The basis of citizenship law today

Most African countries—like most countries in the world—apply a compromise in their laws governing citizenship between the two basic concepts known as *jus soli* (literally, law or right of the soil), whereby an individual obtains citizenship because he or she was born in a particular country, and *jus sanguinis* (law/right of blood), where citizenship is based on descent from parents who themselves were citizens. In general, a law based on *jus sanguinis* will tend to exclude from citizenship those who are descended from individuals who have migrated from one place to another. An exclusive *jus soli* rule, on the other hand, would prevent individuals from claiming the citizenship of their parents if they had moved away from their “historical” home, but is more inclusive of the actual residents of a particular territory. In addition to these two principles based on birth, two other factors are influential in citizenship determination for adults: marital status, in that marriage to a citizen of another country can lead to the acquisition of the spouse’s citizenship, and long-term residence within a country’s borders.

Today, citizenship in African countries is typically based on (i) birth in the country, usually with the requirement that at least one parent (in some cases still only the father) is a citizen (or was also born there); (ii) birth outside the country when at least one parent (sometimes only the father) is a citizen; (iii) marriage, where the spouse of a citizen automatically becomes a citizen or is entitled to register or opt for citizenship (in some cases, still only the wife of a male citizen); (iv) naturalisation, based on length of residence and other qualifications such as knowledge of a national language and a clean criminal record; (v) an additional category of citizenship by registration or option (usually an easier process than naturalisation) for citizens of countries with particular ties (usually African states), in case of marriage, or for children by adoption.56

Some states are still using laws that were adopted at or soon after independence and have been little changed since; others have undertaken comprehensive reforms, often in the context of a general constitutional review; yet others have adopted a series of amendments to their existing laws—most often to introduce partial or total gender equality—sometimes leading to complex provisions that seem to contradict themselves and create corresponding difficulties in determining an individual’s position.

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56 Where the concept of a privileged system of registration for African or Commonwealth citizens exists in the anglophone countries, it often remains on the statute books only as a transitional provision dating from independence.
There is a common distinction in law and practice between citizenship “from birth” (termed “by origin” in the civil law countries) and citizenship “by acquisition.” Citizenship from birth/by origin may be based either on descent (jus sanguinis) or on birth in the country (jus soli), but implies that a child has a citizenship from the moment of birth without any further procedures required for its recognition by the state.\(^57\) In most cases citizenship by acquisition relates to those who have become citizens as adults, as a result of marriage or naturalisation. However, in some countries there is a distinction drawn at birth itself among children of mixed parentage, with the children of citizen fathers being citizens from birth, and the children of citizen mothers only having the right to acquire citizenship following an administrative procedure (which must sometimes be completed before majority). In many countries, the rights of those who are citizens from birth or by acquisition are the same; but others apply distinctions, especially in relation to the holding of public office. In addition, citizenship by acquisition may often be more easily withdrawn. Gender discrimination in relation to the award of citizenship from birth/of origin may thus be highly significant to the exercise of other rights.

\(^57\) The usage is not consistent, however, especially in English: these are not terms with a common interpretation across all legal systems. In countries using English as the official language, the law mostly refers to citizenship “by birth” to mean “from birth”; but, confusingly, in some cases citizenship “by birth” is used to mean citizenship based on birth in the country (jus soli).