in Africa? Yes/No	https://au.int/sites/default/files/treaties/36403-treaty-protocol-on-free-movement-of-persons-in-africa-e.pdf	NO				https://au.int/en/treaties	1	0	1 for yes
RII	4	a	Sub-regional treaties (as relevant)	Is your country party to the 2005 SADC Protocol on the Facilitation of Movement of Persons (signed and ratified)? Yes/No	https://www.sadc.int/files/9513/5292/8363/Protocol_on_Facilitation_of_Movement_of_Persons2005.pdf	YES		18-Aug-05		https://www.sadc.int/files/9513/5292/8363/Protocol_on_Facilitation_of_Movement_of_Persons2005.pdf	1	1	1 for yes
RII	4	b		Is your country party to the 2008 SADC Protocol on Gender and Development (signed and ratified)? Yes/No	https://www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf	YES		17-Aug-08		https://www.sadc.int/files/8713/5292/8364/Protocol_on_Gender_and_Development_2008.pdf	1	1	1 for yes
RII	5	a	Other UN treaties	Is your country party to the Convention on the Rights of the Child 1989 (signed and ratified)? Yes/No	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	YES		16-Jun-95		https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	1	1	1 for yes
	5	b		If yes, did your country make any reservations related to nationality (arts.7&8)? Yes/No/NA. Please list any relevant reservations in comment column.		NO				https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	0	0	-1 for yes

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RII	5	c		Is your country party to the Convention on the Elimination of all Forms of Discrimination Against Women 1979 (signed and ratified)? Yes/No.		YES		15-Dec-95		https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	1	1	1 for yes
	5	d		If yes, did your country make any reservations related to nationality (art.9)? Yes/No/NA. Please list any relevant reservations in comment column.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	NO				https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	0	0	-1 for yes
RII	5	e		Is your country party to the Convention on the Elimination of Racial Discrimination 1965 (signed and ratified)? Yes/No.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	YES		10-Dec-98		https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	1	1	1 for yes
RII	5	f		If yes, did your country make any reservations related to nationality (art.5)? Yes/No/NA. Please list any relevant reservations in comment column.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	NO				https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	0	0	-1 for yes
RII	5	g		Is your country party to the International Covenant on Civil and Political Rights 1966 (signed and ratified)? Yes/No.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	YES		10-Dec-98		https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	1	1	1 for yes
RII	5	h		If yes, did your country make any reservations related to nationality or birth registration (art.24)? Yes/No/NA. Please list any relevant reservations in comment column.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	NO				https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	0	0	-1 for yes
	5	i		Is your country party to the Convention on the Rights of Persons with Disabilities (signed and ratified)? Yes/No.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	YES		30-Nov-07			1	1	1 for yes

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	5	j		If yes, did your country make any reservations related to nationality or birth registration (art.18)? Yes/No/NA. Please list any relevant reservations in comment column.	https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en	NO						0	0	-1 for yes
RII	6	a	Direct effect	Once ratified, does an international treaty apply automatically in domestic laws of the country? That is, the treaty does not need to be domesticated in national legislation before it has effect. Please note any relevant constitutional provisions in the Comment column.	Constitutional provisions on status of international law	YES				DUAL: South African Constitution section 39, section 231, 232 and 233.	South African Constitution	0,5	0,5	,5 for yes
												15,5	9,5	

2. Access to birth registration

IND	Q	Sub	Subtheme	Question	Relevant sources	Answer: YES/NO	Answer: N/A	General answer	Legislation: Name of law (act, regulation, directive) & section numbers	Relevant court rulings	Comment	Source used (other than legislation)	Score available	Score achieved	Note on score
SOUTH AFRICA															
ACCESS TO BIRTH REGISTRATION															
ABR	1	a	Access to birth registration - data	What is the official rate of birth registration of children under five in your country? Indicate percentage in general answer column. Please indicate in comments column if a different age limit is applied in	Official country statistics or if not available: https://dhsprogram.com/ https://data.unicef.org/crvs/ https://data.unicef.org/topic/child-protection/birth-registration/ (refer to UNICEF BR sheet) OR https://unstats.un.org/			88,6%			StatsSA figure for completeness of birth registration (all ages)	StatsSA Statistical release P0305 Recorded live births 2018 http://www.statssa.gov.za/publications/P0305/P03052018.pdf	2	0,5	2 for > 99% 1 for > 90% 0,5 for > 75%

