

You Can't Lose What You Haven't Got: Citizenship Acquisition and Loss in Africa



Bronwen Manby

The heading for this discussion makes a person focused on sub-Saharan Africa scratch her head somewhat. Which ‘new’ denationalisation policies are we talking about? In Africa, we have continued to see the same old denationalisation policies that have been in place since the 1960s. The context of national security policies has changed in some countries, especially the threat of 21st century terrorism methods in places such as Kenya or Nigeria, but the methods used by the governments in response have not changed.

The legal provisions

If we start from a survey of the laws, most African countries allow for deprivation of nationality acquired by naturalisation, some of them on quite vague and arbitrary grounds. The former British colonies borrow language from the British precedents and provide for deprivation on the grounds of ‘disloyalty’ or the ‘public good’; while the francophone countries talk about behaviour ‘incompatible with the status of a national’ or ‘prejudicial to the interests of the country’. However, more than half of Africa’s 54 states forbid deprivation of nationality from a national from birth (of origin, in the

The original version of this chapter was revised. A correction to this chapter is available at https://doi.org/10.1007/978-3-319-92719-0_62

This text was written in November 2014 and reflects events current at that time. Some important later developments are not reflected, including, most importantly, the readmission of Morocco to the African Union in January 2017 and the decision of the African Court on Human and Peoples’ Rights in the *Anudo* case against Tanzania issued in March 2018.

civil law terminology), whether or not the person would become stateless.¹ And although a large number of the remaining countries have a provision framed along the lines provided in the 1961 Convention on the Reduction of Statelessness for a person who works for a foreign state in defiance of an express prohibition to lose their nationality,² only a small handful provide for deprivation of a birthright citizen in case of a crime against the state – Egypt, Eritrea and Mali.³

None of the sub-Saharan countries come close to the extremes of Egypt, where citizenship can be deprived from anyone (whether a citizen from birth or by naturalisation) if, among other things, ‘at any time he has been qualified as Zionist’.⁴

On the positive side, the South African and Ethiopian constitutions provide blanket prohibitions on deprivation of nationality, whether from birth or naturalised (though South Africa then goes on to violate this prohibition in its legislation).⁵ Several constitutions and laws create serious due process hurdles for governments seeking to revoke citizenship. In Kenya for example, the 2010 constitution requires a naturalised citizen (citizenship by birth cannot be revoked) to have been actually convicted of a serious crime, including treason;⁶ less specifically, Burundi, Malawi, and Rwanda have

¹ Botswana, Burkina Faso, Burundi, Chad, Comoros, Ethiopia, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Mauritius, Namibia, Nigeria, Rwanda, Seychelles, Somalia, South Africa, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. In the case of Botswana, Ethiopia, Libya, Tanzania and Zambia, dual nationality is not permitted, and voluntary acquisition of another nationality results in automatic loss. Lists from Manby, B. (2010), *Citizenship Laws in Africa: A Comparative Study*. Open Society Foundations, 2nd edition; updated information for a forthcoming 3rd edition. On the number of states in Africa: Morocco is not a member of the African Union, while the Sahrawi Arab Democratic Republic is: if both are counted, there are 55 states.

² Angola, Cameroon, CAR, Congo Republic, Côte d’Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Guinea, Guinea Bissau, Liberia, Madagascar, Morocco, Mozambique, Sao Tomé & Príncipe, South Sudan, Sudan, Togo and Tunisia.

³ Egypt Law No. 26 of 1975 Concerning Egyptian Nationality, Article 16(7); Eritrea Nationality Proclamation 1992 Article 8; Mali Nationality Code 1962, Article 43 (amended 1995).

⁴ Law No. 26 of 1975 Concerning Egyptian Nationality, Article 16(7), translation from UNHCR website, <http://www.refworld.org/docid/3ae6b4e218.html>. Libya had similar rules until they were changed in 2010.

⁵ South Africa Constitution 1996, Article 20; Ethiopia Constitution 1993, Article 33.

