

### 3 | Natives and settlers

Since the human species evolved within its boundaries, Africa has seen internal migrations across the vast distances of the continent, as the first peoples travelled in search of new territories and resources and were followed by different population groups over the centuries. For many millennia, Africa's peoples have also left its shores: it is probable that all human beings on the planet are descended from individuals who first came from Africa. North Africa has long exchanged both goods and people with the European countries on the northern side of the Mediterranean Sea. The coastal populations along the countries bordering the Indian Ocean have traded and intermarried with people from the Arabian peninsula and the Indian subcontinent for centuries. The first Europeans arrived in sub-Saharan Africa on voyages of exploration, trade and missionary activity from the end of the fifteenth century, long before the era of military conquest and colonial rule.

The nature of migration slowly changed, however, especially as the European presence in sub-Saharan Africa degenerated into trafficking of human beings followed by colonial conquest. Though a trade in slaves had long existed across the Sahara Desert and the Indian Ocean, the numbers affected dramatically escalated with the Atlantic slave trade, peaking in the late eighteenth century. More than ten million people were ultimately taken from the continent by Europeans, before the abolition of the slave trade in the nineteenth century. No sooner had the slave trade ended than the age of empire began, establishing the foundations of the states we see today. And with empire came further migration: of Europeans to manage the new structures of government and to farm the best land; of other non-Africans as indentured labour to build the new infrastructure or to use

that infrastructure for the purposes of trade; and of Africans themselves, either forcibly used as labour on colonial plantations, or following economic opportunities of their own accord.

There are two main groups in Africa today whose members are not themselves migrants but suffer from blanket discrimination in their entitlement to citizenship. The first are the descendants of the more recent immigrant populations (roughly, since the period of nineteenth-century European colonization), including not only Europeans themselves but also those of south Asian descent in east and southern Africa and the 'Lebanese' of west Africa. The second group, most numerous, but least well known, are those of African descent whose ancestral origins lie outside the present borders of the state concerned; and in some cases also their ethnic kin who are not themselves descended from migrants but are lumped together with the more recent arrivals for the purposes of state policy and in popular understanding. Among these are the Banyarwanda of the Democratic Republic of Congo; 'northerners' (as well as descendants of Burkinabé or Malian migrants) in Côte d'Ivoire; and the Nubians of Kenya, black Africans yet still regarded as not eligible for full citizenship because they 'originally' came from somewhere else.

Thus, though it may seem easy to understand a state policy of dispossessing or at least disfavoursing those who were previously the dispossessors or who benefited from official favouritism during the period of colonial rule, contemporary policies of dispossession have equally or to a greater extent affected those who were themselves among the victims of empire; or who have been 'guilty' only of migration from another part of Africa in search of economic opportunities.

Although the marginalization of these groups is justified in the official or public mind by their status as newcomers or minorities who do not belong, in practice their status is designated on the basis of race or ethnicity. The number of generations an individual's family has been resident in the territory, fluency in national languages, contribution to economic, political or cultural achievements, and apparent integration into the life of

the country may all hold no weight in citizenship regimes that depend in law or practice on proving the absence of an alternative nationality or a line of descent from ancestors who were already in the country at the time of independence.

The case studies below describe the situation of these migrant populations in Zimbabwe, Kenya and Uganda, Sierra Leone, DRC and Côte d'Ivoire. In the last two countries especially, citizenship discrimination has led directly to bloody conflict. As the case of Rwanda shows, discrimination need not be founded on citizenship law to have catastrophic consequences – the 1994 genocide was built on years of systematic government discrimination against one segment of the population, but not in any formal sense on manipulation of the right to be a Rwandan citizen as such – but the denial of citizenship rights has a particular usefulness to governments. If a group of persons are not citizens, then they lose most of the rights to protection that the state should be giving them; they can be argued to be 'outlaws', outside the reach of the law of the place where they live. They enter a world of half-rights and discretionary executive action, free from the supervision of the courts and much of the reach of international law.

### *Dual citizenship, denationalization and disenfranchisement in Zimbabwe*

Zimbabwe provides perhaps the clearest example of policies of dispossession dating from the era of colonial and minority rule returning boomerang-like to give their perpetrators' descendants a knock-out blow. Yet those worst affected by the efforts to denationalize the 'former oppressors' have not been white Zimbabweans but rather the African migrants from neighbouring countries who have travelled to Zimbabwe in search of economic opportunities.

What was then Rhodesia was one of the most favoured destinations for white settlement under the British empire. Profitable commercial farms were rapidly established on the rich land expropriated from its former cultivators, and the colonial government

established systems to recruit cheap labour from neighbouring Nyasaland (today's Malawi), Northern Rhodesia (Zambia) and Mozambique. Though new foreign recruitment largely ceased with the unilateral declaration of independence from Britain in 1965, the existing farm workers remained, and by the 1980s between a quarter and a half of farm workers were still of foreign origin (though the vast majority had been born in Zimbabwe). An end to white minority rule came in 1980 after a protracted war of liberation, but was ultimately negotiated through talks brokered by the British government that established a new government elected on the basis of universal suffrage and headed by Robert Mugabe (first as prime minister and from 1987 as president), the leader of the dominant liberation movement, the Zimbabwe African National Union – Patriotic Front (ZANU-PF).