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				relation to recording completeness.	org/sdgs/indicators/database/									
ABR	1	b		What is the official rate of birth certificates issued? Indicate percentage in general answer column.	Official country statistics or if not available reports from DHS: https://dhsprogram.com/ or MICS: https://mics.unicef.org/surveys			Same as above		All registrations are issued with birth certificates, whether handwritten or computerised (for children of SA parents)		1	1	1 for same as BR rate; 0 for within 10% of BR rate; -1 for more than 10% difference
ABR	1	c		Have percentages increased/decreased over the past (approx.) 5 years? Indicate increased/decreased in general answer column, with percentage in comment column.	Official country statistics or if not available previous DHS/MICS report			Decreased slightly		Completeness of BR decreased from 89,2% in period 2007-11, to 88,6% in period 2011-16	StatsSA, Recorded Live Births, 2018, presentation slides http://www.statssa.gov.za/publications/P0305/Recorded%20Live%20Births%20%202018%20Presentation%20Slides.pdf	1	0	1 for increased 0 for within 2% of former score -1 for decreased

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ABR	2	a	Access to birth registration - law	Does the law provide that all children must be registered immediately upon birth? Yes/No. Indicate name of law and section in legislation column. Specify time limit for registration in comments column.	National civil registration law, family, and children's law	YES			Births and Deaths Registration Act section 9(1) and Regulation 3. Constitution of RSA s 28	Centre For Child Law v Director-General Dept of Home Affairs and Others (incl. Naki) - Appeal court declares sec 10 of BDRA unconstitutional to the extent it prevents fathers from registering children where the mother is not present. Awaiting judgment in the confirmation of invalidity hearing from the Constitutional Court.	BDRA s9(3)A establishes limit for timely registration at 30 days.	Births and Deaths Registration Act (BDRA)	1	1	1 for yes
ABR	2	b		Does the law allow for late registration of birth? Yes/No. Indicate name of law and section in legislation column. Specify time limits for late registration in comments column.	National civil registration law, family and children's law	YES			BDRA sec 9(3A), reg 3,4 and 5			Births and Deaths Registration Act (BDRA)	1	1	1 for yes
ABR	2	c		If yes, does the law require a fee for late registration of birth (LRB)? Yes/No. Indicate name of law and section in legislation column. Indicate amount of fee in general answer column.	National civil registration law, family and children's law	YES			BDRA Reg 5		Not yet implemented	BDRA Reg 5	1	0	1 for no

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ABR	2	d		Are there additional requirements for LRB (such as DNA proof of parentage or interviews)? Yes/No. Indicate name of law and section in legislation column. Indicate additional requirements in general answer column.	National civil registration law, family and children's law	YES			BDRA s 9(3A) Regs 3, 4, 5. DNA Circular No 5 of 2014.		A panel interview for LRB is required. DNA tests are required for LRB of children born out of wedlock to parents where one is a no-RSA citizen.	BDRA	0	-1	-1 for yes
ABR	2	e		Does the law make provision for the registration of birth and LRB of orphaned/abandoned unaccompanied children whose parents are unknown? Yes/No. Indicate name of law and section in legislation column and note in the comments column any information about implementation of the law in practice.	National civil registration law, family and children's law	YES			BDRA s 12, reg 9		Social worker to register birth - Often denied if the parents are not brought along.	BDRA	1	1	1 for yes
ABR	3	a	Issue of birth certificate	Does the law provide for all children to be issued with birth certificates upon registration? Yes/No. Indicate name of law and section in legislation column.	National civil registration law, family and children's law	YES			BDRA S9(7)		Non-RSA children are issued with handwritten birth certificates	BDRA	1	1	1 for yes

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ABR	3	b		Is the issue of birth certificates free? Yes/No. If no, indicate the cost (amount) in general answer section. Indicate name of law and section in the legislation column.	National civil registration law	YES					BDRA	1	1	1 for yes
ABR	3	d		Do the birth registration entry and birth certificate record the nationality and/or place of birth of the parent(s)? Yes/No. If yes, please indicate in comment column how this is determined (e.g., if the nationality documents of the registering parent(s) are inspected, or nationality / place of birth is self-reported).	National civil registration law; identification law	YES		Identification Act s 8 re particulars that need to be included; BDRA reg 3, 4,5		The parents' birthplace is recorded and indicated on the birth certificate. The nationality of the parent is only recorded in the National Population Register if they are also a citizen or permanent resident of RSA. Linked to child.	BDRA; Identification Act	1	1	1 for yes
ABR	4	a	Discrimination in law: Parents immigration status	Does the law require proof of a parent's legal residence (either citizenship or, if foreign, valid passports and residence permit) for registration of the child to be possible? Yes/No. Indicate name of law and section in legislation column. Specify the required proof or any other barriers in	National civil registration law; identification law	YES		BDRA reg 3, 4,5		Parents need to provide current IDs (if South African) or valid passports and valid permits (if foreign), and marriage certificate if married. Both parents if both parents are being added to the birth certificate. If unmarried, always the mother's valid document and the father's	BDRA	0	-1	-1 for yes