⁶ Kenya Constitution, 2010, Section 17.

constitutional provisions forbidding arbitrary deprivation of nationality.⁷ Meanwhile, Gambia, Ghana, Liberia and Rwanda all provide that deprivation can only be done by a court, on the government's application,⁸ and a majority, though not all, others provide for judicial review of administrative decisions to deprive.⁹ A few countries provide for protection against statelessness in deprivation cases: just Lesotho, Mauritius, and Zimbabwe (since 2013) provide in principle for protection from statelessness in all cases where nationality is revoked by act of the government; and Namibia, Rwanda, Senegal and South Africa provide partial protection, allowing statelessness to result in some circumstances.¹⁰

On the negative side, Botswana, Lesotho, Malawi, Mauritius, Seychelles, Tanzania, Zambia and Zimbabwe — notably, all with a British legal inheritance — explicitly state in their legislation that the decision of the minister on any matter under the nationality law cannot be reviewed in court.¹¹ These are all countries which do not allow for deprivation of birthright citizenship (though some provide for loss in case of acquisition of another nationality); but it's questionable what the protection against statelessness in deprivation

⁷ Burundi Constitution 2005, Article 34; Malawi Constitution 1994 (as amended to 1998), Article 47 ; Rwanda Constitution 2003, Article 7.

⁸ Gambia Constitution 1996, article 13; Ghana Constitution 1992 Article 9, Citizenship Act 2000, Article 18; Liberia Aliens and Nationality Law 1973, Articles 21.53; Rwanda Nationality Law No.30 of 2008, Article 20.

⁹ Most of the civil law countries provide quite detailed procedures for nationality litigation through the courts; the Commonwealth countries tend to have weaker protections, and do not have the same tradition of providing procedures in the substantive law itself, but South Africa for example, provides for all decisions of the minister to be reviewable by the courts, as do Gambia and Kenya.

¹⁰ Lesotho Constitution 1993, as amended to 2001, Article 42 (however, this provision is not respected in the Citizenship Order 1971 Article 23); Mauritius Citizenship Act 1968, as amended to 1995, Article 11(3)(b); Namibia Constitution 1990, as amended to 2010, Article 9(4); Rwanda Nationality Law 2003, Article 19; Senegal Nationality Code 1961 as amended 2013, Article 21; South African Citizenship Act 1996, as amended 2013, Article 8; Zimbabwe Constitution 2013, Article 39(3) (but this is not respected in the Citizenship Act, 1984, as amended to 2003, Article 11(3), which provides in principle prohibition of rendering a person stateless, but allows the minister to override if it is in the 'public good' to do so).

¹¹ Botswana Citizenship Act 1998, Article 22; Lesotho Citizenship Order 1971, Article 26; Malawi Citizenship Act 1966, Article 29; Mauritius Citizenship Act 1968 Article 17; Seychelles Citizenship Act 1994, Article 14; Tanzania Citizenship Act 1995 23; Zambia Citizenship Act Article 9; Zimbabwe Citizenship Act 1984 Article 16.

cases provided by Mauritius means, if the decision of the minister cannot be challenged. In Swaziland, where a certificate of nationality ‘shall’ be issued by the minister to a person who is qualified to be a citizen, it is also provided that the minister ‘may revoke’ a certificate and no grounds are specified.¹² Namibia allows deprivation of nationality on the grounds that a person was already deprived in another country, increasing the likelihood of rendering them stateless.¹³

In 2013, the Seychelles inserted a new article to its citizenship law expanding the grounds for deprivation of citizenship if the minister ‘is satisfied’ that the person has been involved in terrorism, piracy, drug offences, treason, and other offences, or has acted with disloyalty.¹⁴ In 2010, the South African Citizenship Act was amended to provide for automatic loss of citizenship by a naturalised citizen ‘if he or she engages, under the flag of another country, in a war that the Republic does not support’, leaving lawyers wondering how you would know whether or not the Republic ‘supported’ a particular war (and would it matter which side the person was on?).¹⁵

The practice

But this review of deprivation provisions has a slightly unreal feel. These procedures are hardly used, so far as one can tell. Only South Africa publishes any statistics – or at least it used to do so – revealing that at least 17 people have been deprived of citizenship since 2001-02 (despite the constitutional ban on deprivation), though no details are given. Countries such as Kenya and Nigeria, both facing well-publicised and serious security threats from the Al-Qaeda-affiliated Al-Shabaab and Boko Haram are not known to have deprived any individual of citizenship through the formal procedures of the law on deprivation.¹⁶

¹² Swaziland Citizenship and Immigration Act 1992, Article 20.

¹³ Namibia Citizenship Act 1990, Article 9(3)(e).

¹⁴ Section 11A of the Citizenship Act, No. 18 of 1994, inserted by Act 11 of 2013.

