

# CONSTITUTIONS, CITIZENSHIP AND THE CHALLENGE OF NATIONAL INTEGRATION AND NATION-BUILDING IN AFRICA

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MBAKU, John, M. Constitutions, Citizenship and the Challenge of National Integration and Nation-Building in Africa. *International and Comparative Law Review*, 2018, vol. 18, no. 1, pp. 7–50. DOI: 10.2478/iclr-2018-0025.

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**Summary:** Most countries in Africa are both “multination” and “polyethnic” states. This is due partly to the forced amalgamation, by the European colonialists, of the continent’s “ethnocultural nations” into single economic and political units that were called “colonies.” These colonies eventually evolved into what are today’s independent African countries. Today, many of these ethnocultural groups want to secede and form their own independent polities in order to have more autonomy over policies that affect their well-being, including especially their cultural and traditional values. The struggle by these groups for either outright secession or so-called enhanced rights has created many challenges for governance, national integration and nation-building in many countries in Africa today. Throughout the continent, inter-ethnic conflict, for example, over the allocation of scarce resources, has produced sectarian violence that has led to civil wars (as occurred in Liberia, Sierra Leone, Rwanda, and Nigeria) and significantly endangered prospects for peaceful coexistence. It has been suggested that the solution to this political quagmire is the creation of differentiated citizenship rights for each of these groups. The paper suggests that of the three types of differentiated citizenship that have been suggested as a way to accommodate diversity—self-government rights, polyethnic rights, and special representation rights—self-government rights pose the greatest threat to social, political, and economic stability in the African countries. The solution to this governance challenge may lie in inclusive and robust dialogue, which can help these groups find a way to remain citizens of their present polities, while at the same time, retaining their cultural identities.

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**Keywords:** constitutions, multination state, polyethnic state, ethnocultural group, self-government rights, polyethnic rights, special representation rights, national integration, nation-building

## 1. Introduction

Most countries in Africa are both *multination* and *polyethnic* states.<sup>1</sup> This is partly due to colonial conquest and the forced amalgamation of Africa's "ethnocultural nations" into single economic and political units that were referred to as *colonies*. The latter eventually evolved into what are today's independent African countries. For example, a country such as Nigeria, consists of many ethnocultural groups, many of which (e.g., the Igbos, Yoruba) consider themselves "nations" and want the governments of the countries that they currently reside in to grant them the right to self-determination, which they argue, had been abrogated through colonial consolidation and opportunistic manipulations by post-colonial elites. In Nigeria, several groups (e.g., supporters of the *new Biafra*) have been making demands on the central or federal government in Abuja to grant them the right to manage their own affairs. Like the Québécois in Canada, Nigeria's so-called "Biafrans"<sup>2</sup> demand "certain powers of self-government."<sup>3</sup> The Biafrans, like other ethnocultural groups in Nigeria, want the freedom to design and implement their own development plans, raise their children in the traditions of their ancestors, and safeguard their cultures. For example, these groups want control over issues of language, education, culture, use and alienation of land, and the protection of the ecosystem. Some Biafrans, however, want secession from the Nigerian federation so that they can start their own sovereign polity, separate from Nigeria.<sup>4</sup>

- 1 KYMLICKA, Will. Three Forms of Group-Differentiated Citizenship. In BENHABIB, Seyla (ed.). *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton, New Jersey: Princeton University Press, 1996, pp. 153–170.
- 2 "Biafra" is a reference to the now defunct break-away Republic of Biafra, which grew out of an effort by several ethnocultural groups in the then Eastern Nigeria, led by the Igbos, to secede from the Nigerian Federation and form their own independent and sovereign country. The secession attempt resulted in a bloody civil war that lasted from 1967 to 1970. Although the defeat of the Biafrans restored the federation, some of the ethnocultural groups that were involved in the secessionist movement never gave up their struggle to gain the right of self-determination from the central government. The re-emergence of the Biafra idea, some students of Nigerian political economy argue, is a result of the failure of the post-civil war federal government in Abuja to remedy the conditions that forced many ethnocultural groups in Eastern Nigeria to resort to violent mobilization. See, e.g., BAXTER, Peter. *Biafra: The Nigerian Civil War, 1967–1970*. West Midlands, UK: Helion & Company Limited, 2014; ACHEBE, Chinua. *There was a Country: A Personal History of Biafra*. London, UK: Penguin, 2013.
- 3 KYMLICKA, supra note 1, p. 155.
- 4 For an examination of the new politics of secession in Nigeria, see generally OFFODILE, Chudi. *The Politics of Biafra and the Future of Nigeria*. Morrisville, North Carolina: Lulu Publishing, 2016; EBIEM, Osita. *Nigeria, Biafra & Boko Haram: Ending Genocide Through Multi-State Solution*. New York: Page Publishing, Inc., 2014.

While some Biafrans seek secession from Nigeria in order to form their own independent polity, other groups prefer the establishment of a constitutional federal system through which their political and economic autonomy can be granted recognition. Within the type of division of powers desired by ethnocultural groups that support federalism in Nigeria, sub-national political units<sup>5</sup> would be granted the power to have jurisdiction or control over certain issues that are critical to the survival of their cultural identity. To many ethnocultural groups in Nigeria (e.g., Yoruba and Igbo), language, education (especially of their young children), culture, and property rights in land, are very important to them and they believe that local control is critical in meeting their objectives with respect to these issues. Nigeria, as envisioned by these groups, should not be a unitary State but a multination State in which the various “nations” that currently make up the country have wide levels of economic and political autonomy. These groups argue that constitutionally-mandated decentralization within a federal system is the key to peace and security in Nigeria.

Many groups in Cameroon, Burundi, Côte d’Ivoire, Ethiopia, Kenya, Ghana, and Uganda have made similar arguments. Ethnocultural groups in these countries demand the constitutional devolution of power from the federal government to the sub-national units—the latter would provide the country’s various “peoples” or “nations” the right of self-determination within a federal system and the facilities to realize their objectives within their individual geographic zones.<sup>6</sup>

Ethnocultural groups in Africa claim some geographic territory within the country that they reside in as their “ancestral” home. While some groups seek to reform national institutions and establish a constitutional federal system that grants them a significant level of political and economic autonomy, others seek to completely extinguish all relationships with their existing polities and establish their own sovereign states with an internationally recognized identity.<sup>7</sup> Among the Anglophones of the Republic of Cameroon, some members want a return to the federation and a restoration of their economic and political auto-

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5 These sub-national units would be ethnocultural groups, which in the case of Nigeria, can be found in various geographic locations throughout the country. The Igbos, for example, are located in the Nigerian states of Abia, Anambra, Delta, Ebonyi, Enugu, Imo, and Rivers. See generally NWAFOR-EJELINMA, Ndubisi. *Ndi-Igbo of Nigeria: Identity Showcase*. Bloomington, Indiana: Trafford, 2012.

6 See, e.g., NKWI, Paul Nchoji, NYAMNJOH, Francis B. (eds.). *Regional Balance and National Integration in Cameroon: Lessons Learned and the Uncertain Future*. Bamenda, Cameroon: Langaa Research & Publishing CIG, 2011.

7 See generally BARTKUS, Viva Ona. *The Dynamic Secession*. Cambridge, UK: Cambridge University Press, 1999; MWAKIKAGILE, Godfrey. *Ethnic Politics in Kenya and Nigeria*. Huntington, New York: Nova Science Publishers, Inc., 2001; PAVKOVIC, Aleksandar, RADAN, Peter (eds.). *The Ashgate Research Companion to Secession*. Aldershot, UK: Ashgate, 2011.

my.<sup>8</sup> Others, however, want to secede and form a new country.<sup>9</sup> Anglophones complain that within today's Republic of Cameroon, they are being subjected, by their more numerous Francophone brethren, to an inferior form of citizenship, one that has left them sitting helplessly on the economic and political margins for many decades.<sup>10</sup> In recent years, the secession movement in the two regions of Cameroon that make up the Anglophone part of the country has gained significant momentum as President of the Republic, Paul Biya, has become increasingly violent in the government's treatment of Anglophone activists. In fact, on Sunday October 1, 2017, security forces opened fire on unarmed Anglophones who were peacefully protesting their treatment at the hands of the Francophone-dominated government in Yaoundé, killing at least 17 of them.<sup>11</sup>

Throughout the continent, the struggle by many ethnocultural groups to secede and form their own independent polities where they can enjoy new citizenship rights or negotiate a new institutional arrangement that grants them more autonomy over policies that affect their lives, has created many governance challenges for the respective countries. In some cases (e.g., Liberia, Nigeria, Sierra Leone, Rwanda), these struggles have produced bloody civil wars that have killed many people and destroyed a lot of property.<sup>12</sup> In other countries, violent inter-ethnic conflict has produced sectarian violence that has destroyed prospects for peaceful coexistence and economic development. This is particularly true of countries such as the Central African Republic, South Sudan, and the Democratic Republic of Congo.<sup>13</sup> Generally, these violent struggles by various

- 8 In 1961, the independent République du Cameroun (the former UN Trust Territory of Cameroons under French administration, which had gained independence on 1 January 1960 and had taken the name République du Cameroun) united with the former UN Trust Territory of Southern Cameroons under British administration, which gained independence in 1961 to form a federation called the Federal Republic of Cameroon. That federation, however, did not last long; it was unilaterally abrogated by President Ahmadou Ahidjo in 1972, resulting in the creation of a unitary state. See DERSSO, Solomon (ed.). *Perspectives on the Rights of Minorities and Indigenous Peoples in Africa*. Pretoria, South Africa: Pretoria University Law Press, 2010.
- 9 ATANGA, Mufor. *The Anglophone Cameroon Predicament*. Bamenda, Cameroon: Langaa Research & Publishing CIG, 2011; KONINGS, Piet, NYAMNJOH, Francis B. *Negotiating an Anglophone Identity: A Study of the Politics of Recognition and Representation in Cameroon*. Leiden, The Netherlands: Brill, 2003.
- 10 See ATANGA, supra note 9 & KONINGS, NYAMNJOH, supra note 9.
- 11 See, e.g., *Death Toll Rises in Cameroon's Anglophone Region Unrest*. Aljazeera, 3 October 2017. [online]. Available at: <<http://www.aljazeera.com/news/2017/10/cameroon-english-region-unrest-death-toll-rises-171003061709512.html>> Accessed: 7 October 2017.
- 12 See, e.g., HUBAND, Mark. *The Liberian Civil War*. London, UK: Frank Cass, 2013; GBERIE, Lansana, *A Dirty War in West Africa: The RUF and the Destruction of Sierra Leone*. Bloomington, Indiana: Indiana University Press, 2005; SPALDING, Frank. *Genocide in Rwanda*. New York, New York, USA: Rosen Publishing Group, Inc., 2009.
- 13 CARAYANNIS, Tatiana, LOMBARD, Louisa (eds.). *Making Sense of the Central African Republic*. London, UK: Zed Books; JOHNSON, Hilde E. *South Sudan: The Untold Story from Independence to Civil War*. New York: I.B. Tauris, 2011; KISANGANI, Emizet F.

ethnocultural groups within many African countries for “improved” citizenship rights have created many challenges for economic growth and development, as well as for national integration and nation building.

It has been suggested that the solution to this political quagmire is the creation of *differentiated citizenship rights* for these groups in an effort to prevent either attempts at secession, many of which have led to civil war, or continued sectarian violence, which has stunted economic growth and human development. In this paper, we shall examine group-differentiated citizenship and determine the extent to which it can be used to placate many ethnocultural groups, stop them from demanding secession, and enhance peaceful coexistence. Before we do that, however, we shall explore the general concept of citizenship as it applies to African countries. In Section 2, we examine citizenship in Africa—this discussion will include an overview and definitions, ways to acquire citizenship, how to acquire effective citizenship laws, and citizenship law in the continent today; in Section 3, we try to answer the question: Is there a right to nationality in Africa?; and Section 4 is devoted to a review of how countries use citizenship as a tool of discrimination. Section 5 is the heart of our analysis. In this section, we look at differentiated citizenship and see if it is an appropriate tool to minimize sectarian violence in the continent and enhance prospects for national integration and nation-building. Section 6 provides the conclusion and policy recommendations.

## 2. An Introduction to Citizenship in Africa

### 2.1 Overview and Definitions

The term “citizenship” is used in the social science literature to refer to “different types of belonging to a political community and the rights that such belonging brings with it.”<sup>14</sup> In law, however, citizenship is defined differently—the definition is usually couched in terms of the legal relationship between the “state and the individual.”<sup>15</sup> Of course, the relation between the state and the individual also provides the foundation or basis for other rights.<sup>16</sup> Black’s Law Dictionary defines a citizen as “[a] member of a free city or jural society, (civitas,) possessing all the rights and privileges which can be enjoyed by any person under its constitution and government, and subject to corresponding duties.”<sup>17</sup> Under U.S.

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Civil Wars in the Democratic Republic of Congo, 1960–2010. Boulder, Colorado: Lynne Rienner, 2012.

14 MANBY, Bronwen. *Citizenship Law in Africa: A Comparative Study*. New York City: Open Society Foundations/African Minds, 2016.

15 *Id.* p. ix.

