

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

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Valorisation Addendum for: Citizenship and Statelessness in Africa: The law and politics of belonging

This thesis addresses a subject that has been of critical importance to African states since most attained independence in the 1960s; how to build a national identity and functioning polity out of highly diverse populations with no political history of government within the borders established by the colonial powers. It does so through the prism of nationality law, arguing that the role of the formal rules on membership of the polity in supporting or undermining the stabilisation of the modern state in Africa is both important and has been too little studied to date. On the basis of its findings the thesis makes recommendations that are of direct policy relevance to individual states, to the African Union and its institutions and to the work of UNHCR and other international agencies.

This book pulls together comparative legal analysis across all 54 African states and more than a dozen case studies of individual country situations into one volume, sets them in a theoretical framework and in the context of the history of nationality law in Africa dating back to the pre-colonial period, and draws on the lessons of this history to inform its conclusions about the laws in effect today and their likely future impact.

This subject is of relevance not only in Africa but also globally, especially in the context of the current surge in transcontinental migration caused by conflict, in the Middle East and elsewhere, and by the increasing globalisation of the economy. How can those who flee or seek a better life, and especially their descendants, be best integrated into the states where they eventually find themselves – especially if it turns out that they are unable to go “home”? To what extent would a failure to provide these migrants and refugees a route to integrate in their new countries undermine the stability of those states in turn?

The research results will be of interest to policy-makers in a wide range of fields, including: law-makers and officials responsible for drafting and adopting nationality laws; oversight bodies examining the respect of particular states for their obligations under the international and African human rights treaties; human rights activists working at the national and global levels, especially those with a focus on children’s or women’s rights, as well as the rights of refugees and migrants; UNHCR policy units and field offices responsible for implementing the mandate of the agency on statelessness; and other UN and international agencies, including IOM. It will also be a resource for immigration lawyers outside the continent advising clients from Africa who may have a claim to protection as stateless persons.

There is a wide range of fields of scholarship for which this book may be relevant, grouped under three main headings: the international and comparative law of nationality and statelessness; the origins of and solutions to conflict based on ethnicity and identity in Africa and elsewhere; and the citizenship (in its broader sense of participation) and integration of migrant populations more generally around the world.

In terms of academic impact, the thesis has two main aims: first, to urge scholars in political science and sociology to take more seriously the provisions of the law as having a real impact on popular understanding of “autochthony” and who belongs; secondly, to argue that international law should shift away from a focus on statelessness (proving a negative) and towards a focus on the right to a nationality in the country where a person has the closest connections, and on the design of functional laws and systems to provide nationality and legal identity.

There is no other book that tries to do the same thing as this work: that is, to integrate a comprehensive examination of Africa’s nationality laws with a discussion of their impact in practice. There is in general little comparative scholarship on African nationality laws, and while there is a very large literature on the nature of the African state and on identity conflicts related to ethnicity and religion, very little of it pays more than glancing attention to the role of nationality laws in exacerbating or reducing such conflicts. There are some exceptions at the level of national studies (notably Côte d’Ivoire, DRC and Zimbabwe), but there is nothing that brings these studies into a cross-continental comparison dating back to the colonial period.

This research for this thesis was of three main types:

- The compilation of a comprehensive database of the nationality laws of all 54 African states, both historical and currently in effect (now made available to UNHCR’s Refworld database), and the development of detailed comparative tables on the provisions currently in force. The first product of this research was a report published by the Open Society Foundations in 2009; but the content has been completely updated and expanded for this thesis.
- Wide-ranging reading in secondary sources about the history of nationality law in Africa, including of the British and French (and other) colonial powers as well as of the independent African states, and on conflicts since independence in which nationality was in question -- matching this history with a chronology of amendments to the different laws and highlighting the ways in which the law was instrumentalised for political effect; or in which the law had political impacts that were not originally intended.
- Field work research conducted in the preparation of studies and conduct of advocacy for UNHCR and the Open Society Foundations.

In addition to the thesis itself, the research will be published in a third edition of the OSF book on comparative African nationality laws (to be freely available as a PDF download); in a book that will focus rather on the country case studies and argument on the impact of law in practice, provisionally accepted for publication by Cambridge University Press; and in advocacy submissions in a range of contexts in Africa as the need arises. The recommendations in the thesis for reform to nationality law exist in more detailed form in a number of other publications.

Perhaps most importantly, the research on which the thesis is based has already informed and will continue to be used for a campaign for the adoption of a Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa. The African Commission on Human and Peoples' Rights adopted the text of the draft protocol at an extraordinary session in August 2015, and the campaign has moved to the other institutions of African Union and AU member states, with the aim that it will be adopted by the AU Assembly of Heads of State and Government and enter into force as a binding treaty.