¹⁵ South African Citizenship Act 1996, as amended 2013, Article 6(3). This amendment came into force on 1 January 2013. The 1996 Constitution provides in Article 20 that ‘No citizen may be deprived of citizenship.’ It is possible that the phrasing of the revised Article 6(3) is designed to avoid this prohibition by providing for automatic loss. See further *Submission on the South African Citizenship Amendment Bill, B 17 – 2010*, Citizenship Rights in Africa Initiative, 6 August 2010.

¹⁶ Email correspondence, November 2014, with Chidi Odinkalu of the Nigeria National Human Rights Commission and Adam Hussein Adam of the Open Society Initiative for East Africa, both following these issues closely.

The legal provisions on deprivation of citizenship are, in fact, more or less irrelevant in countries where (a) as described above, citizens from birth cannot be deprived of citizenship under law except in the rather rare circumstance of working for another state despite a formal request not to do so; (b) naturalisation is very difficult to obtain; and (c) the government has easily accessible other means of achieving the same result in relation to (people who believed they were) birthright citizens, obviating any need to amend the law on withdrawal of nationality.

As regards (b), statistics on naturalisation are hard to come by, but it seems that only a handful of people a year may be naturalised in most countries – even in Nigeria, with more than 150 million people, only around a hundred people acquire nationality by naturalisation or marriage annually – and those who are naturalised are mostly non-Africans operating in the formal economy, with all the panoply of lawyers and documents to support their claim.¹⁷ So few people are involved, and the procedures for obtaining naturalisation are so highly discretionary, that it seems unlikely that anyone who has the slightest possibility of becoming a threat to the security of the state could pass that barrier – and therefore be at risk of subsequent deprivation. It's not impossible of course; but very unlikely. South Africa has had much more accessible naturalisation procedures, rendering it perhaps more vulnerable in this regard; but the numbers have dropped dramatically in recent years, without explanation.

Therefore, (c) comes into play. The methods traditionally used in Africa to 'denationalise' a person are simply to deny that he or she ever had nationality to start off with; to argue that the nationality documentation previously held was issued in error, or to fail to issue or renew a document providing proof of nationality (not even requiring an allegation of fraud). The key amendments to nationality laws in Africa have not been to increase government powers to deprive, but to restrict access to nationality based on birth and residence and to exploit any ambiguity in the rules applied on succession of states at independence.¹⁸ These are the methods used against some high profile individuals: Kenneth Kaunda of Zambia and Alassane Ouattara of Côte d'Ivoire most famously; but also John Modise of Botswana, who found himself no longer considered a national by birth when he set up a political party in order to run for president. These cases reached the African Commission on Human and Peoples' Rights, but there are many others litigated only at national level involving politicians, journalists or activists.

¹⁷ Manby, B. (2015), *Nationality, Migration and Statelessness in West Africa*. Dakar: UNHCR and IOM.

¹⁸ Manby, B. (2014), 'Trends in citizenship law and politics in Africa since the colonial era', in E. F. Isin & P. Nyers (eds.), *Routledge Handbook of Global Citizenship Studies*, 172–185. Oxon; New York: Routledge.

UNHCR's clear guidance is that a retrospective finding that a person was not a national and was issued nationality documents in error is just as subject to rules on arbitrariness as any procedure under formal provisions on deprivation.¹⁹ However, under national law, why bother with deprivation proceedings if you can manage matters so much more easily by other methods? And this applies especially when whole categories of people are seen as problematic, or potentially so.

It is, in fact, not the individual difficult cases that raise the greatest concerns in the African context, but the tendency to attribute collective responsibility to whole groups of citizens when a country is faced with a (real or perceived) security threat – or simply an organised opposition with support from a particular ethnic group. Faced with the challenges of 'nation-building' in states created by colonial fiat, the question of who belongs is not necessarily an obvious one to answer. African states have a history of mass expulsions based on ethnic grounds – there is even a style of bag known in Nigeria as a 'Ghana Must Go' bag, dating to one such episode in the 1980s when (actual or alleged) Ghanaians had to pack up and leave – and it remains the case that the usual approach is to assert that someone is a non-national, and then expel them.²⁰ The prevalence of such practices led to the inclusion of a specific provision banning mass expulsions, not found among similar treaties, in the African Charter on Human and Peoples' Rights.²¹ Even where those who have been expelled fail to find recognition in their alleged country of origin, they may be unable to reclaim their status in the former country of residence: among those persons of Eritrean origin who were expelled by Ethiopia to Eritrea during the 1998 war between the two countries, a number subsequently became refugees from the highly repressive Eritrean regime. Even in their case, when some applied for reacquisition of Ethiopian nationality, they were reportedly told that they were security risks, so could not get papers.²²

In Kenya, discriminatory measures in relation to documentation and identity have been sharply stepped up against Kenyan Somalis and coastal Muslims, tarred with the brush of the Westgate Mall siege and other out-

¹⁹ Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ('Tunis Conclusions'), UNHCR, March 2014, especially paragraph 9.

