Gender discrimination

Published by

Manby, Bronwen.
Citizenship Law in Africa: A Comparative Study.
Project MUSE. muse.jhu.edu/book/17534.

For additional information about this book
https://muse.jhu.edu/book/17534
Gender discrimination

All African countries except Sudan and Somalia are parties to the UN Convention on the Elimination of All Forms of Discrimination Against Women. Algeria, Egypt, Mauritania, Niger, and Tunisia ratified the convention with reservations relevant to their nationality laws, mainly referring to the provisions of shari’a law in relation to equality of men and women. Twenty-seven countries had ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa as of early 2009; another 22 had signed. As noted above, the Protocol is weak on citizenship rights, allowing national law to override the nondiscrimination presumptions of the treaty in relation to passing citizenship to children, and not even mentioning the right of a woman to pass citizenship to her husband.

At independence and until recently, most countries in Africa discriminated on the basis of gender in granting citizenship. Female citizens were not able to pass on their citizenship to their foreign spouses or to their children, if the father was not also a citizen. Often, the law also required a woman to have her husband’s or father’s permission in order to travel outside the country.

In recent years, however, this situation has begun to change, as reforming laws based on the international human rights consensus on women’s rights have introduced gender neutrality in many countries. A key moment was the 1993 Unity Dow case in Botswana, where the Court of Appeal upheld a woman’s right to pass Botswanan citizenship to her children (see below, p. 48). Since then, Algeria, Botswana, Burkina Faso, Burundi, Côte d’Ivoire, Djibouti, Egypt, Ethiopia, Gambia, Kenya, Lesotho, Mali, Mauritius, Morocco, Niger, Rwanda, Senegal, Sierra Leone, Tunisia, Uganda, Zimbabwe, and no doubt others have enacted reforms providing for greater, if not in all cases total, gender equality.

Despite this trend, many countries still discriminate, rendering hundreds of thousands of people effectively stateless. Among the most discriminatory laws are those of Libya, where virtually every article enshrines lesser rights for women. In Madagascar, meanwhile, perhaps 5 percent of the long-established two million-strong Muslim community finds itself effectively stateless because complex citizenship rules restrict citizenship by origin to those born of a

---

Malagasy father. Those with a Malagasy mother and non-Malagasy father have to claim citizenship before reaching the age of majority or risk losing it.\[91\]

Some relatively recent nationality laws still discriminate. The nationality code Burundi adopted in 2000, for example, gives full rights to pass on their citizenship by descent or marriage only to men.\[92\] This law has not yet been amended, despite a new constitution explicitly stating that men and women have the same rights in relation to nationality.\[93\] Swaziland’s 2005 constitution explicitly provides that a child born after the constitution came into force is a citizen only if his or her father is a citizen.\[94\] The unrecognised state of Somaliland has also adopted a citizenship law that explicitly discriminates on the basis of gender, providing that citizenship from birth is granted to “anyone whose father is a descendant of persons who resided in the territory of Somaliland on 26 June 1960 and before.”\[95\]

At least a dozen countries still discriminate on the grounds of gender in granting citizenship rights to children who are either born in their country or born overseas (including Benin, Burundi, Guinea, Liberia, Libya, Madagascar, Mali, Mauritania, Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Togo, and Tunisia. See Table 2: Right to citizenship by descent—which, however, does not reflect absolutely all provisions that discriminate by gender.) In several of these countries, the child of a citizen mother and noncitizen father born in the country can claim citizenship, but does not have citizenship automatically as of right; thus, the law is discriminatory in individual provisions relating to citizenship from birth, but the total effect of all the provisions is to allow both sexes to pass citizenship to their children. In Burundi, for example, the 2005 constitution provides that children of Burundian men or women have the same right to a nationality, the nationality code of 2000 provides that the status of children born of a citizen mother is technically the right to acquire citizenship “by declaration”; citizenship from birth is restricted to those born of a citizen father.\[96\] Sometimes, for example in Benin and Mali, the discrimination appears only in provisions allowing for the child of a citizen mother to repudiate nationality at majority, but if no action is taken he or she will have citizenship (these provisions are not noted in Table 2).\[97\] In Zimbabwe, advocacy by the women’s movement led to the removal of discrimination on grounds of gender and marital status of the parents in 1996, but only with effect from that date: children born between 1980 (attainment of majority rule) and 1996 could not claim Zimbabwean citizenship if only their mother was


\[92\] Loi No. 1-013 du 18 juillet 2000 portant Code de la nationalité burundaise, Articles 2, 4, and 5.