16 *Id.* p. ix. These other rights may include, for example, the “right to diplomatic protection when outside the country.” *Id.*

17 See Black’s Law Dictionary. [online]. Available at: <https://www.polskawalcza.com/library/a.blackslaw4th.pdf> > Accessed: 10 October 2017.

law, a citizen is “[o]ne who, under the constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights.”<sup>18</sup>

The rights that states grant their citizens vary by state. Nevertheless, the most common rights that states grant their citizens include “the right to permanent residence within the state, the right to freedom of movement within the state, the right to vote and to be elected or appointed to public office, the right of access to public services, the right to diplomatic protection when outside the country, and other rights that are guaranteed to noncitizens as well as citizens.”<sup>19</sup>

Although the words “nationality” and “citizenship” are often used in the literature interchangeably, it is important to note that an individual can be recognized by the law as a national of a country but still not enjoy all the rights that go with full citizenship. Consider, for example, those people who were referred to as “natives” during the colonial period in Africa—in French colonies, only people of European descent were granted both nationality and full citizenship rights.<sup>20</sup> A similar situation was also in existence in apartheid South Africa—only people of European descent were accorded nationality and full citizenship rights.<sup>21</sup>

## 2.2 Ways to Acquire Citizenship: An Overview

There are several ways in which an individual can acquire citizenship in a country. In this section, we briefly take a look at the most important ones. The first one is *citizenship by birth*,<sup>22</sup> and represents citizenship, which an individual acquires by “right from birth”<sup>23</sup> rather than through some “administrative process”<sup>24</sup> while in adulthood. As argued by Morse,<sup>25</sup> “[t]wo things usually occur to create citizenship by birth: first, birth locally within the dominion [or territory] of the sovereign; secondly, birth within the protection and obedience, or, in

18 Id. p. 311. See also *Minor v. Happersett*, 88 U.S. 162 (1875).

19 Manby, *supra* note 14, p. ix.

20 See, e.g., THOMPSON, Virginia, ADLOFF, Richard. *French West Africa*. Stanford, California: Stanford University Press, 1958 (examining, inter alia, the French system of indigénat, under which Africans or “natives” were granted an inferior form of citizenship and only people of European descent were granted nationality and full citizenship rights).

21 See generally MANBY, Bronwen. *Citizenship Law in Africa: A Comparative Study*. New York City: Open Society Foundations/African Minds, 2016 & MacDONALD, Michael. *Why Race Matters in South Africa*. Cambridge, Massachusetts: Harvard University Press, 2016.

22 See generally MORSE, Alexander Porter. *A Treatise on Citizenship: With Reference to the Law of Nations, Roman Civil Law, Law of the United States of America, and the Law of France*. Boston, Massachusetts: Little, Brown, and Company, 1881 (providing, inter alia, detailed discussion on citizenship by birth and how it is acquired).

23 Manby, *supra* note 21, pp. ix–x.

24 Id.

25 Morse, *supra* note 22.

other words, within legiance [or jurisdiction] of the sovereign.”<sup>26</sup> The second way in which an individual can acquire citizenship in a country is by descent—that is, *citizenship by descent*—and this involves a situation in which “an individual obtains citizenship on the basis of his or her father’s and/or mother’s citizenship (regardless of place of birth).”<sup>27</sup> Third, is citizenship by acquisition—this is citizenship that the individual has acquired through an administrative process, “such as by naturalization, registration, option, or marriage.”<sup>28</sup>

Associated with the concept of citizenship is the term “statelessness,” which is defined in international law to mean the “lack of citizenship.” As defined in the Convention Relating to the Status of Stateless Persons (“Stateless Convention”),<sup>29</sup> “the term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law.”<sup>30</sup> It is important to note that only states are legally able to have nationals and, as a consequence, an individual who is not recognized by a state or is recognized only by a “non-state entity,” is essentially stateless.<sup>31</sup>

In the Stateless Convention’s definition of stateless person, the phrase “considered as a national . . . under the operation of its law” implies that “a theoretical claim to nationality is inadequate to establish that a person is not stateless if in practice she or he is not recognized as a citizen by the state concerned.”<sup>32</sup>

### 2.3 The Road to More Effective Citizenship Laws in Africa

The road to more effective citizenship laws in the African countries has been colored with discrimination against certain groups and individuals.<sup>33</sup> During

26 Id. p. 238.

27 Manby, supra note 21, p. x.

28 Id.

29 UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES. Convention Relating to the Status of Stateless Persons. [online]. Available at: <[http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf)> Accessed: 9 January 2017.

30 Article I(1), Convention Relating to the Status of Stateless Persons, supra note 29.

31 Manby, supra note 21, p. x.

32 Manby, supra note 21, p. x.

33 For example, during the apartheid era in South Africa (1948–1994), citizenship laws distinguished between individuals based on their race—while whites enjoyed full citizenship rights, other groups within the country (Africans, Asians, and those designated by apartheid laws as colored) were subjected to an attenuated form of citizenship. For example, while whites were granted the right to participate fully in government, very few blacks were allowed to do so and only under the strict supervision of whites and usually in positions that did not allow them to directly regulate the socio-interaction of whites. For example, although blacks could become police officers, they could not, in their line of duty, arrest a white person who had been suspected of breaking the law. See generally GUELKE, Adrian. *Rethinking the Rise and Fall of Apartheid: South Africa and World Politics*. New York City: Palgrave Macmillan, 2004 (examining, inter alia, law and citizenship in apartheid South Africa).



the colonial period, for example, nationality did not give Africans full citizenship rights in the colonies in which they were resident.<sup>34</sup> Even after the colonies gained independence from the Europeans, individuals belonging to certain groups—for example, women and ethnic minorities—continued to suffer from degraded forms of citizenship or statelessness.<sup>35</sup>

Traditionally, international law has regarded the grant of nationality as exclusively the purview of states.<sup>36</sup> Nevertheless, developments in international law since the 1920s have favored the placing of limits on the extent to which states can regulate citizenship and nationality. In fact, in 1930, the Convention on Certain Questions Relating to the Conflict of Nationality Laws,<sup>37</sup> addressed this issue of “conflict of nationality laws” (“The Hague Convention on Certain Questions”). In its preamble, the Convention on Certain Questions states that “all its members should recognize that every person should have a nationality and should have one nationality only.”<sup>38</sup>

Article 1 of The Hague Convention on Certain Questions<sup>39</sup> states that although each “State” has the right “to determine under its own law who are its

34 In addition to the fact that many of them were subjected to forced labor, they could not participate fully in governing the colony. See, e.g., RUDIN, Harry Rudolph. *Germans in the Cameroons: A Case Study in Modern Imperialism*. New Haven, Connecticut: Yale University Press, 1938 (examining, inter alia, colonial practices in the German colony of Kamerun) and THOMPSON, Virginia, ADLOFF, Richard. *French West Africa*. Stanford, California: Stanford University Press, 1958 (examining, inter alia, the French colonial policy in West Africa).

35 Consider, for example, the rights of women under Sharia law in modern Nigeria: in 2003, the world grew extremely angry and impatient at Nigeria after Amina Lawal, a peasant woman in predominantly Islamic northern Nigeria had been sentenced to death by stoning for adultery. See SENGUPTA, Somini. *Facing Death for Adultery, Nigerian Woman is Acquitted*. The New York Times, September 26, 2003. [online]. Available at: <<http://www.nytimes.com/2003/09/26/world/facing-death-for-adultery-nigerian-woman-is-acquitted.html>> Accessed: 9 January 2017 & VAUGHAN, Olufemi. *Religion and the Making of Nigeria*. Durham, North Carolina: Duke University Press, 2016.

36 See, e.g., WEIS, Paul. *Nationality and Statelessness in International Law*. Alphen aan den Rijn, The Netherlands: Sijthoff & Noordhoff, 1979, p. 126 (arguing, inter alia, that “the right of a State to make rules governing the loss of its nationality is, in principle—with the possible exception of the prohibition of clearly discriminatory deprivation—not restricted by international law, unless a State has by treaty undertaken specific obligations imposing such restrictions.”)

37 LEAGUE OF NATIONS. *Convention on Certain Questions Relating to the Conflict of Nationality Laws*, The Hague, April 13, 1930. [online]. Available at: <<http://www.refworld.org/docid/3ae6b3b00.html>> Accessed: 9 January 2017.

38 Preamble, Convention on Certain Questions, supra note 37. While The Hague Convention on Certain Questions was interested in making certain that every person was guaranteed citizenship, it also wanted to harmonize “citizenship practices among states” and minimize “dual citizenship.” Manby, supra note 21, p. 19.

39 The Hague Convention on Certain Questions, supra note 37.



nationals,”<sup>40</sup> other states are not bound to give recognition to these laws, unless they are “consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.”<sup>41</sup> That is, other states would only recognize a country’s citizenship laws if “they are consistent with international conventions.”<sup>42</sup>

When the United Nations adopted the Universal Declaration of Human Rights (UDHR)<sup>43</sup> in 1948, the latter included a guarantee for citizenship rights.<sup>44</sup> According to Article 15(1), “Everyone has the right to a nationality.”<sup>45</sup> Some scholars have argued that the inclusion of citizenship in the UDHR “implies that even states that have ratified none of the relevant treaties are bound to respect citizenship as a human right.”<sup>46</sup>

In 1975, the 1961 Convention on the Reduction of Statelessness<sup>47</sup> went into force. Article 1 imposes on States Parties the duty to grant its nationality to anyone born in their territory who might “otherwise be stateless.”<sup>48</sup> Article 1 states that “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.”<sup>49</sup> Article 1 is better read together with Article 8(1) – the latter states that “A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.”<sup>50</sup> A state, however, can legitimately deprive a person of his nationality even if doing so would render the person stateless.<sup>51</sup> Nevertheless, a state that has decided to deprive an individual of his nationality must do so “only through a procedure that respects due process [of law].”<sup>52</sup> Regarding protected individuals, Art. 9 states as follows:

40 The Hague Convention on Certain Questions, *supra* note 37, at Article 1.

41 The Hague Convention on Certain Questions, *supra* note 37, at Article 1.

42 Manby, *supra* note 21, p. 19.

43 UNITED NATIONS. Universal Declaration of Human Rights. [online]. Available at: <<http://www.un.org/en/universal-declaration-human-rights/>> Accessed 10 January 2017.

44 *Id.* at Article 15.

45 *Id.* at Article 15.

46 *Id.* at Article 15.

47 The convention was adopted on August 30, 1961 and entered into force on December 13, 1975. It was designed to complement the 1954 Convention Relating to the Status of Stateless Persons. See Convention on the Reduction of Statelessness, 1961. [online]. Available at: <[http://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness\\_ENG.pdf](http://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf)> Accessed: 10 January 2017 & Convention Relating to the Status of Stateless Persons. [online]. Available at: <<http://www.unhcr.org/en-us/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>> Accessed 10 January 2017.

48 Convention on the Reduction of Statelessness, *supra* note 47, at Art. I.

49 *Id.* at Art. I

50 *Id.* at Art. 8(1).

51 For example, as made clear in Art. 8(b), a country has limited legitimate grounds to deprive an individual of his nationality, if, for example, the nationality was gained fraudulently or through misrepresentation.

52 MANBY, Bronwen. *Citizenship Law in Africa: A Comparative Study*. New York City: Open Society Foundations/African Minds, 2016, p. 19.

“A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.”<sup>53</sup>

The twin issues of “nationality” and “statelessness” are very important to international human rights law. As a consequence, international human rights conventions usually mention either citizenship or nationality in relation to the protection of human rights. For example, Art. 1(3) of the International Convention on the Elimination of All Forms of Racial Discrimination<sup>54</sup> states as follows: “Nothing in this Convention<sup>55</sup> may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.”<sup>56</sup> Similarly, the Convention on the Elimination of All Forms of Discrimination against Women<sup>57</sup> deals with nationality as it relates to women. Art. 9 states that “States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. States Parties shall grant women equal rights with men with respect to the nationality of their children.”<sup>58</sup>

Although the International Covenant on Civil and Political Rights<sup>59</sup> does not include any clauses that deal directly with the nationality or citizenship of adult individuals, it specifically provides for the right of children to acquire nationality. According to Art. 24(3), “Every child has the right to acquire a nationality.”<sup>60</sup> In addition to guaranteeing the right of every child to acquire a nationality, the Convention on the Rights of the Child<sup>61</sup> also imposes a duty on States Parties to respect and ensure the implementation of these rights.<sup>62</sup>

53 Art. 9, Convention on the Reduction of Statelessness, *supra* note 47.

54 International Convention on the Elimination of All Forms of Racial Discrimination. [online]. Available at: <<http://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf>> Accessed: 10 January 2017.

55 This reference is to the International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 54.

56 Art. 1(3), International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 54. See also Art. 5(iii), International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 54.

57 Convention on the Elimination of All Forms of Discrimination against Women. [online]. Available at: <<http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>> Accessed: 10 January 2017.

58 *Id.* at Article 9(1–2).

59 International Covenant on Civil and Political Rights. [online]. Available at: <<http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>> Accessed: 10 January 2017.

60 *Id.* at Art. 24(3).

61 Convention on the Rights of the Child. [online]. Available at: <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> Accessed: 10 January 2017.

62 According to Art. 7(1) of the Convention on the Rights of the Child, “The child shall be registered immediately after birth and shall have the right from birth to a name, the right

On June 27, 1981, the African (Banjul) Charter on Human and Peoples' Rights ("The Banjul Charter")<sup>63</sup> was adopted and it went into force on October 21, 1986. The Banjul Charter, however, does not deal specifically with the nationality of an individual—there is no provision within the charter dealing with nationality. However, the African Charter on the Rights and Welfare of the Child (ACRWC) does contain provisions on the right of a child to acquire nationality.<sup>64</sup> Article 6 of the ACRWC guarantees the rights of a child to acquire nationality and imposes a duty on States Parties "to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he [sic] has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."<sup>65</sup>

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa<sup>66</sup> has relatively weak provisions on the right of women to acquire a nationality. Nationality is dealt with only in Art. 6, with two rela-

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to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents." Art. 7(2) of the same convention goes on to impose a duty on States Parties to respect and implement these rights: "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless." Art. 8(1) provides more support to the provisions in Art. 7: "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference." See also CCPR General Comment No. 17: Article 24 (Rights of the child), Adopted by the Thirty-fifth session of the Human Rights Committee on April 7, 1989. Available at: <<http://www.refworld.org/docid/45139b464.html>> Accessed: 10 January 2017. Note, for example, the first statement of paragraph 8: "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born." Id.

63 ORGANIZATION OF AFRICAN UNITY. African (Banjul) Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M.58 (1982). Available at: <[http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf)> Accessed: 11 January 2017.

64 The African Charter on the Rights and Welfare of the Child (ACRWC). [online]. Available at: <<http://pages.au.int/acerwc/documents/african-charter-rights-and-welfare-child-acrwc>> Accessed: 11 January 2017.