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				comments column.						document if he acknowledges paternity. If married, both parents' valid documents, because of presumption of paternity in marriage (so the married fathers name will go on the birth certificate).				
ABR	5	a	Discrimination in law: Parents marital status & equal rights	Does the law require the parents to show proof of legal marriage in order to be able to register the child in both their names? Yes/No. Indicate name of law and section in legislation column.	National civil registration law; marriage law; nationality law	NO			BDRA SEC 10	Unmarried fathers can be added to the birth certificate if they acknowledge paternity in the presence of a home affairs official and the mother consents.	BDRA	0	0	-1 for yes
ABR	5	b		Does the law allow a mother to register the birth of her child without the consent/presence of the father? Yes/No. Indicate name of law and section in legislation column. Specify the rules in comments column including in relation to the child's birth in or out of wedlock.	National civil registration law	YES			BDRA section 10	Mother allowed to register alone if unmarried. Marriage certificate required if married.	BDRA	1	1	1 for yes

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ABR	5	c		Does the law allow a father to register the birth of his child without the consent/presence of the mother? Yes/No. Indicate name of law and section in legislation column. Specify the rules in comments column including in relation to the child's birth in or out of wedlock.	National civil registration law	YES			BDRA sec 10.	Centre For Child Law v Director-General Dept of Home Affairs and Others (incl. Naki) - Appeal court declares sec 10 of BDRA unconstitutional to the extent it prevents fathers from registering children where the mother is not present. Awaiting judgment in the confirmation of invalidity hearing from the Constitutional Court.	Only the mother of a child born out of wedlock may register the child. This has been reviewed by the Constitutional Court. See CCL n DG DHA & Naki. The law now allows fathers to register but the application is not yet in place.	BDRA	1	1	1 for yes
ABR	6	a	Consular registration	Does the law provide for the consular authorities of the country to provide birth and other civil registration services to nationals? Yes/No. Please indicate any relevant law or directive in the legislation column. Please indicate any fees or other conditions in the comments column.	National civil registration law; any law governing ministry of foreign affairs	YES					The birth of a child born abroad can be registered at the consular authority in the country of birth or the DHA office in RSA. In practice, children born outside SA who are registered within SA are required to provide the passport they travelled into RSA with. Barrier if there is no passport. According to legal representatives.		1	1	1 for yes

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PSB	1	a	Right to a nationality	Does the constitution or law provide for every child to have the right to a nationality?	Constitution & nationality code / citizenship act	YES			SA Constitution s28(1)(a)		"Every child has the right to a name and a nationality from birth".		1	1	1 for yes
PSB	2	a	Born on the territory	Does the law provide that a child born in the territory has citizenship automatically at birth based on the child's birth in the territory (jus soli)? Yes/No. Indicate name of law and section in legislation column. Please note any discrepancy in the law as written and the law as implemented in the comment column.	Nationality code/ citizenship act	NO			N/A				2	0	2 for jus soli. 0,5 for yes, but not implemented (see comment section).
	2	b		Does the law provide that a child born in the territory of parents who hold a particular immigration status (e.g., permanent resident) has citizenship automatically at birth? Yes/No. Indicate name of law and section in legislation column. Please note any discrepancy in the law as written and the law as implemented in the comment column.	Nationality code/ citizenship act	NO			SACA sec 2(3)	Minister of Home Affairs and others (appellants) v. Joseph Emmanuel José & Jonathan Diabaka 'Junior', South African Supreme Court, 25/Nov/2020	The children of permanent residents no longer obtain South African citizenship at birth. Since the 2010 amendment: Both parents must be permanent residents at time of birth, child resident until majority, birth registered under BDRA. Then application must be made. No discretion will apply though.		1	0	1 if yes
PSB	2	b	Double jus soli	Does the law provide that a child born in the territory has citizenship automatically at birth based on the child's and one parent's birth in the	Nationality code/ citizenship act	NO							1	0	1 for double jus soli

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				territory (double jus soli)? Yes/No. Indicate name of law and section in legislation column. Please note any discrepancy in the law as written and the law as implemented in the comment column.											
PSB	2	c	Delayed jus soli	Does the law provide that a person can acquire citizenship based on birth in the territory and habitual residence during childhood (automatically or on application)? Yes/No. Indicate name of law and section in legislation column. Please describe the procedure and note any discrepancy in the law as written and the law as implemented in the comment column.	Nationality code/citizenship act	YES			SACA sec 2(3) & sec 4(3)	See cases Ali v DHA and Jose v DHA. Section was inserted in 2010. Not implemented retrospectively to persons born before 2010. Courts interpret the section retrospectively. Applicants in Ali case have been granted citizenship. Jose is still on appeal on whether it should be discretionary.	Unfortunately, there is no formal procedure yet, but one can apply through the local DHA offices. Some have been granted. Many take very long. Some are rejected on irrelevant grounds.		1	0,5	1 for delayed jus soli automatic; 0.5 for upon application.
PSB	3	a	Otherwise, stateless born in the territory	Is there a provision in law for children born on the territory to be granted nationality if not granted nationality at the time of birth by any other state in accordance with its laws? Yes/No	Nationality code/citizenship act	YES			SACA sec 2(2)	See case DGLR v Minister of Home Affairs. Section not fully implemented. Court declared child to be a citizen. DHA ordered to make regs re implementation. Neither have been implemented.	The SACA and its regulations do not provide guidelines for proving statelessness. The DHA in DGLR v Minister required proof from the embassy of the country of parents' nationality and disputed it.		2	1	2 for yes. -1 for lack of implementation.
PSB	3	b	Parents stateless	Is there a provision in law for children born in the territory of stateless parents to be granted nationality? Yes/No.	Nationality code/citizenship act	NO			SACA				1	0	1 for yes

