Right to identity documents and passports

Many African countries have national identification systems requiring adults resident in the country to register with the authorities, and frequently the national identity cards obtained from this process are critical to the process of applying for or proving citizenship and to the process of obtaining a passport.\(^{232}\) In civil law countries and in some common law countries, an individual may also apply for a “certificate of nationality” that provides prima facie proof for other purposes—such as registering children in school or obtaining a passport—that the person is a citizen. The administration of these systems is critical to the recognition of citizenship rights, and there are many problems reported in practice.\(^{233}\)

One of the most common actions of repressive governments seeking to silence their critics is to stop them travelling abroad either by denying them a passport or by confiscating existing passports when they try to leave the country. During 2007, governments in Chad, Djibouti, Eritrea, Sudan, and Zimbabwe—and no doubt other countries—denied or confiscated passports from individual trade unionists, human rights activists, opposition politicians, or minority religious groups.\(^{234}\)

Historically, British law regarded the grant of travel documentation as being within the “crown prerogative,” a privilege and not a right, though this position has changed in recent years. African jurisprudence in the Commonwealth countries has regrettably often followed this rule. In the 1985 \textit{Mwau} case in Kenya, for example, the High Court ruled that “in the absence of any statutory provisions ... the issue and withdrawal of passports is the prerogative of the president.”\(^{235}\)

This situation has begun to change, however. In Kenya itself, a groundbreaking 2007 ruling overturned the \textit{Mwau} decision: “In Kenya the right of travel is an expressed constitutional right, and its existence does not have to depend on a prerogative, inference or any implied authority.”\(^{236}\) “The new Kenyan 2010 constitution provides that “Every citizen is entitled to a Kenyan passport and to any document of registration and identification issued by the State to citizens”.\(^{237}\) The South African Constitution also provides for citizens

\(^{232}\) See Klaaren and Rutinwa, pp. 26–38.
\(^{235}\) \textit{In re application by Mwau}, 1985 LRC (Const) 444.
\(^{236}\) Deepak Chamanlal Kamani v. Principal Immigration Officer and 2 Others [2007] eKLR; see also Peter Mwaura, “Passport is a right for every citizen, not a privilege” \textit{The Nation} (Nairobi), 7 July 2007.
to have a right to a passport, and the Ugandan citizenship law adopted in 1999 similarly gives all citizens the right to a passport. In Nigeria, where seizure of passports from activists attempting to travel was a common practice of previous military regimes, the Nigerian Court of Appeal in 1994 upheld the fundamental right of every citizen to hold a passport and to leave the country. The judges ordered that the passport of well-known lawyer Olisa Agbakoba, seized at the airport as he was on his way to attend a conference, be returned to him. In Zambia, the courts have also ruled that a citizen is entitled to a Zambian passport, though this is not provided for in legislation.

**Egypt recognises the right of adherents of “non-recognised” religions to documentation**

Identification documents are mandatory for all Egyptians and necessary to obtain access to employment, education, registration of births and deaths, recognition of marriage, and other state services, as well as most commercial transactions. A person who cannot produce a national ID upon request by a law enforcement official commits an offence punishable by a fine of LE100–200 (US$18–35). For years, the Egyptian government denied Egyptians who were not members of one of the three recognised religions—Islam, Christianity, or Judaism—the right to access such documents. Members of the small Baha’i minority in Egypt, numbering some 2,000, were those most affected by these laws.

In addition, on the basis of their interpretation of Shari’a rather than any Egyptian law, government officials regularly deny those who convert from Islam to any other religion the option to change their religious affiliation on their official documentation. The courts have usually supported officials in this practice.

In March 2009, the Supreme Administrative Court overturned a previous 2006 decision and upheld the right of Egypt’s Baha’is to obtain official documents, including identity cards and birth certificates, without revealing their religious affiliations or having to identify themselves as Muslim or Christian. Three days later, the Egyptian Interior Ministry accepted the ruling by issuing a decree that introduced a new provision into the Implementing Statutes of Egypt’s Civil Status Law of 1994 and instructed Civil Status Department officials to leave the line for religion blank for adherents of religions other than the three the state recognises. The decree came into force on April 15.

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238 Article 21(4), Constitution of the Republic of South Africa.
239 Citizenship and Immigration Control Act, 1999, section 39: “Every Ugandan shall have the right to a passport or other travel documents.”