65 Art. 6(4), The African Charter on the Rights and Welfare of the Child, *supra* note 64. Commentators, such as Manby, have alerted us to the difference between "the right to a nationality" and "the right to acquire a nationality." He argues that there is a "subtle" difference and that the word "acquire" was added to the Charter at the request of some states in order "to remove any implication that a state party accepted an unqualified obligation to accord its nationality to every child born on its territory regardless of the circumstances." Manby, *supra* note 52, p. 20, fn 13. For more in depth discussion of the right of the child to acquire a nationality, see DOEK, Jaap E. The CRC and the Right to Acquire and to Preserve a Nationality. *Refugee Survey Quarterly*, 2006, vol. 25, no. 3, pp. 26–32.

66 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. [online]. Available at: <[http://www.un.org/en/africa/osaa/pdf/au/protocol\\_rights\\_women\\_africa\\_2003.pdf](http://www.un.org/en/africa/osaa/pdf/au/protocol_rights_women_africa_2003.pdf)> Accessed: 11 January 2017.

tively weak provisions: “g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband; h) a woman and a man shall have equal rights, with respect to nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests.”<sup>67</sup>

## 2.4 Citizenship Law in Africa Today

In most African countries today, laws governing citizenship are based on two important concepts: (i) *jus soli*;<sup>68</sup> and (ii) *jus sanguinis*.<sup>69</sup> If citizenship law is based on *jus sanguinis*, it would most likely discriminate against individuals whose parents are immigrants from other countries.<sup>70</sup> However, if citizenship laws are based on *jus soli*, individuals can claim citizenship in the country in which they are born but may not be able to claim the “citizenship of their parents if they had moved away from their ‘historical’ home.”<sup>71</sup> Besides these two principles, “marriage” and “long-term residence” can also provide avenues for the acquisition of citizenship.<sup>72</sup>

67 The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, supra note 66, at Art. 6(g&h). Manby argues that lobbying from the North African states was responsible for the emergence of weak citizenship rights in the Protocol. Manby, supra note 21, at 20. See also BANDA, Fareda. Protocol to the African Charter on the Rights of Women in Africa. In EVANS, Malcolm, MURRAY, Rachel (eds.). The African Charter on Human and Peoples’ Rights: The System in Practice, 1986–2006. Cambridge, UK: Cambridge University Press, 2008, p. 441.

68 The expression “*jus soli*” means “right of the soil”—“is the principle that a person acquires citizenship in a nation by virtue of his birth in that nation or its territorial possessions.” See, e.g., LOUCKY, James, ARMSTRONG, Jeanne, ESTRADA, Lawrence J. (eds.). Immigration in America Today: Encyclopedia. Westport, Connecticut: Greenwood Press, 2006, p. 54.

69 “*Jus sanguinis* is the principle that a person acquires the citizenship of his parents, ‘citizenship of the blood.’” LEE, Margaret Mikyung, Congressional Research Service. Birthright Citizenship Under the 14 Amendment of Persons Born in the United States to Alien Parents. Washington, D.C.: Congressional Research Service, 2010.

70 In Côte d’Ivoire, for example, many individuals have been denied the right to full citizenship rights because of the country’s controversial Ivoirité policy. Although there is no evidence that those who developed it were aware of such legal concepts as *jus soli* and *jus sanguinis*, Ivoirité’s practical effect was that it functioned as law based on *jus sanguinis* and hence, excluded individuals from political participation, individuals such as Alassane Ouattara, whose parents were immigrants from Burkina Faso. See, e.g., KELLER, Edmond J. Identity, Citizenship, and Political Conflict in Africa. Bloomington, Indiana: Indiana University Press, 2014. See, especially, Chapter 6, p. 87.

71 Manby, supra note 21, p. 32.

72 With respect to citizenship through marriage, a person who marries the citizen of another country can acquire the citizenship of the spouse’s country through an administrative procedure. Laws on granting citizenship to non-citizen spouses differ by country. For example, in the Maghreb, it is only in Algeria where women citizens can pass “their citizenship on to their foreign husband”—the male foreign national is eligible to apply for Algerian citizenship after three years of marriage. Also in Algeria, alien females married to an Algerian man are also eligible to apply for and gain Algerian citizenship through their marriage.

The system of citizenship that exists in most countries in Africa today can be grouped into the following categories: (1) An individual is born in a country and at least one of his or her parents<sup>73</sup> is a citizen. (2) A person is born outside the country and at least one of his or her parents is a citizen. (3) A person who is not a citizen (an alien) is married to a citizen of the country—that person can automatically become a citizen or is eligible to register for citizenship. (4) A person has lived in the country for a certain period of time and is eligible for naturalization.<sup>74</sup> (5) Citizenship by registration—for example, under Kenyan law, “[a] person who has been married to a citizen of Kenya for a period of at least seven years shall be entitled, on application, in the prescribed manner to be registered as a citizen of Kenya, . . .”<sup>75</sup>

While some African countries have engaged in substantive and comprehensive reforms to their citizenship laws, others have maintained laws either carried over from colonialism or laws that were enacted shortly after independence.

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ISIN, Engin F., NYERS, Peter (eds.). *Routledge Handbook of Global Citizenship Studies*. New York City: Routledge, 2014, p. 235.

- 73 In most African countries, preference is granted to the father. However, in Tanzania’s Citizenship Act, 1995, no reference is made to the parents. Art. 10(1) states that “The Minister may cause the minor child of any citizen of the United Republic [of Tanzania] to be naturalized as a citizen of the United Republic upon application made in the prescribed manner by a parent or guardian of the child.” The Tanzania Citizenship Act, 1995. [online]. Available at: <<http://www.immigration.go.tz/downloads/Citizenship%20Act%201995.pdf>> Accessed: 11 January 2017.
- 74 In many countries, individuals who have been resident in these countries for a certain length of time and hence, are eligible for naturalization, must still meet additional requirements and these may include acquiring competency in the national language (or at least one local language), having a clean criminal record, and indicating that they plan to remain in that country permanently. For example, according to The Kenya Citizenship and Immigration Act, 2011, “A person who has attained the age of majority and capacity who has been lawfully resident in Kenya for a continuous period of at least seven years may on application be registered as a citizen if that person . . . (d) has an adequate knowledge of Kenya and of the duties and rights of citizens as contained in this act; (e) is able to understand and speak Kiswahili or a local dialect; . . . (g) has not been convicted of an offense and sentenced to imprisonment for a term of three years or longer.” The Kenya Citizenship and Immigration Act, 2011, Art. 13. [online]. Available at: 11 January 2017. <<http://admin.theiguides.org/Media/Documents/ImmigrationCitizenshipAct2011.pdf>> Accessed: 11 January 2017.
- 75 The Kenya Citizenship and Immigration Act, 2011, Art. 11. [online]. Available at: <<http://admin.theiguides.org/Media/Documents/ImmigrationCitizenshipAct2011.pdf>> Accessed: 11 January 2017. In Kenya, an individual can qualify to register as a citizen if the person is an alien who is (i) the spouse of a Kenyan citizen; (ii) a lawful residence of Kenya; (iii) an adopted child of a Kenyan citizen (the adopting parent is the one to make the application for registration as a citizen); (iv) a stateless person who has lived in Kenya continuously since 12th December 1963; and (v) a migrant who voluntarily came to Kenya before December 12, 1963 and has been lawfully resident in the country ever since; (vi) an individual who has attained the age of 18 years and “whose parents are or in the case of deceased parents were eligible to be registered as a citizen under sections 15 and 16.” See The Kenya Citizenship and Immigration Act, 2011, id.

South Africa was one of the countries that, at independence in 1994, engaged purposefully in institutional reforms to restructure its citizenship law. The South African Citizenship Act, 1995,<sup>76</sup> abolished laws enacted by the apartheid government to establish the *bantustans* and inferior levels of citizenship for the country's colored and Asian peoples. Some African countries have clauses in their constitutions that deal with citizenship but most of these constitutional provisions do not specifically address the issues of acquisition, loss and restoration of citizenship. Instead, they impose on the legislature a mandate to enact legislation addressing "acquisition, loss and restoration of citizenship."<sup>77</sup> It is not just South Africa that has used its constitution to deal with historical discrimination.<sup>78</sup> Many other countries, including Ghana, have used their post-independence constitutions to eliminate "differentiated citizenship"<sup>79</sup> and formulate more effective ways for their citizens to acquire and benefit from their countries' citizenship.<sup>80</sup>

It has been noted that "[t]here is a common distinction in law and practice between citizenship "from birth" (termed 'by origin' in the civil law countries) and citizenship "by acquisition."<sup>81</sup> With citizenship from birth (or by origin), the child automatically becomes a citizen as soon as he or she is born, without the need for the parent or anyone else to undertake any administrative procedures. In this case, citizenship may be based "either on descent (*jus sanguinis*) or

76 South African Citizenship Act, 1995. [online]. Available at: <[http://www.saflii.org/za/legis/num\\_act/saca1995271/](http://www.saflii.org/za/legis/num_act/saca1995271/)> Accessed: 11 January 2017.

77 Constitution of the Republic of South Africa, 1996, Art. 3. [online]. Available at: <<http://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf>> Accessed: 11 January 2017. See also Chapter II of The Constitution of the Federation of Nigeria. [online]. Available at: <[http://www.worldstatesmen.org/nigeria\\_const1960.pdf](http://www.worldstatesmen.org/nigeria_const1960.pdf)> Accessed: 11 January 2017.

78 South Africa's constitutional designers were particularly concerned about discriminatory practices introduced into the country through apartheid, many of which dealt with race, ethnicity, and gender. See, e.g., Section 9 of the Constitution of the Republic of South Africa, 1996, which specifically deals with equality with respect to "race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth." Constitution of the Republic of South Africa, 1996, *supra* note 77.

79 During the colonial period, the colonialists created different categories of citizenship within each colony and within these schemes, Africans were placed at the bottom or periphery, and placed in citizenship categories that excluded them from participating fully and effectively in economic and political markets. For example, while people of European origin or heritage were granted full citizenship rights within the colonies—they, for example, could participate in governance and have their marriages recognized at law—Africans had available to them only an attenuated form of citizenship and were, especially in the French colonies, subjected to forced labor.

80 See The Constitution of the Republic of Ghana. [online]. Available at: <<http://www.politicsresources.net/docs/ghanaconst.pdf>> Accessed: 11 January 2017.

81 MANBY, Bronwen. *Citizenship Law in Africa: A Comparative Study*. New York City: Open Society Foundations/African Minds, 2016, p. 33.

on birth in the country (*jus soli*).<sup>82</sup> Citizenship by acquisition usually requires that some type of administrative procedure be undertaken, either by the adult who is petitioning for grant of the citizenship or by a guardian or parent, in the case where a child is the subject of the petition.<sup>83</sup> However, in making decisions regarding citizenship from birth (or by origin), some countries make a distinction between children whose parents (mother and father) are citizens and those of mixed parentage (mother or father is an alien). In these countries, where the father is a citizen and the mother alien, the children are granted citizenship from birth; however, where the mother is a citizen and the father is alien, the children can only be granted citizenship after an administrative procedure has been completed. In some cases, the administrative procedure must be completed before the child reaches the age of majority.<sup>84</sup>

How citizenship rights are acquired may affect the individual's ability to participate in public office. For example, according to the Constitution of Kenya,<sup>85</sup> "A person qualifies for nomination as a presidential candidate if the person—(a) is a citizen by birth."<sup>86</sup> The constitution then defines "citizen by birth"—according to Art. 14(1), "[a] person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen."<sup>87</sup> Hence, under Kenya law, a person of mixed heritage (one parent is a citizen and the other is an alien, for example, mother is a citizen and father is an alien) who has acquired citizenship by birth, is not constitutionally barred from standing for president of the Republic of Kenya.<sup>88</sup> Although the Constitution of Cameroon<sup>89</sup> provides that "[c]andidates for the office of President of the Republic must be Cameroonian by birth," it, unlike the Kenyan constitution, does not define "citizenship by birth." Nevertheless, "nationality by origin"

82 Manby, *supra* note 81, at 33.

83 *Id.*

84 *Id.*

85 The Constitution of Kenya, 2010. [online]. Available at: <<http://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>> Accessed: 12 January 2017.

86 The Constitution of Kenya, 2010, *supra* note 85, at Art. 137(1)(a).

87 The Constitution of Kenya, 2010, *supra* note 85, at Art. 14(1).

88 *Id.*

89 Constitution of the Republic of Cameroon. [online]. Available at: <<http://confinder.richmond.edu/admin/docs/Cameroon.pdf>> Accessed: 12 January 2017. The Constitution of Cameroon is officially known as "Law no. 96–06 of 18 January 1996 to amend the Constitution of 2 June 1972."



is defined in Cameroon's nationality law.<sup>90</sup> Under Algeria's new constitution,<sup>91</sup> a person is eligible to compete for the presidency only if the candidate is a *citizen by origin*<sup>92</sup> and the candidate's mother and father are both *citizens by origin*. The candidate seeking the presidency in Algeria must also be a Muslim.

### 3 Is There a Right to Nationality in Africa?

While the national laws of many African countries do not guarantee the right to nationality, many of these countries are States Parties to international conventions that guarantee the right to nationality. For example, all countries in the continent, with the exception of only Somalia and South Sudan, are States Parties to the Convention on the Rights of the Child ("CRC"),<sup>93</sup> which guarantees each child the "right from birth to a name" and "the right to acquire a nationality."<sup>94</sup> The CRC also imposes a duty on States Parties to "ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child

90 Law No. 1968-LF-3 of the 11th June 1968 to set up the Cameroon Nationality Code. [online]. Available at: <<http://www.refworld.org/docid/3aeb64db1c.html>> Accessed: 12 January 2017. Note that Cameroon law is based on the Common Law of England and Wales (the Anglophone regions—North West Region and South West Region) and Civil Law (the francophone regions). Nevertheless, the nationality code is based essentially on Civil Law and hence, the expression employed is "nationality by origin" as opposed to "nationality from birth." Id.