\[93\] Constitution of Burundi, 2005, Article 12.

\[94\] Constitution of the Kingdom of Swaziland, 2005, Article 43.

\[95\] Republic of Somaliland, Citizenship Law, No. 22/2002 (unofficial translation).


\[97\] See Loi No. 95-70 du 25 aout 1995 portant modification du code de la nationalité malienne, Article 8–5 (Nouveau).
Zimbabwean, unless born out of wedlock. In 2009, as part of a constitutional amendment allowing for the installation of a government of national unity, gender discrimination was completely removed from the constitution in relation to citizenship by birth and marriage—though the Citizenship Act (last amended in 2003) continued to quote the pre-1996 version.

The most common ground for acquiring citizenship as an adult is on the basis of marriage (see Table 3 below). In most countries, marriage to a citizen allows the spouse—or only the wife—to acquire nationality either automatically or on the more favourable terms of registration (in common law countries) or option/declaration (in civil law countries). In some countries, especially those using civil law, the state may object to the acquisition of nationality by the spouse for up to a year after the application is made. Among these countries are: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Republic of Congo, Côte d’Ivoire, DRC, Gabon, Guinea, Madagascar, Mali, Mauritius, Niger, Senegal, Togo, and Tunisia.

Achieving gender equality in the right of a woman to pass citizenship to her husband has proved more of a struggle. In some countries, the very concept of a right to citizenship by marriage has been challenged. In Côte d’Ivoire and the DRC, for example, anxiety has been expressed in constitution- or law-drafting processes about the ease with which foreign men marrying female citizens may acquire nationality. In the DRC, the law now provides, extraordinarily, that an application for citizenship by marriage must be approved by decree of the Council of Ministers and considered by the National Assembly.

In 1995, a Constitution Review Commission in Zambia considered the subject of citizenship in detail, and received many submissions suggesting that citizenship was too easy to obtain for people who were not members of the “indigenous” Zambian population. Critics said the acquisition of citizenship by marriage was open to abuse and that existing constitutional provisions on marriage discriminated by gender. The Commission recommended restricting citizenship to birth, descent, and registration; and the amendments to the constitution adopted on its recommendation included deleting altogether the clause providing for marriage to be the grounds for citizenship by registration. Botswana and Zimbabwe also responded to advocacy for an end to gender discrimination by removing altogether any additional rights in case of marriage (in Zimbabwe, this was the case between 1996 and 2009).

100 In DRC, gender discrimination was ultimately removed, though the conditions under which citizenship may be required by marriage are extremely restrictive (Loi No. 04/024 du 12 novembre 2004 relative à la nationalité congolaise, Article 19); in Côte d’Ivoire, since 2004 a man may acquire Ivorian citizenship from his wife, but only after a delay of 2 years; a woman may acquire citizenship from an Ivorian man immediately (Loi No. 2004-662 du 17 décembre 2004, Article 12).
when further amendments to the constitution increased the general period for naturalisation to 10 years, but provided that those married to a citizen could naturalise in five). Similarly, representations made to a Special Law Commission on Land Related Laws established in Malawi in 2004 expressed the view that economically vulnerable Malawian women could be exploited by foreign men seeking to acquire property in the country.\(^{103}\) In 2010, Namibia amended its constitution to change the period for acquisition of citizenship by marriage from two to 10 years.\(^{104}\)

