

Citizenship Law in Africa: A comparative study

Updates and corrections, October 2010

Since the report *Citizenship Law in Africa: A Comparative Study* was published in October 2009, the following updates and amendments have come to our attention.

Kenya

In March 2010, the Kenyan Parliament adopted a new draft constitution, the first since the independence constitution of 1963. The constitution was approved by referendum in August and entered into force the same month. As a result of the changes, Kenya's citizenship law is substantially reformed. The principal changes are the following:

- An end to gender discrimination under the law in relation to a woman's ability to pass her nationality to her child or spouse;
- An end to the prohibition on dual nationality for adults;
- More restricted grounds for deprivation of citizenship than previously in place;
- A new provision that every Kenyan is entitled to a passport and all registration or identity documents issued to citizens; and
- A guarantee of freedom of movement into, out of and within Kenya for all citizens.

Still problematic are:

- the lack of safeguard against statelessness at birth for children born on the territory;
- the lack of provisions for the grant of nationality to stateless adults and of protection against the creation of statelessness; and
- the lack of explicit due process protections in the case of administrative proceedings relating to citizenship.

A detailed critique of the constitutional provisions is available on the website of the Citizenship Rights in Africa Initiative (CRAI).¹ 'The new constitution also required Kenya's Citizenship Act to be amended within one year of its adoption.

Libya

In 2010, Libya adopted a new nationality law (Law No. 24 of 2010) that brought in important reforms, in particular to remove ethno-religious discrimination in favour of the grant of nationality to Arabs and Muslims, and to limit the draconian powers of the state to take away Libyan nationality. However, Libyan nationality law still discriminates on gender grounds. Libyan women

¹ <http://www.citizenshiprightsinafrica.org/Publications/2010/CRAIKenyaSubmission.030510.pdf>

cannot pass their nationality to their foreign husbands, while only the child of a Libyan father has the right to nationality, whether born in country or abroad. Although the 2010 law allows for the grant of nationality to the child of a Libyan mother and foreign father, this is at the discretion of the state, and regulations are required to implement it. Until 2010, Libyan law allowed for deprivation of nationality, however acquired, on an extraordinarily wide range of grounds. The 2010 amendments allow revocation of citizenship from birth only if based on fraud or false information, and of naturalised citizenship only within ten years of obtaining it and on the basis of fraud or 'actions affecting Libya's security or interests', or residence outside the country for more than two years without permission. Unusually and problematically, the law provides for children to be deprived of nationality if the father's is revoked.

Namibia

In 2010, Namibia adopted an amendment to its constitution to change its citizenship rules in order to extend the period for the grant of citizenship by naturalisation or on the basis of naturalisation or marriage to ten years (from five or two, respectively), and was in the process of amending the implementing legislation to reflect these changes.

South Africa

In July 2010, a bill was introduced to the South African parliament proposing several revisions to the South African Citizenship Act. Among the proposed revisions was the introduction of a version of the common civil law provision that a child born in the country of non-citizen parents has the right to apply for citizenship at majority. The bill also proposed the introduction of new grounds for loss of citizenship, argued to be unconstitutional by CRAI.² It was due for further debate in parliament before the end of the year.

Sudan

In Sudan, an amendment was adopted to the Sudanese Nationality Law of 1994 in 2005, to provide that a person born of a mother who is Sudanese by birth is also entitled on application to Sudanese nationality by birth. Previously, the law restricted the right to obtain nationality by birth on the basis of descent only through the male line – even though the 1998 Constitution already provided for either parent to be able to pass nationality to his or her child.

The current laws applicable to the whole of Sudan in relation to nationality are the Interim National Constitution of the Republic of Sudan 2005 and the Sudanese Nationality Law, 1994, as amended 2005.

In relation to Sudan's entries on the tables in *Citizenship Law in Africa: A Comparative Study*, **Table 2**, on the right to citizenship by descent should be amended to indicate that a child born of a Sudanese mother, whether in Sudan or abroad, has a right to claim citizenship (previously, the table indicated that a child of a Sudanese mother had no rights to Sudanese nationality).

² http://www.citizenshiprightsinafrica.org/Publications/2010/CRAI_Submission_SA_Citizenship_Amendment_Bill_Aug2010.pdf

Table 6, on criteria for loss of nationality, should also be amended to reflect changes introduced by the Nationality Law of 1994 (which replaced the Nationality Law of 1993) to broaden the reasons for which a naturalized citizen may be deprived of nationality. The law allows for the revocation of nationality on the grounds of conviction of an ordinary crime ('of moral turpitude'), as well as on the grounds of the person's 'act or words outside Sudan indicating his non-allegiance or hatred of Sudan' or conviction in Sudan of a crime of showing the same.

The other tables remain unchanged.

The laws of Southern Sudan have not been included for this update.

Zimbabwe

In 2009, Zimbabwe's adopted the Constitution of Zimbabwe Amendment (No. 19) Act, 2009, as part of the process of installing a government of national unity. The amendment act also made important changes in relation to the citizenship, especially by removing gender discrimination.

For citizenship from birth, the current situation under the Constitution is that:

- a person born in Zimbabwe is a citizen by birth if either of his or her parents or grandparents is or was a citizen of Zimbabwe.
- a person born outside the country is a citizen by birth if either of his or her parents is or was a Zimbabwean citizen ordinarily resident in Zimbabwe or working outside Zimbabwe for an international organisation or for the Zimbabwean state.

There is also a separate category of citizenship by descent:

- a person born outside Zimbabwe who is not entitled to citizenship by birth shall be a 'citizen by descent' if his or her birth is registered with the authorities and either of his or her parents or grandparents is a citizen by birth or descent; or if either of the person's parents is or was a citizen by registration (the amendment removes a previous provision restricting the passage of citizenship by birth to one generation of people born and resident outside the country).

Citizenship by registration (the term used in Zimbabwe for naturalisation) is based on 'voluntary and ordinary residence' in Zimbabwe for at least ten years. A person married to a Zimbabwean can be registered as a citizen after five years.

The amendment also provides for the establishment of a Citizenship and Immigration Board to be responsible for the grant and revocation of citizenship (taking this power away from the Registrar-General).

The constitution now provides that an act of parliament 'may' provide for the prohibition of dual citizenship, but does not require it.

Tables 2, 3 and 5 should be amended accordingly.

However, the Citizenship of Zimbabwe Act (adopted 1984, last amended 2003) still quotes the constitutional citizenship provisions on citizenship by birth as they existed prior to amendments made in 1996 that reduced but did not remove gender discrimination (gender discrimination in relation to citizenship by birth and marriage continued to apply in relation to those born or married between 1980 and 1996). The current version of the Constitution of course overrules the version quoted in the act; but it is not clear whether the new rules are applied in practice.

The Citizenship of Zimbabwe Act still prohibits dual nationality; as of 2010 this provision was under active discussion, and the Citizenship Act was due to be replaced.

Other corrections

The second edition of the report also includes corrections to some of the tables, and should be consulted for the latest understanding of the provisions of the various citizenship laws.



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