Racial and ethnic discrimination

In half a dozen countries, citizenship by descent is explicitly limited to members of ethnic groups whose ancestral origins are within the particular state or within the African continent. Liberia and Sierra Leone, both founded by freed slaves, take the position that only those “of Negro descent” may be citizens from birth. Sierra Leone provides for more restrictive rules for naturalisation of “non-Negroes.” Liberia takes the most extreme position in relation to race: since its first constitution was adopted in 1847, those not “of Negro descent” have not only been excluded from citizenship from birth, but—ostensibly “in order to preserve, foster, and maintain the positive Liberian culture, values, and character”—are prohibited from becoming citizens even by naturalisation. Moreover, only citizens may hold real property in Liberia.79

A number of other countries have elements of the same racial preference. In Malawi, citizenship from birth is restricted to those who have at least one parent who is not only a citizen of Malawi but is also “a person of African race” (unless they would otherwise be stateless); there is also preferential treatment to allow registration as a citizen for those “of African race,” or with Commonwealth or Malawian ties.80 Though Mali does not generally discriminate in the rules it applies for children with citizen parents, it provides privileged treatment to children born in Mali of a mother or father “of African origin” who was also born in the country—treatment not extended to those without a parent “of African origin.”81

The terms agreed in the 2004 peace deal that ended the civil war in most of the DRC form the basis of the new constitution and citizenship law, which today recognise as a Congolese citizen from birth “every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence” in 1960. Although the law, significantly, moved this date closer to the present day—it had been 1885—the basis of Congolese nationality is still founded on ethnicity rather than on birth, residence, or other objective criteria.82

Uganda’s constitutional requirements on citizenship include rules that effectively discriminate against long-term migrant populations. The 1995 constitution provides for a right to citizenship from birth for two categories of persons: first, for every person born in Uganda “one of whose parents or grandparents is or was a member of any of the indigenous communities existing

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82 Loi No. 04-024 du 12 novembre 2004 relative a la nationalité congolaise.
and residing within the borders of Uganda as at the first day of February, 1926; and second, for every person born in or outside Uganda one of whose parents or grandparents was a citizen of Uganda from birth. Both categories, the former explicitly, the latter implicitly (by its requirement that the parent or grandparent must him- or herself be a citizen from birth), privilege the ethnic groups historically resident in Uganda. When the 1995 constitution was being negotiated, representatives of Uganda’s Asian population, subjected to expulsion by President Idi Amin, argued that they should be recognised as indigenous by this definition. Although several other ethnic groups whose status was also controversial were successful—including the Banyarwanda, as well as the Batwa, Lendu and Karamojong—the Asians were not, and remain second-class citizens in that regard.

The Nigerian constitution similarly provides for citizenship by birth to be given to those 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.” The constitution also provides citizenship by birth to “every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria,” which includes the possibility of the parent or grandparent being a citizen by naturalisation (unlike in Uganda, where the parent or grandparent must also be a citizen from birth). However, the first provision implies a need for “indigeneity” which is also reflected in Nigeria’s domestic practice.

Eritrea has a provision that is not explicitly racial or ethnic, but has the same effect: nationality by birth is given to any person born to a father or mother “of Eritrean origin,” defining “Eritrean origin” to mean resident in Eritrea before 1933. Those who entered Eritrea between 1934 and 1951 may be naturalised as of right, and their children are also citizens by birth. Somalia’s 1962 citizenship law provides for any person “who by origin, language or tradition belongs to the Somali Nation,” is living in Somalia, and renounces any other nationality to obtain citizenship by operation of law.

In some countries, racial or ethnic discrimination is not written into the law, but nonetheless obtains in practice. In Côte d’Ivoire, constitutional amendments that nominally affected only candidates for the presidency or vice presidency of the country, requiring that they be born of parents who are both “Ivorian by origin,” nevertheless created a legal environment in which all those who might be regarded as not from Côte d’Ivoire’s “core” ethnic groups were not eligible for citizenship. In Madagascar, members of the economically significant, 20-thousand-strong Karana community (of Indo-Pakistani origin) who failed to register for Malagasy or Indian citizenship following India’s

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84 See Human Rights Watch, “They Do Not Own This Place”: Government discrimination against “non-indigenes” in Nigeria, April 2006.
85 Eritrean Nationality Proclamation No.21 of 1992, Articles 2 and 3.
86 Law No. 28 of 22 December 1962 on Somali Citizenship, Section 2.
independence in 1947 are no longer eligible for either citizenship. They find it impossible to obtain travel documentation. In Swaziland, the law does not specifically refer to ethnicity, but the attitudes reflected in the provision of the 1992 Citizenship Act providing for citizenship “by KuKhonta,” that is, by customary law, have in practice ensured that those who are not ethnic Swazis find it very difficult to obtain recognition of citizenship.

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89. “A person who has Khontaed, that is to say, has been accepted as a Swazi in accordance with customary law and in respect of whom certificate of Khonta granted by or at the direction of the King is in force, shall be a citizen of Swaziland.” Swaziland Citizenship Act No.14 of 1992, section 5. See also Constitution of Swaziland, Article 42, which appears to provide that persons born before the constitution came into effect are citizens “by operation of law” if either parent is a citizen and also if the person is “generally regarded as Swazi by descent.” Article 43 of the constitution removes this (not entirely clear) ethnic basis for children born after the constitution came into effect, but entrenches gender discrimination, providing that citizenship is only passed by a father who is a Swazi citizen.