The twists and turns of Zimbabwe's citizenship law since majority rule was attained shadow the political history of the country. Over the years, a law that at first glance appears to provide for a *jus soli* right to citizenship for all individuals born in the country has become so bound about with exceptions based on foreign parentage and gender bias that it is virtually impossible for the non-lawyer to decide whether someone is indeed a citizen. Adding to the complications are the ever-stricter rules that have been applied relating to those Zimbabweans who might have a possible claim on some other citizenship – whether or not they actually hold that citizenship in fact. Whereas many other African countries have gradually relaxed their rules on dual nationality, Zimbabwe has moved so far in the opposite direction that it can in fact be impossible for someone descended from immigrants to the country to be a citizen.

The first version of Zimbabwe's constitution, negotiated under restrictive conditions and British supervision, allowed dual citizenship. As in the case of constitutional provisions providing special protections for white Zimbabweans and restricting redistribution of land for the first decade of majority rule, this provision was opposed by ZANU-PF. Unlike the other transitional arrangements, permission to hold dual nationality

had no special protection. ZANU-PF moved quickly to address this question: in 1983, the constitution was amended to prohibit dual citizenship.<sup>1</sup>

A new citizenship law passed in 1984 confirmed this position and also introduced a requirement that Zimbabwean citizens with an entitlement to another citizenship renounce that right by the end of 1985.<sup>2</sup> This provision was directed primarily at those white Zimbabweans with a British or other passport, or the right to another passport. Though perhaps two-thirds of the up to a quarter-million white Zimbabweans left the country during the years immediately after independence, tens of thousands did renounce their entitlement to a foreign citizenship before Zimbabwean officials and kept or obtained Zimbabwean passports as a result; thousands more remained in the country as permanent residents but used foreign passports.

When dual citizenship was abolished, however, many persons of foreign origin with less access to information than the white population typically had – especially farm workers – were deprived of their Zimbabwean citizenship because they had failed to sign the prescribed form renouncing their foreign citizenship. In 1990, the government provided a partial response to the excluded status of this group by adding a new provision to the constitution that extended the categories of voters entitled to vote in a presidential or parliamentary election beyond citizens to ‘persons who, since 31 December 1985, have been regarded by virtue of a written law as permanently resident in Zimbabwe’.<sup>3</sup> Thus, the government ensured they were not deprived of the franchise as well as their citizenship – no doubt with the hope of obtaining their votes in return. Yet farm workers were still regarded with suspicion by the government, tainted by their association with white farm owners even though they were among the lowest-paid groups in Zimbabwe.

Running in parallel with this racially charged debate on dual nationality was a separate – but related – argument over gender discrimination. Under Zimbabwean citizenship law, women do not have the right to pass on citizenship to their non-Zimbabwean

husbands, nor to their children by a non-Zimbabwean father. Immigration law also subjected foreign husbands (but not wives) of Zimbabwean citizens to the discretion of the state in terms of their right to reside in Zimbabwe. In 1994, the Supreme Court of Zimbabwe ruled that these restrictions violated the constitutional right of Zimbabwean women to freedom of movement.<sup>4</sup> The government promptly introduced a bill to amend the constitution to enable the restrictions on foreign husbands to be reinstated. Just as in the case of dual citizenship, although the amendment was presented as a law that would only affect 'elite' women bringing husbands from overseas, most of those potentially affected were rural women living in Zimbabwe's border regions. Women's rights activists won a pyrrhic victory over the bill: the government conceded on the gender discrimination point, but the constitutional amendment was resubmitted and passed in a form that ensured that restrictions on freedom of movement could be applied to foreign wives as well as husbands of Zimbabwean citizens.

In 1999, a new opposition movement was formed in Zimbabwe, the Movement for Democratic Change (MDC), to contest upcoming elections and challenge the long dominance of ZANU-PF. The MDC campaigned against a proposed new constitution put forward by the government, which had co-opted a citizens' movement for constitutional reform by creating a ZANU-PF-dominated constitutional commission to draft a new text. The draft constitution, which would have greatly strengthened the executive at the expense of parliament as well as extending the powers of the government to acquire land compulsorily without compensation, was rejected in a February 2000 referendum. In June 2000, parliamentary elections were held. The MDC won fifty-seven seats, only just short of the sixty-two seats won by ZANU-PF, and took 77 per cent of the urban vote. ZANU-PF chose to attribute its losses to the MDC in the referendum and elections to the influence and finance of white Zimbabwean citizens considered anti-government, especially the approximately four thousand white commercial farm owners, as well as the by now several hundred

thousand farm workers and their families. In addition to mobilizing violence against the opposition and other measures, steps were taken to amend the criteria for Zimbabwean citizenship, with the transparent aim of disenfranchising these groups.

In May 2000, the government warned whites they would be stripped of their Zimbabwe citizenship if they could not produce foreign documentation showing they had no entitlement to the citizenship of another country. Around 86,000 whites who had allegedly failed to renounce their British citizenship would have to turn in their Zimbabwean passports, a government newspaper advertisement stated; of these, around 30,000 were adults, able to vote.<sup>5</sup> In accordance with this announcement, the registrar-general's office<sup>6</sup> began to refuse to renew the Zimbabwean passports of many whites, arguing they should have renounced any entitlement to foreign nationality to individual foreign governments.

