

Citizenship and statelessness in Africa: the law and politics of belonging

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Propositions for *Citizenship and Statelessness in Africa: The law and politics of belonging*

Bronwen Manby, doctoral thesis, Maastricht University Faculty of Law, 2015

1. Nationality law has had a direct influence on the way that identity politics has played out in African states since independence, even where those drafting the law did not realise the implications of what they adopted: those countries with particularly restrictive nationality laws and unclear recognition of nationality in the transitional rules adopted at independence have also been the site of some of the most intractable identity-based crises: most notably in Côte d'Ivoire and DRC.
2. Almost all the Commonwealth countries have moved away from the *jus soli* right to nationality established at independence and many now have a legal regime based purely on *jus sanguinis*. While the civil law countries that adopted laws providing for a right to nationality based on double *jus soli* and/or on birth and residence till majority have mostly seen greater stability in these rules, some have also restricted access. These changes have left a large number of people without recognition of nationality.
3. Those most negatively affected by such exclusion from nationality at birth fall into three main groups: (1) migrants — historical or contemporary — and their descendants, including refugees and former refugees; (2) border populations, including nomadic and pastoralist groups as well as those affected by transfers of territory; and (3) orphans and other vulnerable children, including those trafficked for various purposes.
4. In many cases, nationality law has been deliberately redrafted by African politicians and governments to exclude both individuals and groups of people from political power and access to other rights. In almost all countries, naturalisation has been kept under close political control and is accessed by very few.
5. Nationality laws have also been amended in more liberal directions across the continent thanks to popular pressure for change: in particular to increase gender equality in transmission of nationality and to permit dual nationality in more circumstances. There have also been examples of positive changes in the rules to provide access to nationality for refugees or historical migrants.
6. The framework of the two international conventions on statelessness is not very helpful in Africa, requiring individuals to prove a negative (lack of another nationality) before they can access the protections established by these treaties. There are in practice many millions of people in Africa whose nationality status is not clear, though they have never moved from the place where they were born; they exist in a blurred zone between clearly having a nationality and clearly being stateless.
7. Despite a great deal of academic writing on Africa focusing on the importance of informal and non-legally recognised institutions rather than the formal rules and structures of the state, law matters even in quite dysfunctional state systems. Though law reform is a far from sufficient solution to questions of political and economic exclusion and marginalisation, it is a necessary component.
8. Law and formal institutions matter, paradoxically, especially for those who seem most isolated from the state, since they have the fewest resources (money, connections, status) to get around the challenges created by laws and institutions that are not adapted to contemporary realities but are still applied (even if only for rent collection) by the formal authorities.
9. There is a vast amount of difference in implementation of laws, and there is a major research agenda (not only in Africa) around the impact of law, secondary legislation and institutional practice related to nationality on broader questions of inclusion and exclusion from the state and society.
10. There is equally a major research agenda around the types of social mobilisation that are most effective in bringing positive change in nationality law (not least for the purposes of the UNHCR campaign to end statelessness), drawing, for example, on the work of the women's rights and diaspora groups that have already influenced nationality law reform.
11. The research for this thesis will, amongst other things, be a resource for a campaign for the member states of the African Union to adopt a proposed protocol to the African Charter on Human and Peoples' Rights on the right to a nationality, which is likely to be adopted by the African Commission on Human Rights as a draft in August 2015. The consideration of the text would then move from the human rights institutions to the political level. If the Assembly of Heads of State and Government of the AU eventually does adopt the protocol, it would be a landmark document in international law on nationality.