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				Specify law and section.											
PSB	3	c	Parents unknown nationality	Is there a provision in law for children born in the territory of parents of unknown nationality to be granted nationality? Yes/No. Specify law and section.	Nationality code/ citizenship act	NO			SACA				1	0	1 for yes
PSB	4	a	Foundlings	Are children of unknown parents and unknown place of birth (foundlings) granted citizenship automatically by law? Yes/No. If known, please describe the procedure in comment section	Nationality code/ citizenship act	NO			SACA sec 2(2)				1	0	1 for yes
PSB	4	b		Is there a restriction to 'new-born' or 'infant' in law or practice specifying when a foundling would qualify for citizenship? Yes/No	Nationality code/ citizenship act		N/A						0	0	-0.5 for yes

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PSB	4	c		Where nationality is provided to foundlings, is there a specific provision for withdrawal of nationality from foundlings; if so, is there a protection against statelessness? Yes/No. Please specify in comments box.	Nationality code/ citizenship act		N/A					0	0	-0.5 for yes and no protection against statelessness or withdrawal is possible after the child becomes an adult
PSB	5	a	Adoption	Where a child national is adopted by foreign parent(s), does the child lose their original nationality before it is confirmed that the new nationality is acquired? Yes/No.	Nationality code/ citizenship act	NO				The law does not address this, but neither does it make provision for loss of nationality in this way.		1	1	1 for no
PSB	5	b		Does a foreign child adopted by national parents acquire nationality? Please indicate whether this is automatic with an adoption order or on application and whether any other conditions apply.	Nationality code/ citizenship act	YES			SACA sec 3	Non-discretionary, but SACA requires birth registration as a requirement. Discrimination in birth registration may affect the adoption.		1	0,5	1 for automatic with adoption order; 0.5 if a separate application is required; 0 if no provision
PSB	6	a	Descent born in the territory	Is the child of a national parent born in the country automatically attributed nationality at birth, without discrimination based on sex of the parent or birth in or out of wedlock? Yes/No. Please specify in comment column if provision discriminates based on sex or marital status of the parents.	Nationality code/ citizenship act	YES			SACA sec 2(1)			1	1	1 for yes, 0,5 if discrimination based on gender or marital status of the parents

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GEL	1	a	General rule	Does the constitution (or other law) generally prohibit discrimination based on sex or gender? Yes/No Please specify any exceptions in comments column (e.g., customary or religious law)	Constitution and any specific legislation on discrimination	YES			SA Constitution sec 9				1	1	1 for yes
GEL	2	a	The right to transmit nationality	Does the nationality law provide for women to transmit nationality to their children on an equal basis with men? Yes/No If no, please note the nature of the discrimination in the comment column, including the rights of each parent in case of birth in or out of wedlock.	Constitution; Nationality code/ citizenship act	YES			SACA s2				1	1	1 for yes
GEL	2	b		Does the law provide for women to transmit nationality to their spouses on an equal basis with men? Yes/No If no, please note the type of discrimination in the comment column.	Constitution; Nationality code/ citizenship act	YES			SACA s 5				1	1	1 for yes
GEL	3	a	Adoptions	Does the law allow men and women to transmit nationality to an adopted child on an equal basis, regardless of their marital status? Yes/No	Constitution; Nationality code/ citizenship act	YES			SACA S3				1	1	1 for yes

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GEL	4	a	Birth registration	Does the law provide equal rights for mothers and fathers to register the birth of a child (subject only to proof of parentage, where relevant). Yes/No	Civil registration law	YES				BDRA sec 10	Centre for Child Law v Director-General, Department of Home Affairs and Others (CA 319/2018); High Court of South Africa, Eastern Cape Division (Grahamstown), 19/May/2020 (on appeal to Constitutional Court)	Only the mother of a child born out of wedlock could register the child. Constitutional Court has recently ruled this to be unconstitutional and now both may. The law has however not been reformed.	1	0	1 for yes
													5	4	

5. Naturalisation

IND	Q	Sub	Subtheme	Question	Relevant sources	Answer: YES/NO	Answer: N/A	General answer	Legislation: Name of law (act, regulation, directive) & section numbers	Relevant court rulings	Comment	Source used (other than legislation)	Score available	Score achieved	Note on score
SOUTH AFRICA															
NATURALISATION															
NAT	1	a	Marriage	Does the law provide for facilitated acquisition of nationality based on marriage to a national (that is, make it easier than for other foreigners)? If yes, please indicate law and section in legislation column, and note in the comments column whether men and women have equal rights to transmit nationality to their spouses, and any required period of marriage or residence.	Nationality law; immigration law	YES			Immigration Act sec 26; SACA sec 5		Immigration Act makes provision for permanent residence for spouses; SACA makes provision for citizenship of all permanent residents after 5 years.		1	1	1 if facilitated acquisition -0.5 if gender discrimination