At least two court cases successfully challenged these provisions. In December 2000, the Supreme Court ruled against the registrar-general, in a case brought by Robyn Carr, a businesswoman whose application to renew her passport had been refused by the registrar-general on the grounds that she must prove she had renounced her British citizenship under British law. But the Supreme Court ordered renewal because she had complied with the requirements of renunciation under Zimbabwean law by filling in a form of renunciation of citizenship, and the registrar-general had no power to require her to renounce her citizenship under British law.<sup>7</sup> In January 2001, Sterling Purser, an eighteen-year-old born in Harare in 1982 of a British father, was denied a passport on the grounds that he had not renounced his British citizenship. Purser challenged the decision, arguing that he had fulfilled the legal requirements to renounce his entitlement to foreign citizenship, and the Supreme Court agreed, following its earlier ruling in the Carr case. In both cases, the Supreme Court awarded costs against the registrar-general.<sup>8</sup>

In light of these court defeats and the electoral results of 2000, the government introduced the Citizenship Amendment

Act No. 12 of 2001, which strengthened the provisions for renunciation drastically, including inserting a provision requiring renunciation under the relevant foreign law, and not only under Zimbabwean law:<sup>9</sup> Section 9(7) provided that:

A citizen of Zimbabwe of full age who –

a) at the date of commencement of the Citizenship Amendment Act, 2001, is also a citizen of a foreign country; or

b) at any time before that date, had renounced or purported to renounce his citizenship of a foreign country and has, despite such renunciation, retained his citizenship of that country; shall cease to be a citizen of Zimbabwe six months after that date unless, before the expiry of that period, he has effectively renounced his foreign citizenship in accordance with the law of that foreign country and has made a declaration confirming such renunciation in the form and manner prescribed.

According to the state-owned media, quoting a government official, the amendment was required because ‘[t]here are concerns that those with dual citizenship are behind efforts to discredit the Government economically and politically by enlisting foreign governments to use diplomatic and other means to topple the ZANU-PF Government’.<sup>10</sup> Information Minister Jonathan Moyo described passports as ‘privileges’ not rights, and threatened their withdrawal from anyone involved in calls for international sanctions against Zimbabwe.<sup>11</sup>

While lawyers argued that the amendment act required only those people who actually had dual citizenship to renounce their foreign citizenship according to the laws of their respective countries, the law was applied more expansively. Registrar-General Tobaiwa Mudede placed an advertisement in a national newspaper stating that even those people with only a claim to foreign citizenship (but no citizenship in fact) had to renounce that potential citizenship. He repeatedly restated this position. Thus, for example, a person born in Zimbabwe of a father of Malawian descent and a mother of Mozambican origin had to



renounce entitlement to Malawian and Mozambican citizenship: something virtually impossible to do. Despite protests from farm workers' organizations at this interpretation of the act, the registrar-general issued a statement confirming that 'any failure by farm workers to renounce foreign citizenship in the form and manner prescribed by the foreign law will result in loss of Zimbabwean citizenship after 6th January 2002'.<sup>12</sup> Before the 6 January deadline, the Mozambican high commission in Harare stated that it was overwhelmed with applications for documentary proof that persons of Mozambican descent were not eligible for Mozambican citizenship, and were unable to supply it.<sup>13</sup>

As Mudede confirmed, the vast majority of persons affected by the amendment were farm workers and others born in neighbouring countries or whose parents were born in neighbouring countries.<sup>14</sup> But although the amendment was given some publicity in the urban areas of Zimbabwe, many affected citizens in the outlying areas remained uninformed until the deadline set had passed and their Zimbabwean citizenship had been lost by operation of law.

A class action suit challenging the registrar-general's interpretation of the citizenship law was filed with the High Court in October 2001 by Lesley Leventhe Petho. Although it was initially struck out by the High Court, on the grounds that Petho's case was not sufficiently typical to be the basis of a class action (he was born in Zimbabwe, the son of Hungarians who had fled the aftermath of the 1956 uprising), the Supreme Court confirmed the possibility of bringing a class action case in October 2002, providing Petho advertised in national newspapers and on radio to let others in the same plight know he was doing this.<sup>15</sup> The state-run Zimbabwe Broadcasting Corporation then refused to accept his advertisements, and negotiations to have the advertisements run at an affordable price never reached conclusion.

Several other cases were successfully brought in the High Court over the next year. In February 2002, the High Court ruled in a case brought by trade union and opposition leader Morgan Tsvangirai, stating that it could not be assumed that a person had a right to

foreign citizenship only because his parents were born elsewhere and that a person could not be required to renounce what they had never possessed, and extending the deadline for renunciations to 6 August 2002.<sup>16</sup> In May 2002, the High Court found in favour of Judith Todd, daughter of former Rhodesian prime minister Sir Garfield Todd, deposed as head of government when he tried to liberalize Rhodesia's apartheid-style rule, and herself a high-profile opponent of the former white minority regime. In 1998, she had become a shareholder and director of Associated Newspapers of Zimbabwe, publisher of the newly established independent newspaper the *Daily News*. The registrar-general asserted that Judith Todd should lose her citizenship because she had not renounced any claim to citizenship of New Zealand, where her father was born. The court, however, ruled that she was still a Zimbabwean citizen, and ordered the restoration of her passport.<sup>17</sup> She was issued a temporary passport, valid for one year, and the government appealed. In June 2002, the High Court also ruled in favour of Ricarudo Manwere, a well-known Zimbabwean dancer of Mozambican parentage.<sup>18</sup>

Presidential elections were held in March 2002. In January, the first set of 'notices of objection' issued in terms of section 25 of the Electoral Act were sent to Zimbabwean citizens who had purportedly lost their Zimbabwean citizenship because they had failed to comply with the terms of the Citizenship Amendment Act No. 12 of 2001. Each notice alleged that the person affected had lost his/her Zimbabwean citizenship and therefore was no longer entitled to remain on the voters' roll. The affected voter was given seven days to appeal to the constituency registrar. There were two distinct groups of people who received notices in error: those who had in fact renounced their foreign citizenship and thus remained Zimbabwean citizens, and those who had never been Zimbabwean citizens and had always been entitled to vote as permanent residents since 31 December 1985; and a further disputed group who had failed to renounce a potential right to foreign citizenship. In a large majority of the cases the notices were received after the seven-day deadline, and when individuals

attempted to lodge their appeals they met with resistance and refusal by the constituency registrar and the registrar-general's office. Many affected farm labourers and rural dwellers never in fact received these notices, and were summarily struck off the voters' roll without first having had an opportunity to be heard.

