Proof of nationality

The systems for proof of nationality are in practice often as important as the provisions of the law on the qualifications in principle. If there are onerous requirements or costs attached to proof of entitlement to nationality then the fact that a person actually fulfills the conditions laid down in law may be irrelevant. The laws of many countries explicitly provide that the right to nationality can be established only if the necessary conditions are proved during the individual’s minority. If the systems to do so do not exist or are discriminatory, then many individuals will be left effectively stateless.

In principle, recognition of citizenship should start at the time of birth, with registration of the birth itself.\footnote{128} Birth registration is usually fundamental to the realisation of all other citizenship rights: lack of birth certificates can prevent citizens from registering to vote, putting their children in school or entering them for public exams, accessing health care, or obtaining identity cards, passports, and other important documents. Yet, according to UNICEF, the UN Children’s Fund, 55 percent of African children under five years old have not been registered, with the situation much worse in rural areas; in some countries more than 90 percent of children are not registered.\footnote{129} In Angola, for example, the 2005 nationality law provides that nationality of origin is proved by a birth certificate; yet UNICEF estimated in 2007 that only 29 percent of Angolan children were registered, and even fewer in rural areas.\footnote{130}

In some countries, registration of births is not even compulsory. For example, in southern Africa, registration of births is compulsory for all children in Mauritius, South Africa, Swaziland, Zambia, and Zimbabwe; but not in Botswana, Malawi, and Tanzania. In Malawi and Tanzania, the requirement to register is racially based. Registration is compulsory only if one or both parents are of European, American, or Asiatic “race” or origin, and in Tanzania also if they are of Somali origin.\footnote{131} Such racially discriminatory practices do not comply with the requirements of the African Charter on Human and Peoples’ Rights and other international treaties.

\footnote{128} “The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.” Convention in the Rights of the Child, 20 November 1989, Article 7(1). The African Charter on the Rights and Welfare of the Child repeats this provision (Article 6(2)).
Several of the francophone countries allow for those persons who have always been treated as citizens (possession d’état de national) to obtain official recognition that they are citizens by origin, without needing to establish further facts. Senegal provides that if someone has his or her habitual residence in Senegal and has always behaved and been treated as a citizen, it shall be presumed that he or she is a citizen. Chad is similarly generous in providing that if a person of African origin has lived in the country for 15 years “as a Chadian”—that is, living in and assimilated to a Chadian community and treated as a Chadian by others and by the authorities—they can obtain a certificate of nationality by origin (though the authorities may object within one year). Similar provisions exist in Benin, Republic of Congo, Morocco, Togo, and elsewhere.

Gabon’s 1998 nationality code contains interesting and perhaps unique provisions relating to children born in the border zones of countries neighbouring Gabon or raised by Gabonese citizens: if such children make a declaration during the 12 months preceding their majority that they have lived in Gabon for the preceding 10 years, or if they were from before the age of 15 brought up by a Gabonese citizen or on state assistance, they can claim Gabonese nationality of origin.

Algeria’s nationality code includes the common provision on the possession d’état de national algérien, if a person has always been treated as Algerian. In addition, it provides that nationality of origin can be claimed by showing evidence of two generations of ancestors born in the country (one parent and one of his or her parents)—but only if those ancestors were Muslim, introducing religious discrimination in an apparently procedural article. In Chad, the provision on possession d’état de Tchadien is restricted to those of “African ancestry” (de souche africain).

Supreme Court rules on proof of nationality in DRC

The disputed status of the Kinyarwanda-speaking populations of the provinces of North and South Kivu in eastern DRC has been at the heart of the wars that have devastated the region since the early 1990s. The question of who belongs to Congo and when they arrived has been central to this conflict, with different laws setting the “date of origin” for ethnic groups to claim to be “from” Congo variously at 1885 (the first date at which the borders of the state were described), 1908, 1950, and 1960 (independence). The argument over who is an indigenous (autochtone) Congolese has come to dominate the discourse over settlement of the various conflicts, linking comparatively local disputes over resources (especially land) to national and regional wars. For individual

132 Loi No. 61–70 du 7 mars 1961 déterminant la nationalité sénégalaise (as amended), Article 1.
133 Ordonnance No. 33/PG-INT du 14 août 1962 portant Code de la nationalité tchadienne, Articles 14–16.
135 Ordonnance No. 05-01 du 27 février 2005 revising Ordonnance No. 70-86 du 15 décembre 1970 portant code de la nationalité algérienne, Article 32.
members of the Banyarwanda ethnic group, questions of documentary proof of citizenship have thus always been critical.

The Congolese nationality laws of 1965 and 1972 required that evidence of Congolese nationality must include “proof of all the conditions established by the law.” However, a court could also take into account “weighty, precise and corroborating presumptions” (présomptions graves, précises et concordantes) as evidence of nationality, drawing inferences from known to unknown facts. This provision was not included in later versions of the law (including that of 1981, which set the date of ethnic qualification for citizenship as 1885, as well as the most recent, of 2004), which state only that evidence of nationality is provided by an official certificate of nationality supplied by the correct state authority. However, the decree implementing the 1981 law also cancelled the certificates of nationality issued under the 1972 law.

In 1996, the Supreme Court considered a request by two members of the long-running “transitional” parliament (le Haut Conseil de la République—Parlement de transition), Mutiri Muyongo and Kalegamire Nyirimigabo, that it set aside the decision of the parliament to exclude them on grounds of doubt about their Congolese (in fact, at that time Zairian) nationality. The court granted the requests and annulled the decision of the transitional parliament on both procedural and substantive grounds. Most importantly, it ruled that the Congolese nationality of the two parliamentarians was sufficiently proved by the certificates of nationality or identity cards that they had obtained from the Ministry of the Interior and did not require any further evidence. The court declined, however, to award any damages.\(^\text{137}\)