More than two dozen countries today still do not allow women to pass their citizenship to their noncitizen spouses, or apply discriminatory residence qualifications to foreign men married to citizen women who wish to obtain citizenship. (These countries are Benin, Burundi, Cameroon, Central African Republic, Comoros, Republic of Congo, Côte d’Ivoire, Egypt, Equatorial Guinea, Guinea, Lesotho, Libya, Madagascar, Malawi, Mauritania, Morocco, Niger, Nigeria,\(^ {105}\) Senegal, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Togo, and Tunisia. See Table 3: Right to pass citizenship to a spouse). In some cases, marriage provides an automatic right to citizenship, but in others marriage only shortens the period within which naturalisation can be applied for and all other conditions for naturalisation must still be fulfilled (this is not indicated in Table 3, but rather in the table on naturalisation).

**Botswana: The Unity Dow Citizenship Case**

In 1992, a landmark court case brought by Unity Dow, a lawyer,\(^ {106}\) challenged the constitutionality of Botswana’s Citizenship Act on the grounds that it discriminated on the basis of gender. Although the original text of the Citizenship Act adopted in 1982 had provided for any person born in Botswana to be a citizen on a *jus soli* basis, the law had been amended in 1984 to provide that a person would become a citizen at birth only if, irrespective of where he or she was born, his or her father (or his or her mother if he or she was born out of wedlock) was a citizen of Botswana. A woman married to a citizen of Botswana could apply for naturalisation on preferential terms, but not a man in the same situation.\(^ {107}\) Thus Unity Dow, a citizen of Botswana married to an American, was prevented from passing on her Botswanan nationality to her children or husband.

Dow contested the discriminatory sections of the Citizenship Act on the grounds that they violated the constitutional bill of rights.

---

\(^{103}\) See *Malawi: Democracy and Political Participation*, AfriMAP and OSISA, 2009.

\(^{104}\) Namibian Constitution Second Amendment Act, 2010 (Act No. 7 of 2010), section 1.

\(^{105}\) Constitution of the Republic of Nigeria, 1999, Article 26. For the most part, immigration authorities have accepted applications for registration by foreign husbands, but there have been some cases brought to court where this has been denied. See comment by Ayo Obe on the Claiming Equal Citizenship website, available at http://www.learningpartnership.org/citizenship/2006/09/survey-national-marries-nonnational, accessed 12 December 2007.

\(^{106}\) In 1998, after the case was decided, the president appointed Unity Dow as the first woman to sit as a judge on the High Court.