In parallel with the cases dealing with dual citizenship, the issue of the rights of permanent residents under the constitutional provision allowing both citizens and permanent residents to vote also came into dispute in the courts. Lawyers argued that those who had supposedly lost their Zimbabwean citizenship under the new rules were nevertheless entitled to be on the voters' roll and vote, because they remained permanent residents. In January 2002, in another case brought by Morgan Tsvangirai, the High Court ordered the registrar-general to restore this group of persons to the voters' roll.<sup>19</sup> In February, however, the Supreme Court overturned this decision, holding that citizens and permanent residents were two separate statuses that could not be held at the same time, and those who had lost their citizenship were therefore not permanent residents by default and not entitled to vote.<sup>20</sup> Other cases in the High Court followed the Supreme Court's ruling.<sup>21</sup> Litigation on these issues was still under way as the presidential election was held on 9–11 March, including a challenge to a new statutory instrument issued on 9 March that changed the rules for disputes over the voters' roll. On the days of polling those people who had obtained orders from the magistrates' courts in favour of their right to be on the voters' roll were none the less denied the chance to vote.

In 2005, the government ended this argument, by passing the Constitution of Zimbabwe Amendment (No. 17) Act. Among many sections dealing with land ownership and the creation of a second chamber in the national parliament, the act also repealed the constitutional provision allowing adults with permanent residency in Zimbabwe to vote.<sup>22</sup> (The same act also amended the section of the constitution dealing with freedom of movement to allow restrictions on movement imposed 'in the national interest, or in the interests of defence, public safety,

public order, public morality, public health, the public interest or the economic interests of the State'. That is, it allowed the government to seize passports and stop MDC representatives or civil society activists from travelling outside Zimbabwe.)

Among those disenfranchised by the various legislative amendments was Sir Garfield Todd, who had, somewhat ironically, previously been deprived of his passport by the government of the last Rhodesian prime minister, Ian Smith. In addition to having his citizenship revoked when the new rules came into force, Garfield Todd's name was put on a list of those not allowed to vote supplied by Registrar-General Mudede to all polling stations, even if, like his, their names were actually printed on the current voters' roll. Aged ninety-four, he still attempted to vote, and was refused.<sup>23</sup> Paying attention to symmetry, the government also refused to renew the passport of Ian Smith.<sup>24</sup>

In November 2002, the minister of justice published a cabinet-approved notice in the *Government Gazette* clarifying that renunciation of citizenship would not apply to a potential right to foreign citizenship, but only to a person who was actually and presently a citizen of a foreign country.<sup>25</sup> (In June 2007, a parliamentary committee of which MDC members formed a substantial part issued a report supporting the cabinet's 2002 notice, to no effect.<sup>26</sup>)

Despite this, the registrar-general continued to apply the rule that renunciation applied to potential as well as actual citizenship. Moreover, in February 2003, the Supreme Court – which by 2002 had been augmented by judges known to support the government – considered the government's appeal against the ruling in Judith Todd's case and agreed with the government's interpretation that a potential claim to citizenship had to be renounced, as well as an actual citizenship. It examined New Zealand law and concluded that although Judith Todd had not actively sought New Zealand citizenship at any time in her life, she was nevertheless entitled to it under the foreign law, and therefore should renounce such entitlement. If she did not do so within two days, she would lose Zimbabwean citizenship.<sup>27</sup> Todd attempted to comply with the ruling. The New Zealand

authorities, however, responded in July, stating that they had received Todd's application for renunciation of citizenship, but that this application could not be processed as she had never laid claim to New Zealand citizenship.

The High Court, however, the first to hear these cases, continued to rule against the registrar-general on the grounds that individuals had in fact no foreign citizenship to renounce. In June 2005, the High Court handed down a judgment in favour of lawyer Job Sibanda, whose father was born in Malawi, finding that Sibanda was 'a Zimbabwean citizen with all privileges, duties and obligations attaching such citizenship'.<sup>28</sup> In 2006, yet another High Court case confirmed the right of lawyer Lewis Uriri, born in Zimbabwe of Mozambican parents, to obtain a birth certificate for his son.<sup>29</sup> In January 2007, the High Court ordered the registrar-general to issue a passport to Trevor Ncube, owner of the independent and critical newspapers the *Zimbabwe Independent* and the *Standard*, who had been informed in December 2005 that he had forfeited his Zimbabwean citizenship because he had failed to renounce his Zambian citizenship (his father was born in Zambia).<sup>30</sup> Ncube's passport was restored to him.

Protests from the southern African region about the Zimbabwe government's treatment of those whose parents had origins in neighbouring countries did eventually lead to a concession in favour specifically of migrant workers from Southern African Development Community (SADC) countries. In 2003 the Citizenship of Zimbabwe Act was amended to allow people who were born in a SADC country, but whose parents came to Zimbabwe as farm labourers, mineworkers, domestic employees or 'in any other unskilled occupation', to apply for 'confirmation' of their citizenship of Zimbabwe and at the same time sign a form renouncing their foreign citizenship (without the need to obtain any documentation from the other SADC country).<sup>31</sup> Although this should have substantially improved the situation of the many farm workers who had been rendered stateless, the amendment was published after most of the people concerned had already lost their Zimbabwean citizenship, and did not have retroactive effect.