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NAT	2	a	Residence-based naturalisation	Does the law provide for a foreigner who has been habitually resident in the territory to be able to acquire nationality? Yes/No Please indicate the law and section number under legislation column. Please specify the minimum number of years of residence required and any other conditions in the comments column, including fees if known.	Nationality law; immigration law	YES			Immigration Act sec 26; SACA sec 5	<i>Mulowayi v Minister of Home Affairs [2019] ZACC 1</i> Declaration of invalidity in respect of regulations to the Citizenship Act to the extent that it requires 10 years of permanent residence as opposed to the 5 years determined by the Act.	All naturalisations require 5 years PR in addition to any previous legal residence under other permits.		1	1	1 if provision based on 10 years residence or less; 0.5 up to 15 years; 0 more than 15 years
NAT	2	b		In relation to any other conditions applied, including that residence must be legal, are there exceptions for stateless persons or those of undetermined nationality?	Nationality law; immigration law	NO			No specific provision				0	-1	Previous score cancelled if no exception to conditions in case of stateless persons
NAT	3	a	Dependents	Does the law allow for the minor child of an applicant for naturalisation to be included in their parent or parents' application and granted naturalisation in his or her own names? Yes/No Please indicate law and section number in legislation	Nationality law; immigration law	YES			SACA sec 5(4)				1	1	1 if yes
NAT	4	a	Equal rights	Does a naturalised citizen enjoy all the rights of a citizen who was attributed citizenship at birth, including the right to transmit nationality to his or her own children? Yes/No. Please indicate law and section number	Constitution; Nationality law; immigration law	YES			Constitution, art 3		Constitution provides for a common South African citizenship, & all citizens equally entitled to the rights, privileges, and benefits of citizenship; and equally subject to the duties and		1	1	1 if yes; -1 if no right to transmit to children

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				in legislation column. Please indicate any restrictions in comments column.							responsibilities of citizenship.				
NAT	5	a	Facilitated acquisition for refugees and stateless persons	Does the law make specific provision for the naturalisation of refugees? Yes/No. Please indicate law and section number in legislation column. Indicate in the comment section if any sort of facilitation is provided (e.g., reduced fees or residence period)	Nationality law; immigration law; refugee law	YES				Refugees Act (1998) section 27(c). Immigration Act (2004) section 27(d). SACA (1995) section 5.	Permitted, but not facilitated. The Refugees Act specifies that refugees have the right to apply for permanent residence in terms of sec 27(d) of the Immigration Act after 10 years of being granted asylum (making refugee status the longest route permanent residence and thus, naturalisation). Sec 27(d) of the Immigration Act, specifically allows the minister to grant permanent residence rights to "a refugee referred to in section 27(c) of the Refugees Act, 1998, subject to any prescribed requirement". All permanent residents who have had permanent residence status for 5 years may apply for naturalisation ito sec 5 of the SACA. Refugees are not excluded in the law.	2	1	2 if specific provision for facilitated acquisition by refugees; 1 if specified that may apply; 0 if no provision exists; -1 if refugees are specifically excluded	

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NAT	5	b		Does the law make specific provision for the naturalisation of stateless persons or persons of undetermined nationality? Yes/No. Please indicate law and section number in legislation column. Indicate in the comment section if any sort of facilitation provided (e.g., reduced fees, residence period)	Nationality law; immigration law; refugee law	NO					Not facilitated		2	1	2 if specific provision for facilitated acquisition by stateless persons; 1 if specified that may apply; 0 if no provision exists; -1 if stateless persons are specifically excluded
NAT	6	a	Renunciation of another nationality	Is there a requirement to renounce before acquiring citizenship based on marriage, residence etc? Yes/No. If there is a requirement, is proof only required after naturalisation confirmed.	Nationality law	YES			SACA s 5	Proof of renunciation is required at application stage.			0	-1	-1 if renunciation required & no protection against statelessness
													8	4	

6. Loss and deprivation of nationality

IND	Q	Sub	Subtheme	Question	Relevant sources	Answer: YES/NO	Answer: N/A	General answer	Legislation: Name of law (act, regulation, directive) & section numbers	Relevant court rulings	Comment	Source used	Score available	Score achieved	Note on score
SOUTH AFRICA															
LOSS OR DEPRIVATION OF NATIONALITY															
LDN	1	a	Loss (by operation of law)	Does the law make provision for automatic loss of nationality of nationals from birth in any other circumstances than voluntary acquisition of another nationality? Yes/No	Constitution, nationality law	YES			SACA sec 6(1)(b)		Automatic loss if a person who has the citizenship of another country serves in the armed forces of such country while at war with SA		0	-1	-1 if yes -1.5 if no verification of other nationality is done.