Table 3: Right to pass citizenship to a spouse

<table>
<thead>
<tr>
<th>Country</th>
<th>Citizenship by marriage</th>
<th>Res. period (if any)*</th>
<th>Marriage period (if any)</th>
<th>Country</th>
<th>Citizenship by marriage</th>
<th>Res. period (if any)*</th>
<th>Marriage period (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td></td>
<td>2 yrs</td>
<td>3 yrs</td>
<td>Libya</td>
<td>m</td>
<td>2 yrs</td>
<td></td>
</tr>
<tr>
<td>Angola</td>
<td></td>
<td>5 yrs</td>
<td></td>
<td>Madagascar</td>
<td>m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benin</td>
<td>m</td>
<td>aut.</td>
<td></td>
<td>Malawi</td>
<td>m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Botswana</td>
<td>-</td>
<td></td>
<td></td>
<td>Mali</td>
<td>=</td>
<td>aut.</td>
<td></td>
</tr>
<tr>
<td>Burkina Faso</td>
<td></td>
<td>aut.</td>
<td></td>
<td>Mauritania</td>
<td>m</td>
<td>aut.</td>
<td></td>
</tr>
<tr>
<td>Burundi</td>
<td>m</td>
<td></td>
<td></td>
<td>Mauritius</td>
<td>=</td>
<td>4 yrs</td>
<td></td>
</tr>
<tr>
<td>Cameroon</td>
<td>m</td>
<td></td>
<td></td>
<td>Morocco</td>
<td>m</td>
<td>5 yrs</td>
<td></td>
</tr>
<tr>
<td>Cape Verde</td>
<td></td>
<td></td>
<td></td>
<td>Mozambique†</td>
<td>=</td>
<td>5 yrs</td>
<td></td>
</tr>
<tr>
<td>CAR</td>
<td>m</td>
<td>aut.</td>
<td></td>
<td>Namibia</td>
<td>=</td>
<td>10 yrs</td>
<td></td>
</tr>
<tr>
<td>Chad</td>
<td></td>
<td></td>
<td></td>
<td>Niger</td>
<td>m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Comoros</td>
<td>m</td>
<td>aut.</td>
<td></td>
<td>Nigeria</td>
<td>m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Congo Rep.</td>
<td>m</td>
<td>5 yrs</td>
<td></td>
<td>Rwanda</td>
<td>=</td>
<td>3 yrs</td>
<td></td>
</tr>
<tr>
<td>Côte d’Ivoire</td>
<td>m+w</td>
<td>m: 2 yrs</td>
<td></td>
<td>SADR</td>
<td>n/a</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DRC</td>
<td></td>
<td>7 yrs</td>
<td></td>
<td>STP</td>
<td>=</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Djibouti</td>
<td></td>
<td>10 yrs;‡</td>
<td></td>
<td>Senegal</td>
<td>m</td>
<td>aut.</td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>m</td>
<td>2 yrs</td>
<td></td>
<td>Seychelles</td>
<td>=</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eq. Guinea</td>
<td>m</td>
<td>aut.</td>
<td></td>
<td>Sierra Leone</td>
<td>m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Eritrea</td>
<td></td>
<td>3 yrs</td>
<td></td>
<td>Somalia</td>
<td>m</td>
<td>aut.</td>
<td></td>
</tr>
<tr>
<td>Ethiopia</td>
<td></td>
<td>1 yr</td>
<td>2 yrs</td>
<td>South Africa</td>
<td>=</td>
<td>2 yrs</td>
<td></td>
</tr>
<tr>
<td>Gabon</td>
<td></td>
<td>3 yrs</td>
<td></td>
<td>Sudan</td>
<td>m</td>
<td>2 yrs</td>
<td></td>
</tr>
<tr>
<td>Gambia</td>
<td></td>
<td>7 yrs</td>
<td></td>
<td>Swaziland</td>
<td>m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ghana</td>
<td></td>
<td></td>
<td></td>
<td>Tanzania</td>
<td>m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guinea</td>
<td>m</td>
<td>aut.</td>
<td></td>
<td>Togo</td>
<td>m</td>
<td>aut.</td>
<td></td>
</tr>
<tr>
<td>C-Bissau</td>
<td></td>
<td>1 yr</td>
<td>3 yrs</td>
<td>Tunisia</td>
<td>m</td>
<td>2 yrs</td>
<td></td>
</tr>
<tr>
<td>Kenya</td>
<td></td>
<td>7 yrs</td>
<td></td>
<td>Uganda</td>
<td>=</td>
<td>5 yrs</td>
<td></td>
</tr>
<tr>
<td>Lesotho</td>
<td>m</td>
<td></td>
<td></td>
<td>Zambia</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liberia</td>
<td>-</td>
<td></td>
<td></td>
<td>Zimbabwe</td>
<td>-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes

- n/a: Not available
- *: If residence period noted then residence is after marriage
- =: Equal rights for men and women to pass citizenship
- m: Only men are permitted to pass citizenship to their spouses
- m+w: men and women can both pass citizenship, but not on equal terms
- aut.: Spouse acquires citizenship automatically, without further procedures (unless chooses to refuse)
- -: No additional rights in case of marriage (except in some cases reduction of residence period for naturalisation, as noted in Table 5)
- †: The position is ambiguous in that legislation conflicts with the constitution – the constitutional provisions are noted here
- ‡: 5 yrs if there are children from the marriage
- NB: There is some simplification of complex provisions
In 1991 and 1992, first the High Court and then the Court of Appeal found in favour of Dow.\textsuperscript{108}