In 2007, the Zimbabwe government introduced a bill to parliament to support the 'economic empowerment of indigenous Zimbabweans'. Indigenous Zimbabweans were defined in the bill as 'any person who before the 18th April 1980 was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest'.<sup>32</sup> The law, which was adopted unchanged, required that at least 51 per cent of all companies, publicly quoted or private, should be held by indigenous Zimbabweans, and established other procedures for ensuring their economic empowerment.

Throughout the ever-increasing insistence on pure Zimbabwean ancestry for those wishing to claim Zimbabwean citizenship, the government has taken care to give the appearance of respect for a rule of law by adopting statutes and constitutional amendments in the usual legalistic terms. Yet the effect has been to overturn the legal conventions and principles that are the basis of international human rights law, including as it applies to nationality. Because many of the most high-profile figures affected by citizenship discrimination have been white Zimbabweans and because the citizenship issue has been tied to land redistribution, the Zimbabwean government has been able to gain a measure of support from across Africa, even though the most numerous victims of the policy are black Africans from neighbouring countries. Yet the perverted rules of nationality that Zimbabwe has sought to apply have transparently been adopted for political purposes to silence critics and divert attention from the real issues. The consequences of such misguided and unjust policies for all Zimbabweans, most of all the poorest, have become ever more apparent the longer they have remained in effect.

### *Ethnic exclusion in Kenya and Uganda*

In the east African countries of Kenya and Uganda, unlike in Zimbabwe, the great majority of those whites who had acquired

land and property during the period of British colonial rule left at independence. Though vast white-owned estates still exist in Kenya, they are few, and the resentment that they might perhaps have generated against whites in the post-independence era has instead been targeted at the south Asian migrants who migrated at a time when both east Africa and the Indian subcontinent were equally part of the British Empire. Asians for the most part did not acquire large landed estates, but they did achieve an economic success that came to be seen to pose a threat to the autonomy of the new states. To undercut the political power that relative wealth might have given them, the new states argued that these Asian immigrants should not have the right to be full citizens – and then took action accordingly.

Asian migration to east Africa began many centuries ago, as trading links across the Indian Ocean were developed among coastal communities in what are now Somalia, Kenya, Tanzania, Mozambique, Yemen, Oman, the Gulf States, Pakistan, India, and farther afield. This contact was accelerated and brought into the interior of the continent under British colonial rule, especially in Kenya and Uganda, where thousands of people from the Indian subcontinent were either imported to work as indentured labour on the railways, or came as traders and businessmen following the economic opportunities those railways brought.

In both Kenya and Uganda, the status of the newer populations of south Asian descent, by then numbering around 175,000 (the majority in Kenya), was highly sensitive during the period leading up to and immediately after independence. In particular, the criteria for acquiring citizenship by registration – an easier process than citizenship by naturalization, and intended to cater for the descendants of Asian or European immigrants – became a subject of debate and dispute, especially in Uganda.

The constitutions of both Kenya and Uganda applied the same rules for acquiring citizenship at independence: a person who was born in Kenya or Uganda of at least one parent who was also born in the country, and who was on the date of independence a citizen of the United Kingdom and colonies or a British protected

person, automatically became a citizen of the newly independent country.<sup>33</sup> In addition, a person born outside the country was automatically a citizen if his father became a citizen according to these rules. Various categories of people with a connection to the country had the right to apply for citizenship by registration, including those caught by the exception for those whose parents were born outside the country, as well as those who had married a citizen. These provisions enabled white settlers, Asians and others of non-Kenyan or Ugandan origin to become citizens of the two countries. The constitutions also recognized Commonwealth citizens as a special category of people, but prohibited dual citizenship for adults.<sup>34</sup> Other non-citizens would follow the process of naturalization, with different conditions.

Both during the independence negotiations and immediately after the adoption of the new constitutions, discontent over the economically advantaged position of Asian immigrants to Kenya and Uganda led to agitation for changes in the law. In both countries, citizenship law was modified and restrictions placed on the business operations of 'non-indigenous' populations; in Uganda, these changes were far more radical, and eventually led to the expulsion of the population of Asian descent.<sup>35</sup>

The 1963 Kenya Citizenship Act (revised in 1988) basically reiterated the constitutional provisions with regard to citizenship. Section 92, however, on registration of citizens, introduced a requirement not present in the constitution that an applicant to be registered as a citizen had to satisfy the minister that he was of 'African descent'. In addition, the person had to show either that 'he was born, and one of his parents was born, in a country to which this section applies'; or that 'he has been resident for a period of not less than ten years in a country to which this section applies and he is not a citizen of an independent state on the Continent of Africa'.<sup>36</sup> The minister could declare the countries to which the section applied (essentially on the basis of reciprocity). This provision was rooted in a commitment to African solidarity, in an era before all African states were independent; it has, however, been little used, if at all.<sup>37</sup>



In Uganda, the requirements of the 1962 independence constitution were implemented by the Uganda Citizenship Ordinance.<sup>38</sup> The ordinance provided that Commonwealth citizens or British protected persons (including most whites and Asians) could register as citizens if they applied before 9 October 1964, and satisfied the minister that they had been resident for five years, among other conditions. The 1962 constitution and the Citizenship Ordinance also gave the minister extensive powers to revoke citizenship granted in this way. During the parliamentary proceedings, Asian members of parliament argued unsuccessfully for an easier application and registration process and a more stringent process for revoking citizenship. By 1967, only 11,000 of the 25,000 applicants for registration had been granted citizenship.

