The right to a nationality in national law

Only seven constitutions in Africa—Angola, Ethiopia, Guinea-Bissau, Kenya, Malawi, Rwanda and South Africa—provide either in general terms for the right to a nationality, or that every child has the right to a name and nationality. A number of other countries have established the right to a nationality in other laws, notably specific legislation relating to children’s rights, rather than the constitution. Nonetheless, the nationality codes themselves do not necessarily ensure that this promise is fulfilled.

Among the countries that provide a constitutional right to a nationality, Angola, Guinea-Bissau, Rwanda and South Africa go the furthest in implementing this right in their nationality laws. In Rwanda, the nationality law provides that a child born in the territory of non-national parents can apply for nationality at majority, and also that a child born in Rwanda who cannot acquire the nationality of one of his or her parents shall be Rwandan. The South African Citizenship Act provides for citizenship on a jus soli basis for any child who does not have the citizenship of any other country or the right to any other citizenship, as well as a the general right for a child born in the country of non-national parents to be able to apply for citizenship at majority; however, these rights are dependent on the child’s birth being registered. Angola and Guinea-Bissau provide for a child of stateless parents or parents of unknown nationality or who would otherwise be stateless to acquire nationality at birth, as well as for a newborn foundling.

In Ethiopia, however, despite reforms adopted in 2003, the law does not provide a right to Ethiopian nationality for a child born in the country who would otherwise be stateless. In Kenya, the new citizenship law of 2011 provides only for foundlings but not children who cannot acquire another nationality. In Malawi, the constitutional right to a nationality for children is not ensured by the provisions of the citizenship legislation. However, the 1966 Citizenship Act is unusual in specifically providing for the registration of stateless persons as citizens, if they can show that they are stateless and

90 Angola Constitution 2010, article 32; Ethiopia Constitution 1994, article 36; Guinea-Bissau Constitution 1984, as amended to 1996, article 44; Malawi Constitution 1966, Article 23(2); Rwanda Constitution 2003, Article 7; South Africa Constitution 1996, article 28(1)(a).
91 Including Botswana, Gambia, Sierra Leone, Ghana, Guinea, Kenya, Mali, Tanzania, Togo and Tunisia. Most of the former French and Portuguese colonies provide, in line with the civil law monist tradition, that the terms of treaties on nationality to which the State is a party apply even if they are contradicted by national law.
93 South Africa Citizenship Act (No. 88 of 1995, as amended to 2010), sections 2(2)(a) and 4(3).
94 Angola Lei No. 1/05 da nacionalidade, de 1 de julho, articles 9 and 14; Guinea-Bissau Lei No. 2/1992 de 6 de abril, as amended 2010, article 4.
were born in Malawi or have a parent who is Malawian; the applicant must also satisfy the authorities that he or she has been ordinarily resident in Malawi for three years, intends to remain there, and has no serious criminal convictions. If the person is under 21, an application can be made on his or her behalf.\footnote{Malawi Citizenship Act 1966, section 18.}

The vast majority of countries in Africa do not provide for an explicit right to nationality. Moreover, the complexities obvious in the tables below, and the many exceptions to each supposed rule, in fact \textit{understate} the challenges of interpreting Africa’s nationality laws. In many countries—especially those in which the issue of nationality has been most controversial—it takes advanced legal skills to make any sense of the question of who has a right to nationality, which represents only the first of many hurdles that someone seeking to claim that right will have to clear. In some states, including Comoros, Lesotho, Liberia, Mozambique and South Africa, the constitution and the law conflict at least in some provisions. Even where these tables indicate that the situation is the same under different conditions or in different countries, such an indication may rest on an interpretation of the law that itself could be subject to challenge.