The Court of Appeal judgment stated as follows:

\begin{quote}
[The time that women were treated as chattels or were there to obey the whims and wishes of males is long past and it would be offensive to modern thinking and the spirit of the Constitution to find that the Constitution was deliberately framed to permit discrimination on the ground of sex.\textsuperscript{109}
\end{quote}

The Court found that, although Article 15 of the Constitution, which provides that “no law shall make any provision that is discriminatory either of itself or in its effect” does not include sex in its list of prohibited grounds of discrimination, it should be read with Article 3 of the Constitution, which provides that every person in Botswana is entitled to “all the fundamental rights and freedoms of the individual ... whatever his race, place of origin, political opinions, colour, creed or sex.” The provisions of the Citizenship Act preventing women from passing Botswana citizenship to their children were thus unconstitutional.

The Citizenship Act was amended to conform with the judgment in \textit{Dow} in 1995, and now allows naturalisation of foreign spouses for both men and women—though only on the same terms as for any other person applying for naturalisation, and the acquisition of citizenship by descent if either the father or the mother was a citizen of Botswana at the time of birth.\textsuperscript{110}

\section*{Reforms in North Africa}

Several of the countries of North Africa have taken steps in the last decade to reform their laws to reduce gender discrimination in the grant of citizenship. However, much still remains to be done, even in those countries that have amended their laws.

Egypt’s 1975 Nationality Law originally provided that a child of an Egyptian woman born outside the country could not be an Egyptian citizen from birth unless born out of wedlock or to a stateless or unknown father. In 2004, however, an important reform amended the law to provide that children born to Egyptian mothers were Egyptian citizens regardless of their father’s status or

\begin{flushright}


\end{flushright}
their place of birth. Those born before the law came into effect (in November 2005) could apply for their citizenship to be recognised. Thousands of people immediately applied for Egyptian citizenship under the new law, and by 2006 it was estimated that 17,000 people had obtained citizenship, most of them born of Sudanese and Syrian fathers. More were then expected to apply, as the Ministry of the Interior announced that applicants for Egyptian citizenship would be exempted from the LE1,200 fee previously required.

The law also provided for foreign wives of Egyptian men to be eligible for citizenship by naturalisation, provided the relevant minister does not object (Article 7); however, this right is not granted to non-Egyptian spouses of Egyptian women, who must follow the criteria stipulated for naturalisation, as for any other foreigner living in the country (Article 4).

Although the new law creates new opportunities for citizenship for children born to foreign fathers, the application of the law places considerable constraints in terms of access to the provision. Applicants for citizenship have to provide, among other documents, the birth certificates of both parents, the mother’s identity card and her father’s birth certificate, and the marriage contract. The process of obtaining an identity card and passport can be long and frustrating, even for members of the educated elite.

Most problematically, probably the largest group of children in Egypt affected by this law—those children born of Palestinian fathers and Egyptian mothers—are still not regarded as eligible for Egyptian citizenship, though the law does not explicitly state this exception. The roots of the Palestinian exception go back to 1959, when the Arab League issued a decree that Palestinians, as a way of preserving their identity, should not be given citizenship in other Arab countries. There are no available statistics on how many children of such marriages are believed to be stateless as a result, though some may be included among the approximately 70,000 Palestinian refugees believed to be in Egypt.

In 2005, Algeria followed Egypt’s lead, amending the nationality law to allow an Algerian woman married to a foreigner to transmit Algerian nationality to her children and spouse on equal terms.

In April 2007, after a long campaign by women’s rights organisations, amendments to the Nationality Code came into force in Morocco. The reform...
finally gave Moroccan women married to foreign men the right to pass Moroccan citizenship to their children, and benefited many children who had previously been effectively stateless, notably the children of Palestinian men and Moroccan women. In practice, however, this new equality may be restricted in the case of marriages of Moroccan women with non-Muslim foreign men. Despite other recent reforms that also brought a greater level of gender equality in marriage, Morocco’s family code (known as the Moudawana) states that a Moroccan Muslim woman cannot marry a non-Muslim man, and the two codes read together indicate that the family code should take preference, even in relation to refugees recognised by Morocco.116 In practice, it seems that the requirement to show that the prospective husband is Muslim is not consistently applied.