The question of citizenship for Asians living in Uganda after independence continued in the 1967 constitutional debate, and slightly more generous provisions were made, by adding the right to derive citizenship from a grandparent and removing gender discrimination. In addition to recognizing existing citizens and new registrations, the 1967 constitution provided citizenship for those born after the constitution came into force to people born in or outside of Uganda with a citizen parent or grandparent.<sup>39</sup>

Both Uganda and Kenya also took measures to promote the 'Africanization' of the economy, perceived to be too dominated by businesses owned by Kenyans of European and Asian descent. Each country passed a Trade Licensing Act, in 1969 and 1977 respectively, to restrict the operations of non-African-owned businesses.

In Kenya, these measures led to a case before the Kenyan High Court in 1968 which considered the concept of 'African descent' under the Citizenship Act in order to decide whether non-Africans could be deprived of property rights.<sup>40</sup> The plaintiffs were individuals of Asian descent who had been given notices to quit the stalls they rented from Nairobi city council following a resolution on the Africanization of commerce. They had been born in Kenya but did not qualify automatically for citizenship

because their parents had not been born in the country, though they were entitled to and had applied for citizenship by registration and were awaiting the results. The court found that the implementation of the resolution was discriminatory in practice and that the quit notices were void – but not that the policy or the resolution were unconstitutional in themselves, on the grounds that the constitutional protection against discrimination did not apply to non-citizens.<sup>41</sup> Effectively, the court accepted that the state's delay in processing applications for citizenship justified its actions against the very same group of people.

In Uganda, these measures went much farther following the takeover of power in 1971 by President Idi Amin, who sought to return the Asian-controlled businesses to 'black Ugandans', on the grounds that the Asians were 'sabotaging Uganda's economy and encouraging corruption'.<sup>42</sup> On 4 August 1972, he announced that he would demand that the British government take over responsibility for the 80,000 Asian British passport holders in Uganda and ensure their removal from Uganda within three months. Successive decrees cancelled all entry permits and certificates of residence issued to persons of Asian origin, and had a knock-on effect on other foreigners, most of whom left the country.<sup>43</sup>

In 1983 the new government reversed these policies, passing legislation to return confiscated property and encouraging the return of the Asian community and other foreigners and investors to Uganda<sup>44</sup> – though the process was not a simple one and there was much controversy over ownership of the property formerly held by Asians.<sup>45</sup>

In 1995, a new constitution was promulgated in Uganda following a countrywide consultative process led by a constitutional review commission (known as the Odoki Commission, after its chair). While the status of those of Asian descent had dominated the drafting of the 1962 and 1967 constitutions, the 1994/95 constitutional debate focused on the status of African immigrants and refugees. In particular, because of the controversial status of the 'Rwandese Tutsi' who had come to Uganda as refugees,

*The Terminal: stateless man spends year at airport*

Sanjay Shah was born in Kitale in Kenya and later lived in Nairobi. His parents were both born in India but held British passports. His predicament began when he learnt that he was eligible for a British Overseas Citizen passport, and decided to apply for one in August 2003. After the mandatory six months' wait, he got his passport, and he left to visit his sister in Britain. A British Overseas Citizen passport does not, however, give the same rights as those granted a British citizen, and at Heathrow he was detained under the Immigration Act 2002 on the grounds that he did not give satisfactory reasons for his visit. He was returned to Kenya three days later with his passport stamped 'prohibited'. Upon arrival in Kenya he was detained again on the grounds that, having obtained another nationality, he was no longer a Kenyan citizen. Shah spent one year at the airport unable to enter Kenya or to go to Britain, while the Indian government also refused to take him. Effectively he found himself suddenly stateless. In July 2005 it was reported that finally he was to become a citizen of Britain.<sup>46</sup>

many Ugandans opposed the recognition of 'Banyarwanda' as citizens. Though a minority sought a more restrictive position, however, many Ugandans wanted citizenship to be defined to include all people who had been in Uganda for a long period of time and wished to obtain citizenship.<sup>47</sup>

The 1995 constitution introduced an explicit ethnic definition of Ugandan citizenship for the first time. It provides for a right to citizenship by birth for two categories: 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 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 by birth.<sup>48</sup> Both categories, the former explicitly, the latter by implication, privilege the ethnic groups historically resident in Uganda, making it difficult for whites and Asians to obtain Ugandan nationality. A schedule listing the 'indigenous communities' of Uganda generated some of the hottest debate as the constitution was adopted; Asians argued unsuccessfully that they should be regarded as an indigenous group. Fifty-six groups were eventually included, among them the Banyarwanda, as well as other cross-border ethnic groups such as the Batwa, Lendu and Karamojong; in 2005, a further nine were added to the list.<sup>49</sup> Uganda thus joined the small group of countries that make it effectively impossible for those of the 'wrong' race or ethnicity to become citizens with full rights, a choice that may well have long-term consequences for its stability.<sup>50</sup>

### *The 'Lebanese' of Sierra Leone*

In west Africa, migration from south Asia was less common than in the countries that came to make up the East African Community. As in east Africa, the laws governing the transition to independence were non-discriminatory on a racial or ethnic basis; but very similar sorts of discrimination in law and practice have since independence been adopted in several countries against the Middle Eastern migrants who came to the region under colonial rule. Among the more extreme cases are the two west African neighbouring countries where freed slaves played the leading role in the early years of self-government: Liberia and Sierra Leone. In each case, the history of oppression by white people and favoured immigrants from other continents led to the adoption of laws that excluded those not of African descent from full membership of the new states. In Liberia, the constitution has, since the first version was adopted in 1847, always provided that only a 'Negro' may be a citizen, whatever the other circumstances (though a single great-grandparent who was fully black may be enough to call an individual 'Negro').<sup>51</sup> Sierra Leone applies a similar rule: though it allows non-blacks

to naturalize, it makes this extremely difficult in practice, and citizenship by birth is restricted to ‘Negro Africans’, defined – until 2006 – with reference to the male line only.