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LDN	2	a	Dual nationality (right to opt)	Does the law allow dual nationality for an ADULT born with two nationalities? Yes/No Please specify any conditions in comment column.	Constitution, nationality law	YES			SACA sec 6(1)(a) & (2)		A person who voluntarily acquires another citizenship as an adult must seek permission from DHA in advance; no requirement for permission if born with two citizenships.		1	1	1 if dual nationality permitted
LDN	2	b		If no, is it permitted for children? Yes/No	Constitution, nationality law	YES			SACA sec 6(1)(a) & (2)		Children not affected by requirement for permission		0	0	-1 if not allowed for children
LDN	3	b	Deprivation (by decision of govt)	If the law makes provision for the deprivation of nationality by decision of the government, does the law prohibit deprivation if the person would be made stateless? Yes/No	Constitution, nationality law	NO	Constitution & SACA conflict	Constitution art. 20; SACA sec 6(1)(b) & 8		Constitution states that "No citizen may be deprived of citizenship"; SACA, however, provides will lose automatically if serves in the armed forces of such country while that country is at war with the Republic, & may be deprived on other grounds - & has no protection against statelessness		0	-1	-1 if no	
LDN	4	a	Marriage	Does the law provide that the marriage of a national to a foreigner or a foreigner's divorce from a national results in automatic loss of nationality for the spouse or children? Yes/No	Constitution, nationality law	NO			No specific provision				0	0	-1 if yes
LDN	5	a	Children	Does the law make provision for loss or deprivation of nationality for the children of a person who has lost or been deprived of his/her nationality? Yes/No	Constitution, nationality law	YES			SACA sec 10		May be deprived if born outside the Republic & "with due regard to the provisions of the Children's Act"		0	-1	-1 if yes
													1	-2	

7. Due process in nationality decisions

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IND	Q	Sub	Subtheme	Question	Relevant sources	Answer: YES/NO	Answer: N/A	General answer	Legislation: Name of law (act, regulation, directive) & section numbers	Relevant court rulings	Comment	Source used (other than legislation)	Score available	Score achieved	Note on score
SOUTH AFRICA															
DUE PROCESS IN NATIONALITY DECISIONS															
DPN	1	a	Constitutional protections	Does the constitution establish the right not to be arbitrarily deprived of nationality? Yes/No	Constitution	YES		"No citizen may be deprived of citizenship"	RSA Constitution sec 20		Despite this prohibition, the SACA provides for deprivation of citizenship.	SA Constitution	1	1	1 if yes
DPN	2	a	Procedural fairness	Does the law require any decision to refuse recognition or grant of nationality (from birth or by naturalisation/ registration), or to deprive a person of citizenship to be reasoned and notified to the person concerned in writing? Yes/No Please note details in comment column	Constitution, nationality law, legislation on administrative procedures	YES		"Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons."	RSA Constitution sec 33. Promotion of Administrative justice Act.	Although a well-established principle in SA law, the DHA does not apply this widely to nationality decisions. One would need to approach a court.		Focus group. There is no provision in the DHA law. Nor any practice or policy	1	0	1 if yes, but 0 if not applied
DPN	2	b		In case of loss or deprivation of nationality, does the law allow an affected person to make representations before loss or deprivation of citizenship takes effect? Yes/No Please note details in comment column	Constitution, nationality law, other law on administrative procedures	YES			PAJA	The law does make provision for this, but in practice it is not applied. Citizenship is deprived in practice before allowing/ while investigations are ongoing.		Focus group feedback. No provision in DHA law. Only Constitution. No policies or practice.	1	0	1 if yes, but 0 if not applied
DPN	3	a	Administrative review / appeal	Does the law provide for an administrative appeal/review (within the relevant executive branch) of decisions to refuse recognition of nationality (e.g., by refusal of an official identity document recording nationality), or to deprive a person of nationality Yes/no.	Constitution & legislation on nationality, identity cards, passports	NO		"Everyone has the right to administrative action that is lawful, reasonable and procedurally fair."	RSA Constitution sec 33. PAJA. SACA sec 25.				1	0	1 if yes