The Association Démocratique des Femmes du Maroc welcomed the law, but called for further reform, including the extension of gender neutrality to the passing of citizenship to a spouse. A foreign woman can acquire Moroccan citizenship after five years of marriage to a Moroccan man and residence in the country, but this possibility is not open to a foreign man married to a Moroccan woman.117 Gender discrimination also still affects the provision of the nationality code providing for Moroccan nationality to be given to children born in Morocco of foreign parents who were themselves also born in Morocco. This provision applies in a gender-neutral way only if the parents were born after the law came into force; all other children born in Morocco (thus including all those being born today) can claim nationality only if their father was born in Morocco, is an Arabic-speaking Muslim, and comes from a country where Arabic-speaking Muslims are in the majority.118

Although Tunisian law has provided since 1993 for both women and men married to foreigners to pass citizenship to their children—whether born in or out of the country—the Code de la nationalité is still discriminatory on its face. Moreover, Tunisian women cannot pass citizenship to their husbands,

116 See Dahir No. 1-04-22 du 12 Hija 1424 (3 Février 2004) portant promulgation de la Loi No. 70-03 portant Code de la famille, Articles 2 and 39 ; Code de la nationalité marocaine, Loi No. 62-06 promulguée par le dahir No. 1-07-80 du 23 mars 2007, 3 rabii I 1428, Article 3. The Code de la famille also forbids a Moroccan man from marrying a woman who is not Muslim, unless she is Christian or Jewish (“sauf si elle appartient aux gens de la Livre”): Ibid., Article 39.


118 Code de la nationalité marocaine, Article 9.
while additional administrative procedures are required if they wish to pass citizenship to their children born abroad.\(^{119}\)

Libya also still discriminates on gender grounds, whether a child is born in or out of the country. Despite the adoption of a new nationality law in 2010 which included important reforms, Libya still gives the right to nationality only to the child of a Libyan father, whether born in country or abroad. Although the 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.\(^{120}\) Those born outside the country can obtain citizenship only from their father. In 1998, the Committee on the Rights of the Child considered a report from Libya and expressed the concern that “decisions related to the acquisition of nationality are only based on the status of the father.”\(^{121}\) In 2003, the committee noted with approval that Libya was considering adopting a rule that would permit a Libyan mother to transfer her nationality to her children, irrespective of her husband’s nationality.\(^{122}\) But the 2010 law only implements this promise in the most limited way possible, and leaves gender discrimination entrenched.

**Ethiopia: The constitution and law are gender neutral, but practice is not**

The 1995 Ethiopian Constitution is gender neutral in its provisions on nationality. It also includes a general provision on the right to equality, which provides, among other things, for nondiscrimination on the basis of sex.\(^{123}\) The 1930 Ethiopian Nationality Law, repealed in 2003, was also gender-neutral at first sight, stating that: “Any person born in Ethiopia or abroad, whose father or mother is Ethiopian, is an Ethiopian subject.” However, in the context of setting out the arrangements through which children born of mixed marriages could establish their Ethiopian nationality, the 1930 law also contained a provision that reads: “Every child born in a lawful mixed marriage follows the nationality of its father.”\(^{124}\) Thus, children of Ethiopian

---

119 Loi No. 63-7 du 22 avril 1963 portant refonte du Code de la nationalité tunisienne, sections 12 et 13. In 1993, Act No. 93-62 of 23 December 1993 amended section 12 of the Tunisian Nationality Code to provide for women to pass citizenship to their children born outside of Tunisia. The code now states: “A child born abroad of a Tunisian mother and a non-Tunisian father shall become Tunisian, provided that this status is applied for through a declaration within the period up to one year preceding his majority. However, before reaching the age of 19, the applicant shall become Tunisian on the basis of a joint declaration by his mother and father.” See also United Nations High Commissioner for Human Rights, International Human Rights Instruments, Core Document Forming Part of the Reports of States Parties: Tunisia, 16 May 1994, paragraph 76(h), available at http://www.unhchr.ch/tbs/doc.nsf/0/55662928a5017fa941256324a050c2d27?Opendocument, accessed 13 November 2007.