The kernel for the British colony of Sierra Leone was founded in 1787, when several hundred immigrants, made up largely but not only of London’s ‘poor blacks’ supported by funds from the abolitionist movement, arrived in the territory and established the first new settlement. In 1792, bolstered by the arrival of ex-slaves from Nova Scotia, the settlers established Freetown, and were joined there by other ‘returnees’ from Jamaica and America. Then, from the date of the abolition of the slave trade by the British parliament in 1807, the British navy began intercepting slave ships travelling from Africa to the Americas, and landed thousands of freed slaves in Freetown, where a naval base had been established. The colony previously managed by the private Sierra Leone Company was surrendered to the British crown in the same year. Though contacts both peaceful and military between the colony and the interior then steadily increased, it was not until 1896 that a British Protectorate was declared over the full territory of what is now Sierra Leone.

During the late nineteenth century, migrants from what are now Syria and Lebanon but was then the Ottoman Empire began arriving in Freetown, which had become a thriving port, and set up businesses as traders. Lebanese nationals also came to settle in Sierra Leone much more recently, especially during the civil war in Lebanon. Something less than 1 per cent of Sierra Leone’s estimated 5–6 million population was at one time made up of individuals of Middle Eastern descent, known collectively as ‘Lebanese’; though the numbers diminished greatly during the civil war to perhaps fewer than ten thousand. Many of these ‘Lebanese’ have parents and grandparents born in Sierra Leone, speak Sierra Leonean languages, and have intermarried and actively participated in the political, social and economic life of the country. At the same time, a strong Lebanese identity is retained by some, through institutions such as the Lebanese International School in Freetown, which teaches the Arabic

language and Lebanese history, as well as the history and curriculum for Sierra Leone. Some have retained Lebanese passports. The Lebanese in Sierra Leone, as elsewhere in west Africa, are for the most part business people, dominating commerce in the large towns.

In 1961, the independence constitution of Sierra Leone created a single nationality, without any distinction by race, ethnic group or sex. 'Every person' born in the former colony or protectorate who was a citizen of the United Kingdom and colonies or a British protected person on 26 April 1961 became a citizen of Sierra Leone on 27 April 1961, unless neither of his or her parents nor any of his or her grandparents was born in Sierra Leone.<sup>52</sup> The 1961 constitution also had an extensive bill of rights guaranteeing the protection of the rights of all individuals without discrimination. Thus, the small population of 'Lebanese' and the offspring of interracial marriages were all recognized as citizens of Sierra Leone.

Within a year after independence, Sierra Leone's constitutional provisions on citizenship were amended twice to become more restrictive and discriminate against individuals on the basis of race, colour and sex.<sup>53</sup> First, the words 'of negro African descent' were inserted immediately after the words 'every person', to apply retroactively from the date of independence. Then the non-discrimination clause that prohibited any law that is 'discriminatory of itself or in its effect' was amended to exclude laws relating to citizenship. Individuals who were not of 'negro African descent' but who had acquired citizenship by virtue of the 1961 constitution were thus stripped of their citizenship of Sierra Leone after less than a year. (In Britain, meanwhile, the 1962 Commonwealth Immigrants Act introduced for the first time restrictions on immigration to Britain for citizens of former colonies. Though not explicitly racial in its language, the new provisions were aimed at non-white immigrants from the newly independent countries of Africa and the Caribbean; the effect was to leave some residents of former British colonies with no right of citizenship in any country.)

The 1962 constitutional amendments defined 'person of negro African descent' as follows: 'a person whose father and his father's father are or were negroes of African origin', introducing both racial and gender discrimination at one step. Even if a person was born in Sierra Leone of a 'negro African' mother, that person could not qualify for citizenship by birth if that person's father or grandfather was not of negro African descent. The amendments also provided that a person whose mother (but not father or grandfather) was a negro of African descent could apply to be registered as a citizen. A registered citizen did not, however, qualify to become a member of the 'House of Representatives, or of any District Council or other local authority unless he shall have resided continuously in Sierra Leone for twenty-five years after such registration or shall have served in the civil or regular Armed Services of Sierra Leone for a continuous period of twenty-five years'.<sup>54</sup> Nor did the law stipulate how registration should be undertaken.