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				Please describe the procedure in comments column.											
DPN	3	b		In case a person's nationality is in dispute and the person has ever held an official document that records his or her nationality (such as a national identity card or passport) is it for the state to disprove that he or she is a citizen? Yes / No	Constitution, & legislation on civil procedure, nationality, identity cards, passports	YES		Civil law cases are proved on a balance of probabilities.	ID Act birth, marriage or death certificate is prima facie proof of the particulars set out therein.		There is no precedent for the burden of proof to be shared.		1	0,5	1 for yes, but - 0,5 for no shared burden
DPN	4	a	Independent oversight of executive action	Are there independent bodies (other than courts) that have the mandate to review executive branch decisions in relation to nationality (ombuds person, human rights commission, etc)	Constitution / legislation establishing these bodies	NO		The Public Protector and South African Human Rights Commission both have jurisdiction over nationality cases	Constitution & legislation on PP & SACRC	List public protector & SAHRC cases/reports			1		1 if yes
DPN	5	a	Judicial oversight	Are decisions relating to the issue of nationality documents by the executive appealable to the usual court system?	Constitution / legislation on civil procedure, nationality, identity cards, passports	YES		All administrative decisions are subject to judicial review.	PAJA. Common law. SACA		The judicial review of decision by the high court is expensive and time consuming. Not very accessible.	PAJA. Focus group feedback.	1	1	1 if yes
DPN	5	b		Are there any specific exclusions in law from court review of executive decisions in relation to the recognition, grant or deprivation of nationality? Yes/No	Constitution / legislation on nationality, identity cards, passports	NO							0	0	-2 if yes

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DPN	6	a	Legal assistance	Is legal assistance available enabling a person to challenge a decision to refuse to recognise or grant nationality or to deprive nationality in court? Yes/no	Legislation relevant to legal assistance	NO		The high court alone has the jurisdiction to review the Minister's decision. An appeal may be lodged to the minister. These often have costs attached to them	SACA. Immigration Act.				1	0	1 for yes
													8	2,5	

8. Resolution of unknown nationality and protection of stateless persons

IND	Q	Sub	Subtheme	Question	Relevant sources	Answer: YES/NO	Answer: N/A	General answer	Legislation: Name of law (act, regulation, directive) & section numbers	Relevant court rulings	Comment	Source used (other than legislation)	Score available	Score achieved	Note on score
SOUTH AFRICA															
RESOLUTION OF UNKNOWN NATIONALITY & PROTECTION OF STATELESS PERSONS															
RUN	1	a	Nationality determination procedure: children	In case of a child of unknown parents, is there a procedure to seek to establish the child's identity and nationality, and to issue documents confirming nationality if it is determined either that one parent is a national or that the parents cannot be identified? YES/NO If yes, please describe the procedure, including the legal grounds, deadlines and competent authority.	Nationality law; children's law; civil registration law	NO			SACA Section 15 BDRA		There is no foundling provision. SACA section 15&16 allow the issue of a certificate of citizenship in cases of doubt, however the process is not determined or gazetted. A child would need to approach a high court.		2	0	2 for yes

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RU N	1	b		In case of a child whose parents are stateless or of unknown nationality, or who cannot transmit nationality to the child, is there a procedure to determine the nationality of the child (including liaising with the authorities of other states where the child may have a link), and to issue documents confirming nationality if it is determined that the child is otherwise stateless. YES/NO. If yes, please describe the procedure, including the legal grounds, deadlines and competent authority.	Nationality law; children's law; civil registration law		NO			SACA Section 15 BDRA		SACA section 15&16 allow the issue of a certificate of citizenship in cases of doubt, however the process is not determined or gazetted. A child would need to approach a high court.		2	0	2 for yes
RU N	2	a	Nationality determination procedure: adults	Is there a procedure established in law to determine nationality of an adult person ordinarily resident in the country in case of doubt? Yes/No. If yes, please state the competent authority and describe procedure.	Nationality law; civil registration law; law on national identity cards		NO			SACA Section 15 & 16		SACA section 15&16 allow the issue of a certificate of citizenship in cases of doubt, however the process is not determined or gazetted. A child would need to approach a high court.		2	0	2 if yes
RU N	2	b		Is there a presumption in law that a person who has always acted and been treated as a national (has apparent status as a national) should be presumed to be such, & a procedure to establish this status? Yes/No	Nationality law		NO							2	0	2 for yes
RU N	3	a	Special initiatives	Has the government implemented any measures specifically aimed at identifying groups and persons of unknown nationality, or very long residence, in order to resolve their status & provide	Information from UNHCR, general media reporting; Parliamentary reporting		NO							2	0	2 for yes

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				citizenship? Yes/No. If yes, describe in comment section (e.g., identification, registration or naturalisation campaigns, reform of discriminatory laws, etc.)											
RUN	4	a	Protection of stateless persons	In case it is not possible to determine a person's nationality, is there a statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure or other administrative procedures through which stateless persons can be identified and protected? Yes/No	Nationality law; Immigration / refugee laws; Civil registration laws	NO							2	0	2 for yes
RUN	4	b		Is there a referral mechanism from refugee status determination & immigration procedures to the statelessness procedure (e.g., if refused asylum, cannot be deported)? Yes/No	Refugee and immigration laws	NO							1	0	1 for yes
RUN	4	c		Does legal recognition as a stateless person result in automatic permission to stay/legal status? Yes/No. Please describe any additional requirements or time-limits to the status.	Immigration laws; Civil registration laws	NO							1	0	1 for yes
RUN	4	e		Are identity and travel documents issued to people recognised as stateless? Yes/No	Immigration laws; Civil registration laws	NO							1	0	1 for yes
RUN	5	a	Immigration detention	If immigration detention powers are provided for in law, are they time-limited if a person cannot be deported? Please	Immigration laws	YES							1	1	1 if time-limited