91 Constitution de la République Algérienne Démocratique et Populaire. [online]. Available at: <<http://www.joradp.dz/TRV/FCons.pdf>> Accessed: 13 January 2017.

92 Note that in Civil law countries—like most former French colonies, Algeria is a Civil law country—"citizenship from birth" is called "citizenship by origin." Citizenship by origin, as is the case with citizenship from birth, may be based on either descent (*jus sanguinis*) or on birth in the country or one of its legal dependencies (*jus soli*). Under Algeria's new constitution, the candidate for the presidency can only be an individual who is not only a citizen by origin, but one whose parents (mother and father) are also citizens by origin. Hence, the citizenship requirements for the presidency in Algeria are more restrictive than those in Kenya. For, under the Kenyan constitution, an individual of mixed parentage can qualify to run for president. See Constitution de la République Algérienne Démocratique et Populaire, supra note 91, at Art. 87 & The Constitution of Kenya, 2010, supra note 85.

93 UN Convention on the Rights of the Child, UN Res. 44/25 pf 20 November 1989, entered into force on 2 September 1990. [online]. Available at: <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>> Accessed: 14 January 2017. Somalia has been unable to ratify the CRC because of the country's endemic political instability and the absence of "solid administrative and political structures capable of undertaking such an engagement in a representative manner for the whole nation."

94 Convention on the Rights of the Child, supra note 93, at Art. 7(1). See The Convention on the Rights of the Child: Signatory States and Parties to the Convention. [online]. Available at: <<http://www.humanium.org/en/convention/signatory-states/>> Accessed: 14 January 2017. Nevertheless, Somalia signed the CRC on May 9, 2002. Id. Regarding South Sudan, the country only came into being on July 9, 2011 and since then, it has been plagued with significantly high levels of sectarian violence. It has neither signed nor ratified the CRC. Id.

would otherwise be stateless.”<sup>95</sup> Although Djibouti and Mauritania did sign and ratify the CRC, they “entered comprehensive reservations to the CRC covering virtually all articles, stating that no provision of the convention would be implemented that is contrary to the beliefs of Islam.”<sup>96</sup> At ratification, the Government of the Republic of Tunisia specifically made a reservation regarding Article 7: “The Government of the Republic of Tunisia considers that article 7 of the Convention cannot be interpreted as prohibiting implementation of the provisions of national legislation relating to nationality and, in particular, to cases in which it is forfeited.”<sup>97</sup> However, on September 23, 2008, the UN “Secretary-General received a notification from the Government of Tunisia that it had decided to withdraw” declarations and reservations that it had made upon ratification, and these included its Art. 7 reservation.<sup>98</sup>

The African Charter on the Rights and Welfare of the Child (ACRWC)<sup>99</sup> also provides for the right of the child to a name and a nationality.<sup>100</sup> According to Art. 6 of ACRWC, “1. Every child shall have the right from birth to a name. 2. Every child shall be registered immediately after birth.”<sup>101</sup> The ACRWC also imposes certain duties on States Parties, which require them to “undertake to ensure that their constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth he is not granted nationality by any other State in accordance with its laws.”<sup>102</sup>

Throughout the continent, many countries do not explicitly provide for the rights to a nationality in their constitutions or domestic laws. Nevertheless, Ethiopia and the Republic of South Africa are exceptions. According to Article 36

95 Id. at 7(2).

96 Manby, *supra* note 81, p. 34. See Convention on the Rights of the Child: Declarations and Reservations. [online]. Available at: <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-11&chapter=4&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11&chapter=4&clang=en#EndDec)> Accessed: 14 January 2017.

97 Convention on the Rights of the Child: Declarations and Reservations. [online]. Available at: <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>> Accessed: 14 January 2017. See also SCHABAS, William A. Reservations to the Convention on the Rights of the Child, *Human Rights Quarterly*, 1996, vol. 18, no. 2, pp. 472–491.

98 Convention on the Rights of the Child, *supra* note 93, p. 29.

99 African Charter on the Rights and Welfare of the Child. [online]. Available at: <[http://www.achpr.org/files/instruments/child/achpr\\_instr\\_charterchild\\_eng.pdf](http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf)> Accessed: 14 January 2017.

100 Id.

101 Id. at Art. 6(1–3).

102 Id. at Art. 6(3). As of January 14, 2016, 41 African countries have signed and ratified the ACRWC, 9 states have signed but have not yet ratified the Charter, and 4 states have neither signed nor ratified the Charter. See Ratification Table: African Charter on the Rights and Welfare of the Child. [online]. Available at: <<http://www.achpr.org/instruments/child/ratification/>> Accessed: 14, 2017.

of the Constitution of the Federal Democratic Republic of Ethiopia,<sup>103</sup> “1. Every child has the right: a. To life; b. To a name and nationality.”<sup>104</sup> Similar provisions are made for children in Art. 28 of the Constitution of the Republic of South Africa, 1996.<sup>105</sup> Despite this constitutional guarantee, there are still major issues that have not yet been fully resolved, especially as concerns children who otherwise would be stateless, discrimination against women and girls, and nationality issues involving Ethiopians of Eritrean origin.<sup>106</sup>

While the Constitution of the Republic of South Africa<sup>107</sup> provides for the right of a child to South African nationality, the South African Citizenship Act 88 of 1995<sup>108</sup> (as amended by the South African Citizenship Act, 2010),<sup>109</sup> also provides for citizenship on a *jus soli* basis for any child who “does not have citizenship; or nationality of any other country, or has no right to such citizenship or nationality.”<sup>110</sup>

In The Children Act, the Government of Kenya has provided for the right of a child to a name and nationality.<sup>111</sup> According to Section 11,<sup>112</sup> “Every child shall have a right to a name and nationality and where a child is deprived of his identity the Government shall provide appropriate assistance and protection, with a view to establishing his identity.”<sup>113</sup> Nevertheless, it appears that other laws in Kenya “have not been amended to comply with . . . [the] requirement[s]” of The Children Act.<sup>114</sup> The Kenya Citizenship Act<sup>115</sup> does not guarantee that “every

103 Constitution of the Federal Democratic Republic of Ethiopia, 1994. [online]. Available at: <<http://www.wipo.int/edocs/lexdocs/laws/en/et/et007en.pdf>> Accessed: 14, 2017.

104 Id. at Art. 36(1)(a-b).

105 Constitution of the Republic of South Africa, 1996. [online]. Available at: <<https://www.ru.ac.za/media/rhodesuniversity/content/humanresources/documents/employment-equity/Constitution%20of%20the%20Republic%20of%20South%20Africa%201.pdf>> Accessed: 14 January 2017. According to Art. 28(1)(a), “Every child has the right—(a) to a name and a nationality from birth.”

106 Manby, *supra* note 81, p. 35. See also SOUTHWICK, Katherine. Ethiopia-Eritrea: Statelessness and State Succession. Available at: <<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR32/15-17.pdf>> Accessed: 14 January 2017.

107 Constitution of the Republic of South Africa, *supra* note 105, at Art. 28(1)(a).

108 South African Citizenship Act 88 of 1995. [online]. Available at: <[http://www.saflii.org/za/legis/consol\\_act/saca1995271.pdf](http://www.saflii.org/za/legis/consol_act/saca1995271.pdf)> Accessed: 14 January 2017.

109 South African Citizenship Act, 2010. [online]. Available at: <[http://www.gov.za/sites/www.gov.za/files/a17\\_2010\\_0.pdf](http://www.gov.za/sites/www.gov.za/files/a17_2010_0.pdf)> Accessed: 14 January 2017.

110 South African Citizenship Act, 2010, *supra* note 108, at Art. 2(2)(a).

111 The Children Act (Laws of Kenya), Revised Edition 2010. [online]. Available at: <<http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897d-f7a3223f57ed.pdf>> Accessed: 14 January 2017. (last visited on January 14, 2017).

112 The Children Act (Kenya), *supra* note 111.

113 Id. at Section 11.

114 Manby, *supra* note 81, at 35.

115 The Kenya Citizenship Act (Laws of Kenya), Chapter 170. [online]. Available at: <<http://kenyalaw.org/kl/fileadmin/pdfdownloads/RepealedStatutes/KenyanCitizenshipAct-Cap170.pdf>> Accessed: 14 January 2017

child shall have a right to a name and nationality.”<sup>116</sup> Although Kenya is a State Party to the African Charter on the Rights and Welfare of the Child, Kenya’s new constitution<sup>117</sup> does not guarantee nationality to those who otherwise would be stateless.<sup>118</sup> However, Kenya’s Citizenship Act<sup>119</sup> grants the minister the power to, “in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Kenya.”<sup>120</sup> Nevertheless, as argued by Manby,<sup>121</sup> there is no evidence that the minister has ever used the authority granted him by the law to “cause a minor to be registered as a citizen of Kenya.”<sup>122</sup>

In Tunisia, there are several laws designed to address children’s rights. First, Tunisia’s new constitution<sup>123</sup> has a rather ambiguously phrased provision concerning the rights of children. According to Art. 47, “Dignity, health, care, education and instruction constitute rights guaranteed to the child by his father and mother and by the State. Children are guaranteed the rights of dignity, health, care, education, and teaching from their parents and the state. The State must provide children with all forms of protection without discrimination and in the best interests of the child.”<sup>124</sup> According to the Child Protection Code of the Republic of Tunisia (CPCT),<sup>125</sup> which entered into effect on January 11, 1996, “Every child has the right to an identity from birth. The identity shall consist of name, surname, date of birth and nationality.”<sup>126</sup> The CPCT “covers a wide range of matters related to children’s rights from violence against children to children in conflict with the law.”<sup>127</sup>

116 The Children Act (Kenya), *supra* note 111, at Section 11. See also The Kenya Citizenship Act, *supra* note 115.

117 The Constitution of the Republic of Kenya, 2010. [online]. <<https://www.kenyaembassy.com/pdfs/the%20constitution%20of%20kenya.pdf>> Accessed: 14 January 2017.

118 *Id.*

119 The Kenya Citizenship Act, *supra* note 115.

120 The Kenya Citizenship Act, *supra* note 115, at Section 4(2).

121 Manby, *supra* note 85, p. 35.

122 The Kenya Citizenship Act, *supra* note 115, at Section 4(2).

123 The Constitution of the Republic of Tunisia, 2014 (Republic of Tunisia, National Constituent Assembly, January 27, 2014). [online]. Available at: <<http://www.venice.coe.int/files/Constitution%20TUN%20-%202027012014.pdf>> Accessed: 15 January 2017. The French version can be found at: Constitution de la République Tunisienne, <[http://mjp.univ-perp.fr/constit/tn2014\\_Constitution\\_Tunisienne\\_en\\_date\\_du\\_26-01-2014\\_Version\\_Francaise\\_traduction\\_non\\_officielle\\_Al\\_Bawsala.pdf](http://mjp.univ-perp.fr/constit/tn2014_Constitution_Tunisienne_en_date_du_26-01-2014_Version_Francaise_traduction_non_officielle_Al_Bawsala.pdf)> Accessed: 15 January 2017.

124 *Id.* at Art. 47.

125 Loi No. 95–92 du 9 Novembre 1995, Relative à la Publication du Code de la Protection de l’Enfant, République Tunisienne. [online]. Available at: <<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/42904/64989/F95TUN01.htm>> Accessed: 15 January 2017.

126 *Id.* at Art. 5. The French version is: “Chaque enfant a droit à une identité dès sa naissance. L’identité est constituée du prénom, du nom de famille, de la date de naissance et de la nationalité.”

127 Child Rights International Network (CRIN), Tunisia: National Laws, April 20, 2012. On its website, the CRIN mentions that “[n]o provisions of the Tunisian Constitution specifically mention children or children’s rights.” *Id.* While this is true of the country’s old constitu-

In a recent study, Manby<sup>128</sup> determined that most African countries “do not provide for an explicit right to nationality” and that “only 16 specifically provide in their laws (in accordance with Article 1 of the 1961 Convention on the Reduction of Statelessness) that children born on their territory of stateless parents or who would otherwise be stateless have the right to nationality.”<sup>129</sup> Nevertheless, in these latter countries, the protections against statelessness are quite often not effectively and fully implemented because of various problems, which include, for example, defective or ineffective birth registration procedures and officials who often are not very sympathetic to the plight of stateless people.<sup>130</sup> Of course, one can add to these problems the fact that many bureaucracies in the African countries suffer from significantly high levels of corruption and that rules and regulations are often enforced in a capricious and arbitrary manner, favoring those who are politically connected or are willing and able to bribe members of enforcement agencies.<sup>131</sup>

In a study completed in 2005 on statelessness and its human cost, M. Lynch<sup>132</sup> determined that because Egyptian law only allows fathers to confer nationality or citizenship, children whose mothers are Egyptian citizens but their fathers are alien or non-Egyptian, are automatically stateless.<sup>133</sup> Such stateless children cannot avail themselves of basic public services, such as education in public schools and state universities. In addition, many of these stateless people cannot participate effectively in the labor market since they are not likely to meet the necessary requirements for work permits.<sup>134</sup> Lynch’s study determined that there were “400,000 to more than a million”<sup>135</sup> stateless people in Egypt.

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tion (The Constitution of the Tunisian Republic, 1959 (Constitution of June 1, 1959 as Amended by the Constitutional Act No. 2008–52 of July 28, 2008), the new constitution (The Constitution of the Tunisian Republic, 2014) does mention children and children’s rights. Article 47 is devoted to children and children’s rights. See The Constitution of the Tunisian Republic, 1959 (Constitution of June 1, 1959 as Amended by the Constitutional Act No. 2008–52 of July 28, 2008). [online]. Available at: <<http://corpus.learningpartnership.org/wp-content/uploads/2012/12/Tunisia-Constitution-2008-English.pdf>> Accessed: 15 January 2017 & The Constitution of the Tunisian Republic. [online]. Available at: <[http://www.constitutionnet.org/sites/default/files/2014.01.26\\_-\\_final\\_constitution\\_english\\_idea\\_final.pdf](http://www.constitutionnet.org/sites/default/files/2014.01.26_-_final_constitution_english_idea_final.pdf)> Accessed: 15 January 2017.