²⁰ See Manby, B. (2009), *Struggles for Citizenship in Africa*. London: Zed Books, Chapter 4.

²¹ Article 12(5) of the African Charter.

²² 'Ethiopians in Limbo: from statelessness to being a refugee in one's own country', *ECADF Ethiopian News and Views*, 14 February 2014, available at <https://ecadforum.com/2014/02/14/ethiopians-in-limbo-from-statelessness-to-being-a-refugee-in-ones-own-country/>

rages. In addition to a general round up and detention of suspected youth, the issuance of national ID cards has been suspended in the three counties that are located in the former North Eastern Province bordering Somalia (Garissa, Wajir and Mandera Counties, created by the 2010 Constitution), meaning that those without IDs cannot travel out of that zone, and effectively lose the reality of citizenship rights – without the need for the government to undertake any bothersome legal proceedings.²³ In Nigeria, the peculiar features of the country's federal system have led to the possibility of 'denationalisation' from a particular part of the country, even though such measures haven't been taken at national level. In the context of the threat from Boko Haram, governors of states in the south-east of the country in 2014 stepped up long-standing discrimination based on the idea of 'indigeneity' to adopt controversial measures to register and possibly deport 'non-indigenes', leading to an emergency meeting of the National Council of State in July 2014 to condemn these practices (but no action beyond establishing a committee to make recommendations).²⁴ Ghana's consul-general in Nigeria indeed recently blamed the Boko Haram insurgency on 'stateless people' excluded from the benefits of citizenship, and urged efforts to strengthen documentation across the sub-region.²⁵

There are the beginnings of recognition that stronger guarantees around the right to a nationality may be part of the solution to some of the security challenges in the continent. The African Commission on Human and Peoples' Rights is working with the AU Commission in Addis Ababa to draft a protocol to the African Charter on the right to a nationality.²⁶ The African Committee of Experts on the Rights and Welfare of the Child recently adopted a General Comment on the rights of children to a name, birth registration and a nationality.²⁷ In parallel, there is a major push to improve docu-

²³ Email communication, Adam Hussein Adam, OSIEA, November 2014.

²⁴ 'Council of State moves to stop citizens' registration, deportation', *The Citizen*, 1 August 2014, available at <https://thecitizenng.com/council-of-state-moves-to-%E2%80%8Estop-citizens-registration-deportation/>. On the history of discrimination in relation to nationality in Kenya, see Manby, B. (2009), above n. 20, Chapter 6; on Nigeria and 'indigeneity', see Chapter 5.

²⁵ 'Envoy Blames Insecurity in Nigeria, Others on Stateless People', *Premium Times*, 29 April 2014, available at <https://www.premiumtimesng.com/news/159587-envoy-blames-insecurity-nigeria-others-stateless-people.html>

²⁶ See ACHPR Resolution 234 on the Right to Nationality, 53rd Ordinary Session, 9-23 April 2013, Banjul, The Gambia; Resolution 277 on the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa, 55th Ordinary Session, 28 April to 12 May 2014, Luanda, Angola.

²⁷ Available at the Committee of Experts website: <http://acerwc.org/the-committees-work/general-comments/>

mentation through the initiation or strengthening of requirements to hold a national identity card, for civil registration in general, and for the use of biometric data in these documents. But this push on information technology carries significant risks that governments will seek only to police the boundaries of their systems, excluding anyone of ‘doubtful’ nationality, while failing to reform legal provisions and administrative practices that restrict access to nationality for those who constitute no security threat at all. To date, the international agencies responsible on these issues — especially UNHCR, UNICEF and IOM — are also failing to join up the dots with a coherent approach on nationality and documentation in their interventions with national governments. Given the very real security threats they face, it remains an open question whether governments such as Nigeria’s and Kenya’s will commit to more secure rights to citizenship, rather than only more secure documentation.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