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				provide the legal source(s).											
RUN	5	b		Are there procedural safeguards to ensure that stateless persons in detention are released & protected (e.g., by referral to procedure identified above)? Yes/No.	Immigration laws	NO							1	0	1 if yes
													17	1	

Bonus: Pledges

IND	Q	Sub	Subtheme	Question	Links to sources	Answer: YES/NO	Comment	Source used	Score available	Score achieved	Note on score
BONUS SECTION: PLEDGES											
SOUTH AFRICA											
BSP	1	a	Pledges: ratification of treaties	Has your country pledged to ratify either or both of the UN Statelessness Conventions?		YES		https://www.unhcr.org/com-memorations/Pledges2011-preview-compilation-analysis.pdf	0	1	1 BONUS for yes
BSP	1	b		Has your country pledged to ratify any other relevant convention?		NO					

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BSP	2	a	Pledges: birth registration	Has your country made a pledge towards improving rates of birth registration? Yes/No/NA. Please specify date and content of pledge in the comment column.	See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	YES	At the Global Refugee Forum (GRF) in 2019 SA pledged to: 1. Promote Civil Registration and related documentation in order to ensure that the South African nationals and refugees in the territory of South Africa are properly documented; and 2. to promote civil registration and related documentation across the SADC region to ensure that regional citizens are properly documented to eradicate possibilities of statelessness in the region.	https://globalcompactrefugees.org/index.php/channel/pledges-contributions	0	1	1 BONUS for yes
BSP	2	b	Pledges: prevention of statelessness at birth	Has your country made a pledge towards prevention of statelessness at birth? Yes/No/NA. Please specify date and content of pledge in the comment column.	See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	NO		See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	0	0	1 BONUS for yes
BSP	3	a	Pledges: gender equality	Has your country pledged to eradicate gender discrimination in its domestic laws or other gender related pledge? Yes/No. Please specify date of pledge in the comment column.	See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	NO		See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	0	0	1 BONUS for yes

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BSP	4	a	Pledges: Naturalisation	Has your country made a general pledge relevant to access to naturalisation, based on long residence? Yes/No/NA. Please specify date of pledge in the comment column.		NO			0	0	1 BONUS for yes
BSP	5	a	Pledges: loss and deprivation	Has your country made a pledge relevant to loss and deprivation of nationality? Yes/No/NA. Please specify date of pledge in the comment column.	See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	NO			0	0	1 BONUS for yes
BSP	6	a	Pledges: due process	Has your country made a pledge relevant to due process? Yes/No. Please specify date of pledge in the comment column.	See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	NO			0	0	1 BONUS for yes
BSP	7	a	Pledges: resolution of unknown nationality & protection of stateless persons	Has your country made a pledge relevant to the resolution of persons with unknown nationality or at risk of statelessness? Yes/No/NA. Please specify date of pledge in the comment column.	See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	NO			0	0	1 BONUS for yes
BSP	7	b		Has your country made a pledge relevant to the identification and protection of stateless persons? Yes/No/NA. Please specify date of pledge in the comment column.	See pledges at https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/	NO			0	0	1 BONUS for yes

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BSP	8	i	Pledges: other	Has your country made any other related pledges not mentioned yet such as at the GRF in 2019? Yes/No/NA. Please specify date of pledge in the comment column.	https://globalcompactrefugees.org/index.php/channel/pledges-contributions	YES				0	0	1 BONUS for yes
										0	2	

	Indicator	IND	Score available	RSA	RSA %	ESW	ESW %	BOT	BOT %	TZN	TZN %	ZIM	ZIM%
1	Ratification of international instruments	RII	15,5	9,5	61	14	90	7	45	10	65	12	77
2	Access to birth registration	ABR	15	9	60	7	47	6,5	43	5,5	37	5	33
3	Prevention of statelessness at birth	PSB	15	6	40	4,5	30	4,5	30	4	27	4	27
4	Gender equality in nationality law and birth registration	GEL	5	4	80	2	40	4	80	2	40	4	80
5	Naturalisation	NAT	8	2,5	31	2,5	31	1	13	1,5	19	2	25
6	Loss and deprivation of nationality	LDN	1	-2	-200	-0,5	-50	-2,5	-250	-2,5	-250	0	0
7	Due process in nationality decisions	DPN	8	2,5	31	2,5	31	-0,5	-6	-1,5	-19	1,5	19
8	Resolution of unknown nationality and protection of stateless persons	RUN	17	1	6	0	0	0	0	2	12	0	0
	Total		84,5	32,5		32		20		21		28,5	
9	Pledges	Bonus	0	2		4		0		1		4	