128 MANBY, Bronwen. *Citizenship Law in Africa: A Comparative Study*. New York City: Open Society Foundations/African Minds, 2016.

129 Manby, *supra* note 128, pp. 35–36.

130 Manby, *supra* note 128, p. 36.

131 See generally MBAKU, John Mukum. *Corruption in Africa: Causes, Consequences, and Cleanups*. Lanham, Maryland: Lexington Books (examining, inter alia, the prevalence of corruption in many African countries).

132 LYNCH, M. *Lives on Hold: The Human Cost of Statelessness*. Washington, D.C.: Refugees International, 2005. [online]. Available at: <<http://www.refworld.org/docid/47a6ba00.html>> Accessed 15 January 2017.

133 *Id.* at 28.

134 *Id.* at 28.

135 *Id.*

The best and most effective protections for children are those that are based on a *jus soli* law—within such a law, “a person acquires citizenship in a nation by virtue of his birth in that nation or its territorial possessions.”<sup>136</sup> But, how many countries in Africa currently base their citizenship laws on *jus soli*.<sup>137</sup> In a study of citizenship law in Africa, Manby<sup>138</sup> determined that only Chad, Lesotho, and Tanzania currently “base their law on *jus soli* in the first instance (with an exception for the children of diplomats or other state representatives).”<sup>139</sup> Many Civil law countries “have adopted a half measure between requiring descent from a citizen and a *jus soli* rule, by providing either that children born in their territory of noncitizen parents can claim citizenship from birth (‘by origin’ in the civil law usage) if they are still resident there at majority, or that children born in the territory of at least one parent also born there are citizens from birth.”<sup>140</sup>

It is important to note that even in cases where law is based on *jus soli* and a child is granted citizenship by virtue of birth in a nation or its territorial possessions, there may arise problems in practice that make it very difficult for some children who otherwise would be stateless from benefiting from the law. It has been determined, for example, that in the Central African Republic (CAR), children whose births have not been registered or those whose parents are not nationals of the CAR find it very difficult to file a legitimate claim for citizenship.<sup>141</sup> After its study of the right of a child to nationality in the Central African Republic, the UN Committee on the Rights of the Child made the following conclusion: “The Committee is concerned at violations of the right to a nationality for children whose birth has not been registered or for children born in the State party and whose parents are not nationals of the State party. The Committee joins the State party in noting that while children can acquire nationality from age 12, parents who are non-nationals have much greater difficulty in acquiring nationality.”<sup>142</sup>

Under Ugandan law, while children born in the country to parents who are noncitizens can, through application, “be entitled to be registered as a citizen of Uganda,”<sup>143</sup> children of refugees are expressly excluded from benefiting from this

136 LOUCKY, James, ARMSTRONG, Jeanne, ESTRADA, Lawrence J. Immigration in America Today: An Encyclopedia. Westport, Connecticut, 2006, p. 54.

137 Manby, *supra* note 128, p. 36.

138 Manby, *supra* note 128.

139 *Id* at 36.

140 These countries include Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Republic of Congo (Brazzaville), Equatorial Guinea, Gabon, Ghana, Mali, Mauritania, Morocco, Mozambique, Niger, Rwanda, Senegal, Togo, Tunisia, Uganda, and Zambia. Manby, *supra* note 128, p. 36.

141 Manby, *supra* note 128, at 36.

142 UN Committee on the Rights of the Child: Concluding Observations: Central African Republic, CRC/C/15/Add.138, October 18, 2000. [online]. Available at: <<http://www.ref-world.org/country,,CRC,,CAF,3ae6afd60,0.html>> Accessed: 15 January 2017.

143 The Ugandan Citizenship and Immigration Control Act, 1999, Art. 14. <[Published by Palacký University Olomouc, Czech Republic, 2018.](http://citizen-</a></p>
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law.<sup>144</sup> Manby<sup>145</sup> notes that the exclusion of the children of refugees from registering as citizens is especially worrying, given the fact that these are the people who are most vulnerable to statelessness. Of course, because of sectarian violence in neighboring countries (notably in Sudan, South Sudan, Somalia, Rwanda, and the Democratic Republic of Congo) during the last several decades, Uganda has been flooded with large numbers of refugees, many of whom have lived in the country for many years.<sup>146</sup>

Until 2010,<sup>147</sup> South African law had granted citizenship to children born on its soil except if one parent was a diplomat or had not entered the country legally.<sup>148</sup> According to Section 2(2)(a-b) of the South African Citizenship Act, 1995, “No person shall be a South African citizen by virtue of subsection (1)(b) if, at the time of his or her birth, one of his or her parents—(a) was a person enjoying diplomatic immunity in the Republic in terms . . . (b) had not been lawfully admitted to the Republic for permanent residence therein, and his or her other parent was not a South African citizen.”<sup>149</sup>

The South African Citizenship Act, 2010<sup>150</sup> amended Section 2 of the South African Citizenship Act, 1995<sup>151</sup> and replaced Section 2(2)(a-b) with the following: “Any person born in the Republic and who is not a South African citizen by virtue of the provisions of subsection (1) shall be a South African citizen by birth, if—(a) he or she does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality; and (b) his or her birth is registered in the Republic in accordance with the Births and Deaths Reg-

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shiprights4frica.org/wp-content/uploads/2016/02/Uganda\_Citizenship\_and\_Immigration\_Control\_Act\_Cap66\_1999.pdf> Accessed: 15 January 2017.

144 *Id.* According to Art. 14(a)(i–ii), “Every person born in Uganda—(a) at the time of whose birth—(i) neither of his or her parents and none of his or her grandparents had diplomatic status in Uganda; and (ii) neither of his or her parents and none of his or her grandparents was a refugee in Uganda; . . . shall, on application, be entitled to be registered as a citizen of Uganda.”

145 Manby, *supra* note 128, p. 36.

146 See generally Gingyera-Pinywa, A. G. G. *Uganda and the Problem of Refugees*. Kampala, Uganda: Makerere University Press, 1998; MUSHEMEZA, Elijah Dicens. *The Politics and Empowerment of Banyarwanda Refugees in Uganda, 1959–2001*. Kampala, Uganda: Fountain Publishers, 2007; HOLLENBACK, S. J. (ed.). *Refugee Rights: Ethics, Advocacy, and Africa*. Washington, D.C.: Georgetown University Press, 2008; OTUNNU, Ogenga. *Crisis of Legitimacy and Political Violence in Uganda, 1890–1979*. New York City: Springer, 2016. See also OTUNNU, Ogenga. *Crisis of Legitimacy and Political Violence in Uganda, 1979 to 2016*, New York City: Springer, 2016.

147 In 2010, the South African Citizenship Act, 1995 (No. 88 of 1995), G16751, was amended by the South African Citizenship Act, No. 17.

148 South Africa Citizenship Act, 1995. [online]. Available at: <[http://www.saflii.org/za/legis/num\\_act/saca1995271/](http://www.saflii.org/za/legis/num_act/saca1995271/)> Accessed: 16 January 2017.

149 *Id.* at Sect. 2(2)(a-b).

150 South Africa Citizenship Act, 2010. [online]. Available at: <[http://www.gov.za/sites/www.gov.za/files/a17\\_2010\\_0.pdf](http://www.gov.za/sites/www.gov.za/files/a17_2010_0.pdf)> Accessed: 16 January 2017.

151 South Africa Citizenship Act, 1995, *supra* note 148.



istration Act, 1992 (Act No. 51 of 1992).<sup>152</sup> The 2010 amendments to the South African Citizenship Act, *inter alia*, eliminate the provision that children born on South African soil to diplomats or parents who did not enter South Africa legally cannot be citizens.<sup>153</sup>

#### 4 Citizenship, Discrimination, and Political Participation in Africa

Since the colonial period in Africa, governments have used the concept of citizenship as a tool to gain advantage over their perceived or real political “enemies.” For example, in apartheid South Africa, the white-dominated government, through the Population Registration Act No. 30 of 1950,<sup>154</sup> created categories of citizenship that were based exclusively on race. The new law was supposed to enhance the ability of the white-dominated government to fully implement its policy of apartheid. Specifically, the Act required that each person resident in South Africa be classified and registered based on or in accordance with that person’s *racial characteristics*.<sup>155</sup> In doing so, the government effectively created a citizenship system in which whites or South Africans of European ancestry enjoyed superior and more secure and stable citizenship rights while individuals belonging to various African ethnocultural groups were subjected to the most

152 South Africa Citizenship Act, 2010, *supra* note 150.

153 See South Africa Citizenship Act, 1995, *supra* note 148 & South Africa Citizenship Act, 2010, *supra* note 150. For further discussion on citizenship law in other African countries, see generally Manby, Bronwen. *Citizenship Law in South Africa: A Comparative Study*. New York City: Open Society Foundations/African Minds, 2016; DORMAN, Sara, HAMMETT, Daniel, NUGENT, Paul (eds.). *Making Nations, Creating Strangers: States and Citizenship in Africa*. Leiden, The Netherlands: Brill, 2007; KELLER, Edmond J. *Identity, Citizenship, and Political Conflict in Africa*. Bloomington, Indiana: Indiana University Press, 2014.

154 See, e.g., van der Walt, Gerrit (ed.). *Municipal Management: Serving the People*. Cape Town, South Africa: Juta & Company, 2007; SELLSTRÖM, Tor. *Sweden and National Liberation in Southern Africa, Volume I: Formation of a Popular Opinion 1950–1970*. Uppsala: Nordiska Afrikaninstitutet, 1999; Government of South Africa. *Population Registration Act No. 30 of 1950*. [online]. Available at: <<http://www.sahistory.org.za/archive/population-registration-act%2C-act-no-30-of-1950>> Accessed: 11 September 2017.

155 These characteristics were determined by the government. The law identified three main racial classifications—Black, White, and Colored. Descendants of immigrants from British India, who were considered by the white government as having no historical right of residency in the country, were later added as a racial category. In addition, there existed, within the two categories of Colored and Indian, subgroups, which included Cape Colored, Malay, Griqua, Chinese, Indian, Other Colored, and Other Indian. The Population Registration Act 1950 worked with other legislative acts to promote the goals of apartheid. For example, the Prohibition of Mixed Marriages Act of 1949 made it illegal for a white person to marry a person of another race. Of course, in order to enforce this law, there was need to define who a white person was and hence, the need for the Population Registration Act 1950. The Population Registration Act was repealed in 1991 as part of the effort to get rid of apartheid-era laws. See GOVERNMENT OF SOUTH AFRICA. *Population Registration Act No. 114 of 1991*. [online]. Available at: <<https://www.gov.za/sites/www.gov.za/files/Act%20114%20of%201991.pdf>> Accessed: 11 September 2017.

insecure and disadvantaged form of citizenship. In fact, under apartheid laws, many black South Africans actually lost their citizenship and became foreigners in the country of their birth.<sup>156</sup> The so-called Bantustan policy, which the United Nations called “a fantasy and a fraud,”<sup>157</sup> effectively created so-called “independent homelands” and pushed many African groups into what were essentially barren wastelands, which were incapable of economically supporting even small groups of individuals. As argued at the time by many economists and legal scholars, “[w]hites occupy the best farm and pasture lands, and the mines, while the Bantustans are discontinuous wastelands with few resources, no industrial cities, and no seaports.”<sup>158</sup> Of course, in addition to the fact that many African groups were essentially pushed into economically nonviable lands, they also lost their South African citizenship and hence, were no longer able to participate in and benefit from a robust and dynamic economy.<sup>159</sup>

Apartheid South Africa, of course, was not the only country in Africa whose politicians manipulated citizenship laws to gain political and economic advantage or punish their opponents. For example, in Zambia in 1996, the Movement for Multi-Party Democracy (MMD) government enacted a new constitution that effectively abrogated the citizenship of several politicians, including that of the former president of Zambia, Kenneth Kaunda.<sup>160</sup> According to the Constitution of Zambia, 1996, “A person shall be qualified to be a candidate for election as President if—(a) he is a citizen of Zambia; (b) both his parents are Zambian by birth or descent.”<sup>161</sup> The provisions of the Zambian constitution, which was amended in 1996, can be compared to those of the 1991 Constitution of Zambia. The 1991 constitution did not mention anything about the citizenship of the parents of a candidate for the presidency. Article 34 (Election of President) of the 1991 Constitution of Zambia states as follows: “(3) A person shall be qualified to be a candidate for election as President if he: (a) is a citizen of Zambia; (b) has attained the age of thirty-five years; (c) is a member of, or is sponsored by,

156 See generally GARDNER, John. *Politicians and Apartheid: Trailing in the People's Wake*. Pretoria, South Africa: Human Sciences Research Council (HSRC), 1997.

157 UNITED NATIONS. *Bantustan Policy: A Fantasy and a Fraud*. New York City: United Nations, 1971; SOUTH AFRICA DEMOCRACY EDUCATION TRUST. *The Road to Democracy in South Africa: 1970–1980*. Pretoria, South Africa: Unisa Press, 2004.

158 DAVIS, F. James. *Who is Black? One Nation's Definition*. College Park, Pennsylvania: The Pennsylvania State University Press, 2010, p. 93.

159 BUTLER, Jeffrey, ROTBERG, Robert I., ADAMS, John. *The Black Homelands of South Africa: The Political and Economic Development of Bophuthatswana and KwaZulu*. Berkeley and Los Angeles, California: The University of California Press, 1977.

160 See, e.g., KOHN, Sebastian. *Abusing Citizenship in Zambia—Again*. Voices, 17 October 2011. [online]. Available at: <<https://www.opensocietyfoundations.org/voices/abusing-citizenship-zambia-again>> Accessed: 12 September 2017.