120 Libya Nationality Law No. 24 of 2010, Articles 3 and 11.


123 Constitution of The Federal Democratic Republic of Ethiopia, 8 December 1994, Articles 6 and 25. Article 6 provides that: “(1) Any person of either sex shall be an Ethiopian national where both or either parent is Ethiopian. (2) Foreign nationals may acquire Ethiopian nationality. (3) Particulars relating to nationality shall be determined by law.”

124 Ethiopia Nationality Law, July 1930, Sections 1 and 6.
women and foreign men were not regarded as Ethiopian—both in law and in popular understanding—even if they were born and had lived all their lives in Ethiopia.\footnote{125}

The 1930 law also reflects a double standard with regard to the effects of marriages of Ethiopian subjects to foreigners. Whereas “a lawful marriage [in Ethiopia or abroad] of an Ethiopian [man] with a foreign woman confers Ethiopian nationality upon her,” “a lawful marriage contracted abroad of an Ethiopian woman with a foreign [man] deprives her of Ethiopian nationality if her marriage with the foreigner gives her the nationality of her husband.”\footnote{126}

Article 33 of the 1995 Constitution did remedy this inconsistency by providing that marriage of an Ethiopian, male or female, to a foreigner does not result in the loss of Ethiopian nationality unless he or she chooses to take the nationality of his or her spouse; but statutory law still conflicted with this provision for several years.

Even excluding those Ethiopians with a parent from what is now Eritrea, tens of thousands of Ethiopia’s people are of mixed blood. Many Arabs, Italians, Greeks, Armenians, and others have lived in Ethiopia since the late nineteenth century. Many of them are or have been married to Ethiopians, and their children born and raised in Ethiopia. Some took the citizenship of their non-Ethiopian parent; as soon as they did so, they automatically lost any right to Ethiopian citizenship. Some of these people left Ethiopia during the turbulent years of military rule, but many others chose to stay. Those whose mothers were Ethiopian found themselves effectively stateless.

In 2003, a comprehensive reform to the nationality law significantly improved this situation, at least on paper. The 2003 Proclamation on Ethiopian Nationality removed this gender discrimination, providing that an Ethiopian national of either sex may pass nationality to his or her spouse, and also simply that “any person shall be an Ethiopian national by descent where both or either of his parents is Ethiopian.” The proclamation also eased restrictions on naturalisation and provided that “all Ethiopian nationals shall have equal rights and obligations of citizenship regardless of the manner in which nationality is acquired.”\footnote{127} The law is not stated to have retroactive effect, however, and in practice it seems that those with non-Ethiopian fathers find it difficult to obtain recognition of a right to nationality on equal terms.

\footnote{125} “A child born in a lawful marriage of an Ethiopian mother with a foreigner is always able to recover the benefit of Ethiopian nationality, provided he lives in Ethiopia and proves he is completely divested of the paternal nationality” (section 7); “If the lawful marriage according to the national law of the foreign father is posterior to the birth of the child issued from his relations with an Ethiopian woman, the child legitimated through this subsequent marriage follows the nationality of his foreign father only on condition that the national law of the latter confers upon him the foreign nationality with all inhering rights. Otherwise, the child preserves his Ethiopian nationality” (section 8). Ethiopia Nationality Law, July 1930, Sections 7 and 8.

\footnote{126} Ethiopia Nationality Law, July 1930, Sections 2 and 4.

\footnote{127} Proclamation 378/2003 on Ethiopian Nationality, Sections 3, 5, 6, and 18.