161 GOVERNMENT OF ZAMBIA. *Constitution of Zambia 1996 (As amended by Act No. 17 of 1996)*, ART. 34(3)(a-b). [online]. Available at: <<https://aceproject.org/ero-en/regions/africa/ZM/Constitution%20of%20Zambia%201996.pdf/>> Accessed: 12 September 2017.

a political party; and (d) is otherwise qualified to be elected as a member of the National Assembly.”<sup>162</sup>

Many Zambians believed that the constitutional changes implemented by the MMD government of President Frederick J. Chiluba were designed to frustrate the ability of former president Kaunda to return to power. Kenneth Kaunda, or KK, as he was generally known, had led the country to independence from Great Britain in 1964 and had served as president until he was ousted by Chiluba and the MMD through democratic elections in 1991. In 1996, Kaunda, whose parents were born in Nyasaland (now Malawi), was attempting to return to power when the MMD changed the constitution to invalidate his candidacy.

While colonialism<sup>163</sup> and the apartheid regime in South Africa<sup>164</sup> are usually the governmental structures that most people associate with various forms of discrimination in Africa, it is important to understand that even in post-independence Africa, many countries continue to pursue citizenship laws that discriminate against people either on racial and/or ethnocultural basis. Liberia’s 1986 constitution specifically limits citizenship by birth and naturalization “only to persons who are Negroes or of Negro descent.”<sup>165</sup> The justification given for this extremely restrictive law is that it would “foster and maintain the positive Liberian culture, values and character.”<sup>166</sup> Art. 22 further places restrictions on the ownership of real property—“only Liberian citizens shall have the right to own real property within the Republic [of Liberia].”<sup>167</sup>

162 Government of Zambia. Constitution of Zambia (Adopted on 24 August 1991), Article 34(3). [online]. Available at: <<http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004847.pdf>> Accessed: 12 September 2017.

163 See generally BOAHEN, A. Adu (ed.). *General History of Africa VII: Africa Under Colonial Domination 1880–1935*. London: James Currey, 1990; PARSONS, Timothy H. *Race, Resistance, and the Boy Scout Movement in British Colonial Africa*. Athens, Ohio: Ohio University Press, 2004; Jerónimo, Miguel Bandeira, PINTO, António Costa (eds.). *The Ends of European Colonial Empires: Cases and Comparisons*. New York City: Palgrave Macmillan, 2016.

164 For an overview of racial discrimination in South Africa, see generally MAYLAM, Paul. *South Africa’s Racial Past: The History and Historiography of Racism, Segregation, and Apartheid*. New York City: Routledge, 2001; DUBOW, Saul. *Scientific Racism in Modern South Africa*. Cambridge, UK: Cambridge University Press, 1995; FREDRICKSON, George M. *White Supremacy: A Comparative Study in American & South African History*. Oxford, UK: Oxford University Press, 1981.

165 Art. 27(b), Constitution of the Republic of Liberia, 1986. [online]. Available at: <<http://www.tlcafrica.com/constitution-1986.htm>> Accessed: 16 January 2017.

166 *Id.*

167 *Id.* at Art. 22. The 1986 constitution replaced the Liberian Constitution of 1847, which had been in force since the country came into being in 1947. On August 17, 2010, Liberia’s legislature proposed four amendments to the constitution, none of which dealt with Articles 22 and 27. All four amendments were rejected by voters.

Sierra Leone's Citizenship Act, 1973<sup>168</sup> restricts Sierra Leonean citizenship by birth only to people of "negro African descent."<sup>169</sup> The Sierra Leone Citizenship Act, 1973 was amended by the Sierra Leone Citizenship (Amendment) Act, 2006<sup>170</sup> and Section 2(a-b) was replaced by: "Provided that his father, mother or any of his grand parents was born in Sierra Leone and is or was a person of Negro African descent."<sup>171</sup> Thus, the requirement that a child be of "Negro African descent" in order to acquire Sierra Leonean citizenship by birth remains valid.<sup>172</sup>

Although other African countries also have racial preferences, there are not as restrictive as those provided in Liberian and Sierra Leonean laws. For example, Malawi's Citizenship Act, 1966 states that "Every person born in Malawi after the 5th day of July, 1966 shall become a citizen of Malawi on the date of his birth if one of his parents is a citizen of Malawi and is a person of African race."<sup>173</sup> The Malawi Citizenship Act, 1966 was amended by the Malawi Citizenship Act 1992 and the phrase "as is a person of African race" deleted from Section 4(1).<sup>174</sup>

Nigeria's 1999 (post-military rule) constitution emphasizes ethnicity in the acquisition of citizenship by birth.<sup>175</sup> According to Art. 25(1)(a), the following persons are citizens of Nigeria by birth—namely—"every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria."<sup>176</sup> As we will see later in this article, the infusion of indigeneity into Nigeria's citizenship law has created significant problems for the mobility of human capital and economic development within the country.<sup>177</sup> Although the Nigerian constitu-

168 Sierra Leone Citizenship Act, 1973. [online]. Available at: <<http://www.refworld.org/docid/3ae6b50610.html>> Accessed: 16 January 2017.

169 Id. at Sect. 2(b).

170 Sierra Leone Citizenship (Amendment) Act, 2006. [online]. Available at: <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=481596b42&page=search>> Accessed: 16 January 2017.

171 Id. at Amendment No. 3.

172 Id.

173 Section 4(1), Malawi Citizenship Act, 1966. Available at: <<http://www.malawilii.org/mw/legislation/act/1966/28>> Accessed: 16 January 2017.

174 Malawi Citizenship Act 1992. [online]. Available at: <<http://citizenshiprightsafrika.org/malawi-citizenship-act-1996-as-amended-1992/>> Accessed: 16 January 2017.

175 Constitution of the Federal Republic of Nigeria, 1999. Available at: <<http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>> Accessed: 16 January 2017.

176 Id. at Art. 25(1)(a).

177 See, e.g., Human Rights Watch, "They Do Not Own This Place": Government Discrimination Against 'Non-Indigenes in Nigeria', Human Rights Watch, 2006, vol. 18, no. 3A. [online]. Available at: <<https://www.hrw.org/sites/default/files/reports/nigeria0406webwcover.pdf>> Accessed: 16 January 2017; KIMENYI, Mwangi S., MBAKU, John. Elections and Violence in Nigeria: The Question of Citizenship in Sub-Saharan Africa, The Brookings Institution. [online]. Available at: <<https://www.brookings.edu/opinions/elections-and-violence-in-nigeria-the-question-of-citizenship-in-sub-saharan-africa/>> Accessed: 16 January 2017.

tion guarantees all citizens the right to move freely and engage in both political and economic activities in all sections of the country,<sup>178</sup> this is not true in practice—government practices in both the economic and political sphere, grant preference to so-called “indigenes” or “native sons” or “sons of the soil,” a process that effectively brings indigeneity into play in the administration of the country’s citizenship rules.<sup>179</sup>

## 5 Differentiated Citizenship and Its Impact on Nation-Building

### 5.1 Introduction

African leaders, such as South Africa’s Nelson Mandela<sup>180</sup> and Tanzania’s Julius Nyerere,<sup>181</sup> as well as Ghana’s Kwame Nkrumah,<sup>182</sup> have argued that any

178 Section 4(1) of the Constitution of Nigeria states that “[e]very citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.” Constitution of the Federal Republic of Nigeria, *supra* note 175.

179 See Kimenyi and Mbaku, *supra* note 177 & TAIWO, Olufemi. Of Citizens and Citizenship. In AKIBÁ, Okon (ed.). *Constitutionalism and Society in Africa*. Aldershot, UK: Ashgate, 2004, p. 55.

180 While Mandela’s vision for a South African citizenship, based, not on race or ethnicity, but on a belief in equality for all peoples before the law, is fully articulated in his well-celebrated autobiography—Mandela, Nelson. *Long Walk to Freedom: The Autobiography of Nelson Mandela*. New York City: Little, Brown and Company, 2008—a more poignant articulation was presented in 1964 before the Pretoria Supreme Court where he was being tried for treason in relation to his anti-apartheid activities. See MANDELA, Nelson. Nelson Mandela, I am Prepared to Die: Nelson Mandela’s Statement at the Opening of the Defense Case in the Rivonia Trial, Pretoria Supreme Court, April 20, 1964. [online]. Available at: <<http://www.historyplace.com/speeches/mandela.htm>> Accessed: 4 January 2017. He declared as follows: “During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die.” Mandela, *id.*

181 See generally NYERERE, Julius K. *Freedom and Unity: Uhuru Na Umoja*. Dar es Salaam, Tanzania: Oxford University Press, 1966. In seeking to create a single political and economic entity devoid of references to ethnicity, Nyerere also discouraged the formation of political parties based on ethnic groups. In arguing against political parties based on ethnicity, Nyerere stated that “where there is one party, and that party is identified with the nation as a whole, the foundations of democracy are firmer than they can ever be where you have two or more parties, each representing only a section of the community.” Quoted in DECALO, Samuel. *The Process, Prospects and Constraints of Democratization in Africa*. African Affairs, 1992, vol. 91, no. 362, pp. 7–35.

182 Dr. Kwame Nkrumah, Ghana’s first president, was one of the founding fathers of the Organization of African Unity, which sought to create a unified Africa where ethnicity and religion would not stand in the way of unity. He was also a leading figure in the pan-African movement. See generally HARRIS, Gordon. *The Organization of African Unity*. Oxford, UK: CLIO Press, 1994; POE, Daryl Ziwe. *Kwame Nkrumah’s Contribution to Pan-Africanism: An Afro-*

form of differentiated citizenship within their respective countries would create major barriers to nation building and national integration. Mandela was quite aware of the nature of the apartheid regime, whose foundation was built on a differentiated citizenship hierarchy in which Africans were effectively pushed to the economic and political periphery, serving essentially as instruments for the maximization of the objectives of white groups<sup>183</sup>—Afrikaners and whites of English origin. Apartheid was a system based on white supremacy and permanent African inferiority in all fields of endeavor.

Both Nkrumah and Nyerere lived through European colonial practices that infantilized Africans. Within the colonial governance architecture, citizenship rights were granted based on whether one was European or indigene (or native)—the latter expressions were reserved exclusively for Africans. Europeans enjoyed significantly superior citizenship rights than those available to the various ethnocultural groups that inhabited the colonies. In fact, in many African colonies (e.g., in the French colonies in West and Central Africa), Europeans enjoyed the rights of “free persons” (e.g., their marriages were recognized by law; and their property could not be seized without due process of law) while Africans were infantilized and subjected to various forms of exploitation and an

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centric Analysis. London, UK: Routledge, 2004; MAILLU, David G. Kwame Nkrumah: Passionate Pan-Africanist. Nairobi, Kenya: Sasa Sema Publications, 2007; ANSAH-KOI, Kumi. The Pan-Africanist Thought of Kwame Nkrumah. Legon, Accra, Ghana: Institute of African Studies, University of Ghana, 1985; QUIST-ADADE, Charles, DODOO, Vincent. Africa's Many Divides and Africa's Future: Pursuing Nkrumah's Vision of Pan-Africanism in an Era of Globalization. Newcastle upon Tyne, UK: Cambridge Scholars Publishing, 2015.

- 183 Of all the apartheid policies, none of them more effectively illustrates the subordination of Africans to “economic tools” in the service of white economic interests than the so-called “civilized labor policy,” which was introduced into the country through several pieces of legislation, beginning with the Mines and Works Act of 1911 (amended in 1912 and 1926). For a fuller discussion of the civilized labor policy, see DOXEY, George V. *The Industrial Color Bar*. New York City: Greenwood Press, 1961 & HUTT, William H. *The Economics of the Color Bar*. London, UK: The Institute of Economic Affairs, Limited, 1964.



inferior legal status.<sup>184</sup> British Africa also had legal systems specifically designed to deal with “natives.”<sup>185</sup>

The struggle to effectively manage diversity has been a problem in many African countries since independence. Yet, in the last few decades, sectarian violence, induced by groups that want to capture the apparatus of government as a way to minimize their further marginalization,<sup>186</sup> or exit the polity and form their own sovereign nation,<sup>187</sup> or simply express dissatisfaction at the functioning

184 Within the French colonies, “natives” or “sujets” were subjected to an inferior legal status under the Code de l’indigénat. Under this legal system, for example, Africans were subjected to forced labor. In addition, any “white man” was allowed to impose punishment on “natives” for various code infractions, which were grouped under 34 headings and included “disrespect of France, its national symbols, or functionaries.” For more on the indigénat and its use in French colonies in Africa, see generally CROWDER, Michael. *Indirect Rule: French and British Style. Africa: Journal of the International African Institute*, 1964, vol. 34, no. 3, pp. 197–205; STEELE, Murray. *Algeria: Government and Administration, 1830–1914*. In SHILLINGTON, Kevin (ed.). *Encyclopedia of African History*. New York: Fitzroy Dearborn, 2005, p. 51; SURET-CANAL, Jean. *French Colonialism in Tropical Africa, 1900–1945*. New York: Pica Press, 1971, pp. 331–341; CROWDER, Micheal. *Colonial West Africa: Collected Essays*. New York City: Routledge, 1978; MANNING, Patrick. *Franco-phone sub-Saharan Africa 1880–1985*. Cambridge, UK: Cambridge University Press, 1988, pp. 50–56; KLEIN, Martin. *Slavery and Colonial Rule in French West Africa*. Cambridge, UK: Cambridge University Press, 1998, pp. 208–213.

185 For an introduction to native courts in British Africa, see generally LEWIN, Julius. *Native Courts and British Justice in Africa. Journal of the International African Institute*, 1944, vol. 14, no. 8, pp. 448–453. Note that in the Union of South Africa and to a certain extent, other British colonies with significant populations of European settlers (e.g., Southern Rhodesia), there were actually two types of native courts—Native Commissioner’s Court and Chiefs’ courts. The Native Commissioner’s Court was always headed by a European and he was allowed to apply either the Common Law (i.e., European law) or Native law. Chiefs’ courts were limited to the application of Native law only and these were similar to the Native courts found in British colonies in West Africa. See also ARNOT, Raymond H. *The Judicial System of the British Colonies. Yale Law Journal*, 1907, vol. 16, no. 7, pp. 504–513; GOCKING, Roger. *British Justice and the Native Tribunals of the Southern Gold Coast Colony. The Journal of African History*, 1993, vol. 34, no. 1, pp. 93–113.

186 Examples include the Christian-dominated anti-balaka and the Muslim-dominated Séléka rebel groups in Central African Republic, who since 2013, have been fighting to capture and control the central government in Bangui; The Sudan People’s Liberation Movement-in-Opposition (SPLM-IO), which is dominated by the Nuer ethnocultural group and led by Riek Machar and the Sudan People’s Liberation Movement (SPLM), which is dominated by the Dinka ethnic group and led by Salva Kiir. For an overview of the civil war in Central African Republic, see generally BAPTISTE, Nathalie & Foreign Policy in Focus. *The Central African Republic’s Forgotten Crisis. The Nation (New York)*, September 11, 2014. [online]. Available at: <<https://www.thenation.com/article/central-african-republics-forgotten-crisis/>> Accessed: 5 January 2017.

187 Within Nigeria, there are several groups, which collectively are referred to as Indigenous People of Biafra, who want to seceded from Nigeria and form their own independent country. See, e.g., GAFFEY, Conor. *What is Biafra and Why are Some Nigerians Calling for Independence? Newsweek*, December 7, 2015. [online]. Available at: <<http://www.newsweek.com/what-biafra-and-why-are-some-nigerians-calling-independence-401164>>



of their country's political system, has increased significantly.<sup>188</sup> The challenge for these and other African countries is how to undertake national integration and nation building and provide all citizens (and groups) with the opportunity for self-actualization but at the same time, provide the wherewithal for all diverse groups within each of these countries to maintain their cultural identity. In other words, how can political leaders bring all the various groups that inhabit their countries together, cultivate a sense of community, of purpose, and of a common national citizenship (with equality before the law), minimize the spread of inter-group conflict, mistrust and hatred, and yet not engage in practices that deprive these groups of their cultural identities?

### *5.2 Three Forms of Group-Differentiated Citizenship*

In a discussion of diversity management in Canada, Kymlicka<sup>189</sup> identified three forms of differentiated citizenship that have been designed to accommodate the country's officially recognized "ethnic and national differences." These are (1) self-government rights; (2) polyethnic rights; and (3) special representation rights. As argued by Kymlicka, Canada's "Aboriginal peoples" and the "Québécois" consider themselves "nations" that deserve the right of "self-determination."<sup>190</sup> These groups have demanded that they be granted "certain powers of self-government that they say were not relinquished by their (initially involuntary) federation into the larger Canadian state."<sup>191</sup> They demand the right to govern themselves in certain areas that are very important to the maintenance of their cultures and traditions. Those who support self-government rights for French Canadians (i.e., the Québécois) believe federalism is the appropriate mechanism through which this can be actualized.

Many countries in Africa, for example, Cameroon and Nigeria, are, like Canada, multinationals. Within these countries, there are groups that consider themselves nations (e.g., the Anglophones of Cameroon; the Igbo of Nigeria) and who argue that they want to restore certain powers of self-government that were tak-

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Accessed: 5 January 2017.

188 Examples include post-election violence in Gabon (2015) (see, Bacon, John 1,000 Arrested in Post-Election Violence in Gabon. USA Today, September 1, 2016. [online]. Available at: <<http://www.usatoday.com/story/news/world/2016/09/01/1000-arrested-post-election-violence-gabon/89716046/>> Accessed: 5 January 2017; Kenya (2001–2008) (see Center for Strategic & International Studies (Washington, D.C.). Post-Election Violence in Kenya and Its Aftermath, August 11, 2009. [online]. Available at: <<https://www.csis.org/blogs/smart-global-health/post-election-violence-kenya-and-its-aftermath>> Accessed: 5 January 2017.

189 KYMLICKA, W. Three Forms of Group-Differentiated Citizenship in Canada. In Benhabid, S. (ed.). *Democracy and Difference: Contesting Boundaries of the Political*. Princeton, New Jersey: Princeton University Press, 1996, pp. 153–170.

190 KYMLICKA, supra note 189, p. 155.

191 KYMLICKA, supra note 189, p. 155.

en away from them when they were involuntarily incorporated into what were European colonies.<sup>192</sup>

Kymlicka distinguishes between “self-government rights” and “polyethnic rights.”<sup>193</sup> He states that “[l]ike self-government rights, [polyethnic] rights are not seen as temporary, because the cultural differences they protect are not something we seek to eliminate.”<sup>194</sup> He argues further that “unlike self-government rights, polyethnic rights are usually intended to promote integration into the larger society, not self-government.”<sup>195</sup> Seen in this light, then, polyethnic rights are more likely, than self-government rights, to promote national integration, nation-building and hence, the realization of a common national citizenship. While the various ethnocultural groups within a polity (e.g., Nigeria, Cameroon, South Sudan) can be granted polyethnic rights so that they can maintain their unique cultural practices, this will take place within the larger community called the nation.<sup>196</sup>

There are significant differences between ethnocultural groups when it comes to the types of rights that each is demanding from their governments. First, some ethnocultural groups do not seek assimilation and integration into their existing polities. As a consequence, they do not demand either self-government rights or polyethnic rights. Instead, they seek secession and the formation of their own independent and sovereign polity with an internationally recognized identity—this is the desire of the Southern Cameroons National Council, which is advocating for the complete independence of the Anglophone Regions of the Republic of Cameroon. These militants want to resurrect the now defunct UN Trust Territory of Southern Cameroons and transform it into an independent

192 In fact, in the mid-1960s, the Igbo, under the leadership of Col. Odumegwu Ojukwu, attempted to secede from the Federation of Nigeria and form their own sovereign nation called Biafra. This secessionist effort, on the part of the Igbos and several other ethnocultural groups in Eastern Nigeria, produced a bloody civil war that lasted from 1967 to 1970. See, e.g., JOWETT, Philip S. *Modern African Wars (5): The Nigerian Biafran War 1967–70*. New York: Bloomsbury Publishing, 2016.

193 KYMLICKA, *supra* note 189, p. 156.

194 KYMLICKA, *supra* note 189, p. 156.

195 KYMLICKA, *supra* note 189, pp. 156–157.

196 Even in a country, such as France, that goes to extraordinary lengths to guard its national identity, the government has granted many subcultures the right to maintain their languages and cultures, but do so while remaining strongly faithful to the concept of a French nation and citizenship. For example, the Bretons, who live in the Brittany region of France, and trace their origins to settlers from southwestern Great Britain from the third to the ninth century, are quite proud of their language (Breton) and culture—the government in Paris has allowed them to promote their cultural values, but do so within the “French cultural ideal.” The Félibrige movement, founded on May 21, 1854, worked exclusively to promote the regional language called Occitan. Frédéric Mistral won the Nobel Prize in literature in 1905 for his writings in Occitan. See, e.g., WRIGHT, Julian. *The Regionalist Movement in France, 1890–1914: Jean Charles-Brun and French Political Thought*. Oxford, UK: Oxford University Press, 2003.

country, separate from the present Republic of Cameroon. Anglophone secessionists have made it clear that they no longer want citizenship in the Republic of Cameroon.<sup>197</sup>

Second, some groups want to remain within their existing polities, work for a federal system of government, which enhances nation-building and national integration, but at the same time, provides them with the wherewithal to practice their culture and customs. These groups seek self-government rights. They desire a constitutional order that grants them control over certain issues that are important to the maintenance of their cultural identity. This is the desire of the so-called “federalist” Anglophones of Cameroon, as well as that of many other ethnocultural groups throughout the continent (e.g., the Zulus of South Africa; the Oromo of Ethiopia, although some so-called “radical” Oromo have shown a preference for the formation of a “greater-Oromo-nation that brings together Oromo from Ethiopia, Kenya, Somalia to form an independent country, separate from Ethiopia; and the Igbo of Nigeria).

Finally, many individuals and groups that seek to improve the welfare of ethnocultural groups in Africa have argued that instead of forcing these groups to choose between “secession” and “self-government rights,” it might be possible to create “special representation rights” for these groups. Under the “special representation rights” approach, the country would have one common citizenship but minority groups would be granted certain political rights. For example, a type of “proportional representation” rule can be adopted for membership in the upper legislative chamber (i.e., the Senate), effectively reserving a certain number of seats for members of heretofore marginalized and deprived groups. Representation in the lower legislative chamber, however, would be based on population.

In many African countries today, a lot of minority ethnocultural groups continue to be excluded from fully participating in their countries’ political and economic markets. This has been due primarily to many factors, one of which is the failure of these groups to acquire competency in the official language of the country—English in the former UK colonies; French in the former French and Belgian colonies; etc. In addition, extremely high levels of poverty among these groups, as well as impunity by ruling elites, have generally conspired to keep many minority ethnocultural groups out of national politics—these groups have usually been underrepresented in the legislature and other national decision-making bodies. In order to prevent these minority ethnic groups from engaging in violent and destructive mobilization as a way to improve their political participation, it has been argued that they be granted special representation rights.

Since the 1950s and the 1960s, when the African colonies began to gain independence, the new countries have undertaken constitutional reforms, suppos-

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197 See, e.g., NFOR, N. Nfor. *In Chains for My Country: Crusading for the British Southern Cameroons*. Bamenda, Cameroon: Langaa Research & Publishing CIG, 2014.

edly in an effort to deal with the representation of minorities in government. Unfortunately, most of these reform efforts have been elite-driven, non-participatory and not inclusive, and hence, have not been representative enough to include many of the historically marginalized peoples and groups. These reforms have usually failed to produce institutional mechanisms that can improve opportunities for participation for minority ethnocultural groups.

While members of several ethnocultural groups in Africa continue to push for secession, it is important to note that the majority of groups actually wish to stay within their existing polities. Although these groups want to maintain and safeguard their cultural identities, they also want to belong to and be included in the larger economic, social, and political society, and through that process of integration, benefit from the fruits of wealth creation and economic growth. As much as they want to maintain their unique identity, they want to do so, not by living separately from the rest of the country, but by maintaining their citizenship within the larger community called the nation and yet, securing within the country some geographic area within which they can practice values that are unique to them. One way to achieve that goal is to provide these groups with special representation rights.<sup>198</sup>

As argued by many social scientists,<sup>199</sup> one can see the “right to special representation . . . as an extension of the familiar idea of guaranteeing special representation for underrepresented regions.”<sup>200</sup> In many countries, including, for example, Canada, such a process is believed to promote “both participation and fairness, and hence integration.”<sup>201</sup> One can argue similarly in the case of minority groups in the African countries, that seeking legal ways to provide and guarantee these groups special representation rights is fair, greatly enhances their ability to participate in both political and economic markets, and actually promotes national integration and nation building. The problem is that although the impetus to special representation rights is integration and not secession or separation, it is becoming quite difficult to determine which groups actually qualify for and deserve special representation rights.

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198 Of course, as discussed earlier, there are groups within many African countries that do not wish to remain citizens of the countries within which they currently live. They want to exit and form their own sovereign nations. The Anglophones of Cameroon, for example, have expressed a desire to leave the Republic of Cameroon and form their own country. See, e.g., KONINGS, Piet, NYAMNJOH, Francis Beng. *Negotiating an Anglophone Identity: A Study of the Politics of Recognition and Representation in Cameroon*. Leiden, The Netherlands: Brill, 2003.

199 See, e.g., Kymlicka, Will. *Three Forms of Group-Differentiated Citizenship in Canada*. In Benhabib, Seyla (ed.). *Democracy and Difference: Contesting Boundaries of the Political*. Princeton, New Jersey: Princeton University Press, pp. 153–170.

200 Kymlicka, *supra* note 199, p. 162.

201 Kymlicka, *supra* note 199, p. 162.

Demands for self-government rights, it is argued, unlike representation and polyethnic rights, many not serve an integrative function. For one thing, while representation and polyethnic rights seek existence within the existing polity, as well as opportunities to participate and contribute to the health and well-being of the polity, groups seeking self-government rights want to weaken their bonds with the larger political community and, to a certain extent, “question [the] very nature, authority, and permanence” of that larger political community.<sup>202</sup>

Self-government rights, argues Kymlicka,<sup>203</sup> “are the most complete case of differentiated citizenship, since they divide people into separate ‘peoples,’ each with its own historic rights, territories, and powers of self-government, and each, therefore, with its own political community.”<sup>204</sup>

One major problem that countries in Africa face, with respect to self-government rights, is the fact that once granted to a group, there is a chance that its leaders would continue to demand increases in that autonomy, creating a situation that could effectively lead, perhaps, in the future, to demands for separation and independence. Hence, where groups continuously insist on or demand that their national governments grant them powers of self-government, these multiplication states are likely to be inherently unstable. It was partly for this reason that leaders such as Julius Nyerere (of Tanzania) and Ahmadou Ahidjo (of Cameroon) favored unitary political systems based on a common citizenship strategy in which ethnic pluralism would be subsumed under the banner of nation-building, national integration, and the formation of a single national identity.<sup>205</sup>

Of the three types of differentiated citizenship examined in this section of the paper, one can consider self-government rights as posing the greatest threat to social, political and economic stability in the African countries. Of course, as argued by Kymlicka,<sup>206</sup> in the case of Canada, “the denial of self-government rights is also likely to threaten social unity, by encouraging resentment and even secession.”<sup>207</sup> In fact, as part of the justification for the attempt to secede from what was then the Federation of Nigeria and form their own independent polity called Biafra, many of the ethnocultural groups that supported this idea argued that they had been denied the right of self-determination within the Nigerian polity (i.e., the Federation).<sup>208</sup>

202 Kymlicka, *supra* note 199, p. 163.

203 Kymlicka, *supra* note 199.

204 *Id.* at 163.

205 For the political philosophies of Ahidjo and Nyerere, see generally AHIDJO, Ahmadou. *The Political Philosophy of Ahmadou Ahidjo*, 1958–’68. Yaoundé, Cameroon: Political Bureau of the Cameroon National Union, 1968 & NYERERE, Julius K. *Freedom and Unity: Uhuru Na Umoja*. Dar es Salaam, Tanzania: Oxford University Press, 1966.

206 Kymlicka, *supra* note 199.

207 *Id.* at p. 164.

208 See, e.g., OJUKWU, Col. Emeka. *The Ahiara Declaration: The Principles of the Biafran Revolution*. [online]. Available at: <[http://www.biafraland.com/ahiara\\_declaration\\_1969](http://www.biafraland.com/ahiara_declaration_1969)>.

Managing difference effectively and enhancing peaceful coexistence and development continue to challenge governance in virtually all African countries. The question is: Should African countries, faced with diversity, opt for the Canadian model, which has allowed the country to manage diversity and maintain peaceful coexistence and achieve extremely high levels of human development during the last 125 years? Or, should these countries adopt the model of the American Republic, which despite some significant failures (e.g., slavery, the civil war, Jim Crow) has also made significant achievements in human development? The answer, of course, is not for Africans to import any model of political accommodation and participation but for each country to draw lessons from the experiences of the Canadians and the Americans in promoting and sustaining peaceful coexistence and high levels of human development and then using that knowledge to engage all relevant stakeholders in their individual countries in robust dialogue to agree on institutional arrangements that can enhance the ability of groups within each country to live together peacefully as citizens of a single country. In doing so, certain lessons are important for both the greater society and the minority groups that inhabit these countries.

First, from a national perspective, self-government powers can pose a threat to national integration and nation building. Second, from the point of view of the group, especially the minority group, independent existence could create conditions that are not amenable to rapid economic growth and development. For one thing, the atomization of existing polities could create economies that are too small and hence, cannot produce industrial sectors that can benefit from technological economies of scale. Thus, while a minority group might desire increased self-government powers in order to enhance its ability to maintain its cultural identity, such a group must understand that greater integration into the larger political community, of which it is currently a part, could produce significant benefits, the most important of which is improved access to opportunities for economic growth and development.

It is true that one of the most important objectives of a group is to maximize certain values that are critical to it and its members (e.g., cultural identity) and perhaps, more importantly, to its very existence. Nevertheless, these groups must recognize the enormous benefits bestowed on them by their existence within and connection to the larger political community (i.e., the country of which they are a part). In addition to the fact that each group's culture can be significantly enriched by inter-group interaction, there are many economic benefits, the most

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htm> Accessed: 5 January 2017. At the time he made this speech, Ojukwu was President and Commander-in-Chief of the Armed Forces of the Republic of Biafra—the latter was engaged in a war of independence against the Federation of Nigeria. In the speech, Ojukwu outlines what he contends are crimes committed against the various ethnocultural groups that made-up Biafra by the Government of the Federal Republic of Nigeria. See also AKPAN, Ntieyong U. *The Struggle for Secession, 1966–1970: A Personal Account of the Nigerian Civil War*. London: Frank Cass, 2014.

important of which is the opportunity for members of the minority group to engage in mutually beneficial exchanges with other groups within the larger political community. With these considerations in mind, all groups, through robust dialogue, should be able to design institutional arrangements that allow them to maximize their values while at the same time, not interfering with the ability of the other groups to do similarly. All groups would maintain some level of difference but enjoy a common national citizenship.

But, to minimize the chances that a group might opt for violent mobilization to secede and form its own polity, countries might want to consider granting marginalized groups differentiated citizenship rights. The choice is between (i) self-government rights; (ii) polyethnic rights; and (iii) special representation rights. Groups that seek self-government rights, it has been argued, want to weaken their political bonds with the existing polity and, perhaps, “question [the] very nature, authority, and permanence” of the larger political community.<sup>209</sup> In addition, it is argued that once self-government rights are granted to a group, there is a very good chance that leaders of such a group would continue to seek more autonomy with the prospects that such a group would eventually opt for secession and independence. Thus, groups that continuously seek powers of self-government are likely to contribute significantly to regime instability and create a condition that might lead to the disintegration of the polity. Hence, self-government rights, while they may enhance the welfare of groups that receive them, they may actually threaten the integrity of the polity.

Unlike self-government rights, polyethnic rights can actually encourage the integration of the ethnocultural group into the larger society and hence, promote national integration and nation building.<sup>210</sup> Polyethnic rights, can be used, then, to promote the realization of a common national citizenship. While the various subcultures within a country can be granted polyethnic rights so that they can maintain their unique cultures and customs, they will be able to do so within the larger community called the nation. Like polyethnic rights, special representation rights do not threaten national integration. Special representation rights are designed to explicitly recognize the failure of existing institutional structures to enhance the participation of all groups in the political system and hence, remedy the situation. These rights can be used to improve representation for historically oppressed and marginalized groups and enhance national integration and nation-building.

Unlike polyethnic rights, however, special representation rights are seen as a temporary measure. Since special representation rights “are defended as a response to oppression or systemic disadvantage, they are most plausibly seen as

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209 KYMLICKA, W. Three Forms of Group-Differentiated Citizenship in Canada. In BENHABIB, S. (ed.). *Democracy and Difference: Contesting Boundaries of the Political*. Princeton, New Jersey: Princeton University Press, 1996, p. 163.

210 KYMLICKA, *supra* note 209, p. 156–157.



a temporary measure on the way to a society where the need for special representation no longer exists—a form of political ‘affirmative action.’”<sup>211</sup> In Nigeria, for example, many of the scholars and policymakers that have tried to deal with the marginalization and exploitation of minority groups in the country have argued that the federal government in Abuja should use the windfalls from the sale of the nation’s oil to advance development in marginalized communities, while at the same time, make an effort to reform the governing process in order to eliminate all the sources of minority groups’ oppression and marginalization. The hope, of course, is that minority and marginalized groups would eventually develop the capacity to function competitively in Nigeria’s political and economic markets. Of course, it is also hoped that constraints to minority participation in the political system and the economy, such as lack of effective access to education and health care, as well as historical discrimination, would be addressed fully by the federal government and the society at large.<sup>212</sup>

Arguments of this type have been made with respect to minority groups in other African countries—the government should develop and implement some form of “affirmative action” program to raise the overall quality of life of these historically marginalized and deprived groups, while at the same time, undertaking necessary institutional reforms to rid the political and economic systems of the bottlenecks that have heretofore prevented these groups from full and effective participation. Under the guidance of the government, it is argued, these groups will eventually acquire the capacity to function competitively in both the economic and political arenas without any assistance from the state. The ultimate goal, it is argued, is to have a fully integrated nation, with a common citizenship, in which no group, regardless of how it is defined, is granted any special rights and there would no longer be any need for special representation rights.

For many minority groups in the African countries, the issue is quite complex and may not easily lend itself to resolution through some form of state-sponsored affirmative action. Take the Anglophones of the Republic of Cameroon, for example. Although dealing with poverty and deprivation is important to many of them, a significant number of them consider the right to self-determination to be of greater importance. In fact, among the Anglophone secessionists, the right to self-determination is so important to them that many of them are not willing to entertain the possibility of enhanced economic and human development for the two Anglophone Regions (North West and South West) under the auspices of the Francophone-dominated central government in Yaoundé. Such development, if it ever comes, Anglophone secessionists argue, would be granted to the

211 KYMLICKA, *supra* note 209, p. 158.

212 See, e.g., BAH, Abu B. *Breakdown and Reconstitution: Democracy, the Nation-State, and Ethnicity in Nigeria*, Lanham, Maryland: Lexington Books, 2005; DIAMOND, Larry J. *Class, Ethnicity, and Democracy in Nigeria: The Failure of the First Republic*. Syracuse, New York: Syracuse University Press, 1988; SUBERU, R. T. *Ethnic Minority Conflicts and Governance in Nigeria*. Ibadan, Nigeria: Institut français de Recherche en Afrique, 1996.

Anglophone Regions at the expense of greater integration into the French system and a forced abandonment of their Anglo-Saxon heritage—at the very least, the Common Law would give way to the French Civil Law system; French, not English, would become the language of instruction in schools; and the Gaullist system of government, with its propensity for centralization, would form the foundation for governance institutions in the Anglophone Regions. Many Anglophones have rejected this approach to citizenship and are divided into two major camps—those who see secession as the only solution to their continued marginalization at the hands of the Francophone-dominated government in Yaoundé, and those who believe that the disintegration of the Republic of Cameroon can be avoided but only if the Anglophone Regions are constitutionally granted the right to govern themselves. Within such a constitutional order, the Anglophones Regions would remain part of Cameroon but, like the Québécois of Canada, be guaranteed the right to maintain their identity.

## 6 Conclusion

Since African colonies began to gain independence in the 1950s and 1960s, political elites in the new countries have manipulated laws regulating citizenship for their own benefit. For example, the presidents of many African countries have made changes to their national constitutions to disqualify their political opponents and enhance their chances of remaining in power indefinitely.<sup>213</sup> Of course, the manipulation of citizenship laws has not been limited to post-independence African leaders. Such opportunism was quite common during the colonial period in the continent. Colonialists, including the architects of the apartheid system in South Africa, used citizenship laws effectively to provide them with the wherewithal to dominate and control political, economic, cultural, and social institutions. Through this process, Europeans or whites of European origin were able to dominate and oppress Africans for many years.

Independence was expected to offer Africans the opportunity to rid themselves of the Europeans and their oppressive institutions and create, through a participatory and inclusive process, laws and institutions that reflected their values, ideals, worldview, and aspirations. Unfortunately, constitution making in

213 Examples include Henri Konan Bédié, who in 1995 changed the electoral code to eliminate the political candidacy of his most important political rival, Alassance Ouattara, from competing for the presidency of Côte d'Ivoire. See Frindéthié, K. Martial, *From Lumumba to Gbagbo: Africa in the Eddy of the Euro-American Quest for Exceptionalism*. Jefferson, North Carolina: McFarland & Company, 2016; Hellweg, Joseph. *Hunting the Ethical State: The Benkadi Movement of Côte d'Ivoire*. Chicago, Illinois: The University of Chicago Press, 2011. Also, Frederick Chiluba, who in 1996, changed the Constitution of Zambia to prevent the country's former president, Kenneth Kaunda, from qualifying as a candidate for the presidency. See generally WILKINSON, Michael (ed.). *Global Pentecostal Movements: Migration, Mission, and Public Religion*. Leiden, The Netherlands: Brill, 2012 & MNGOMEZULU, B. Richard (eds.). *The President for Life Pandemic in Africa: Kenya, Zimbabwe, Nigeria, Zambia and Malawi*. London: Adonis & Abbey Publishers, Limited, 2013.

most of the African colonies was top-down, elite-driven, and non-participatory. The result was that issues of importance to the various ethnocultural groups that live in these countries, such as citizenship, were not fully examined by the people. As a consequence, many African countries continue to suffer from citizenship-related problems. For example, in addition to the fact that presidents in many African countries have been able to easily manipulate laws regulating citizenship to gain advantage over their political rivals, statelessness remains a major problem for many people in the continent. The African Union (AU) has encouraged all its member states to join the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. That, unfortunately, is not enough—the AU must encourage all member states to engage in robust dialogue so that each country can provide itself with laws and institutions that guarantee the right to a nationality for everyone within its borders. In 2015, the AU and the UN High Commission for Refugees started a conversation on how to push the right to nationality in Africa. This is an important first step and it needs to be encouraged and supported.<sup>214</sup>

As part of the effort to provide Africans with more effective citizenship laws, an effort must be made to ensure that these laws adequately constrain political elites so that the latter are no longer able to manipulate their constitutions and other laws regulating citizenship for political gain. Thus, the way forward for these African countries is for the citizens to engage in institutional reforms to create governing processes that fully constrain the state. Particularly for African countries that have significant levels of ethnocultural diversity, federalism, coupled with separation of powers with effective checks and balances, can provide each of these countries with effective legal tools to fully constrain political elites and minimize the chances that they will act with impunity and engage in any form of political opportunism.

Although citizenship is a complex issue and one that the citizens of each country must deal with, it is important for them to understand that three aspects of citizenship are very important for the achievement of peaceful coexistence, wealth creation, and human development. The first one is that despite more than sixty years of independence, many African countries have not yet been able to create a common supranational citizenship, which is defined, not by race, ethnicity, religion, or other ascriptive traits, but by allegiance to a group of values or ideals (e.g., non-racial democracy, rule of law, equality before the law, equal opportunity to engage in self-actualization) that define the nation.

Second, is the right of each citizen, regardless of their ethnic or racial origin, to free internal exit. That is, the individual can migrate to any part of the country,

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214 UNHCR. African Union and UNHCR Push for the Right to Nationality in Africa, 29 January 2015. [online]. Available at: <<http://www.unhcr.org/en-us/news/press/2015/1/54ca3567f95/african-union-unhcr-push-right-nationality-africa.html>> Accessed: August 25, 2017.

easily establish residency there and be able to participate fully in the political, economic, and social life of the community, including competing, through elections, for positions in government. Third, citizenship and the laws that regulate it must not evolve into tools to marginalize political opponents or prevent some citizens or groups from participating fully in the political life of the country, including standing for election to important positions in government.

Fourth, African countries must deal with the issue of historical marginalization of certain groups within their countries. Today, some of those groups (e.g., the Anglophones of Cameroon and the Biafrans of Nigeria) want to secede and form their own sovereign polities. Rather than arrest and imprison the leaders of these secessionist movements, the governments of these countries should engage in dialogue with them and the groups that they represent, in order to develop effective ways to resolve these complex problems. It is possible that through robust dialogue, a way can be found for these groups to remain citizens of their present polities, while at the same time, retaining their cultural identities.

Africans wishing to revisit their laws and institutions on citizenship in order to provide themselves with an effective common supranational citizenship, and, in addition, enhance the ability of all citizens to fully understand and appreciate the concept of citizenship, must engage in robust and participatory constitution making. It is critical that the process through which laws regulating citizenship are produced be inclusive and participatory—all of each country's ethnocultural groups must be provided the facilities to participate so that the resulting laws reflect their values and interests, as well as realities.

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