The change to the law was motivated by political considerations; in particular, to narrow the set of candidates eligible to contest elections due to be held in 1962, by depriving Lebanese and mixed-race Sierra Leoneans of the political rights conferred by citizenship. Subsequent laws restricted the rights of non-citizens to acquire property both in the Western Area (the historic colony, near Freetown) and in the provinces (though it did not take any right away from those non-citizens who had already purchased property in the Western Area).<sup>55</sup> From 1965, the government introduced successive acts restricting non-citizens' ability to own and profit from retail trade, and promoting citizen participation in commerce. In 1969 a new government introduced a further trade act that widened the scope of restrictions, barring non-citizens from trading in thirty-eight consumer goods, rather than the eight previously listed, except by special licence from the minister. The restrictions were also extended to other Africans resident in Sierra Leone, and not just those from overseas; affecting in particular the large community of Fula traders, many originating from neighbouring Guinea.<sup>56</sup> Another act required all non-citizens to register

their presence, and gave the government extensive powers to expel non-citizens in the interests of the 'public good'.<sup>57</sup>

These legal changes took place against a turbulent political background. In 1964, Sir Milton Margai, leader of the Sierra Leone People's Party (SLPP) and the new state's first prime minister, died and was succeeded by his brother, Sir Albert Margai. In closely contested elections in March 1967, Siaka Stevens, candidate of the All People's Congress (APC), was declared winner over Margai – only to be ousted in a coup within a few hours. A year of military rule by successive groups was ended with a return to civilian rule in 1968 under Siaka Stevens. Though further disturbances and attempted coups followed, Stevens retained power for the next seventeen years, first as prime minister and then, after a republican constitution was adopted in 1971, as president.

John Joseph Akar, a prominent mixed-race Sierra Leonean with political ambitions, became the best-known case of those affected by the changes to citizenship law and the face of efforts to reverse them. Akar's mother was a black Sierra Leonean; his father was of Lebanese origin and thus not 'of negro African descent', though he had never visited Lebanon. When Sierra Leone became independent on 27 April 1961, Akar automatically became a citizen by operation of the constitution, as both he and one of his parents had been born in Sierra Leone. With the 1962 amendments, however, he lost his citizenship by birth; though he did apply for and was granted citizenship by registration. He challenged the amendments in court. In his application, he contended that the true intention of the amendments was to exclude persons not of 'negro African descent' from being elected to the House of Representatives. He succeeded in the High Court, but the Court of Appeal subsequently reversed the decision. Akar appealed to the Privy Council in England (then the highest court for Sierra Leone). In 1969 the Privy Council reversed the Court of Appeal decision and declared that the amendment was of no effect, though on different grounds from the judge at first instance.<sup>58</sup>

The victory was short lived. The Siaka Stevens government



disregarded the judgment and re-enacted the discriminatory provisions in the Sierra Leone Citizenship Act 1973.<sup>59</sup> The government also established its own Supreme Court in Sierra Leone, removing the right of appeal to the Privy Council.

The 1973 Citizenship Act provided for two categories of citizenship: by birth and by naturalization. Citizenship by birth was granted to anyone born in Sierra Leone before 19 April 1971, or resident in Sierra Leone on 18 April 1971, provided that his or her father or grandfather was born in Sierra Leone and that he or she 'is person of negro African descent'. Dual citizenship was excluded. Persons entitled to apply for naturalization under the 1973 Act were foreign women married to citizens, other persons of 'negro African descent' born in Sierra Leone, and persons of 'negro African descent' continuously resident for a period of not less than eight years.<sup>60</sup> Persons who were Afro-Lebanese (i.e. those whose mothers were black Sierra Leonean and whose fathers were not 'negro' African) could apply to be naturalized under this provision (though no procedures to do so were established). The 1973 Act does not define who is a 'negro African', and the 1962 amendment had also provided little clarity. The presumption was that the phrase meant black African, reducing the essential condition for the acquisition of citizenship to the colour of the person's skin. Thus a black man's children by a Sierra Leonean black woman were citizens by birth wherever they were born. A white or mixed-race man's children by a Sierra Leonean woman could acquire Sierra Leonean citizenship only by naturalization. The 1983 Births and Deaths Registration Act reinforced this discrimination by requiring the officer registering a child's birth to include the race of the child's parents in the birth certificate.<sup>61</sup>

Those without a parent of 'negro African descent' did not even have a right to naturalize until an amendment to the Citizenship Act came into force in 1977, allowing for individuals over twenty-one years of age and without a parent of 'negro African descent' to apply for naturalization based on a residence period of fifteen years and other restrictive criteria.<sup>62</sup> Those under twenty-one could apply to naturalize only if one of their parents was

already naturalized. Persons of 'negro African descent' born in Sierra Leone could apply for naturalization at any time, with no further requirements; and those with a parent of 'negro African descent' not born in the country could apply for naturalization after only eight years. The minister was not required to give any reason for the refusal of any application for naturalization and his decision on any such application could not be challenged in any court.<sup>63</sup> The minister also had very wide powers to revoke the grant of citizenship by naturalization. A person whose certificate is revoked ceases to be a Sierra Leonean and may be subject to expulsion.<sup>64</sup> Moreover, dual citizenship was forbidden. In practice, naturalization became progressively more difficult to obtain, except by payment of a bribe.

The Citizenship Act was further amended in 1976 to exclude naturalized persons from holding a wider range of public offices.<sup>65</sup> After a period of twenty-five years, the restrictions could be lifted; but only by parliamentary resolution passed by a two-thirds majority. In 1978, a referendum approved a new constitution that confirmed the discriminatory provisions in relation to citizenship while making the country a one-party state. Despite these restrictions, Lebanese commercial interests were central to the increasing corruption and 'privatization' of the Sierra Leonean state under the Stevens government, and especially to the exploitation of Sierra Leone's important alluvial diamond industry. The trade acts were used rather as a source of revenue for the government than to restrict non-citizens' ability to operate businesses in practice.

Siaka Stevens retired from office in 1985, and installed Joseph Saidu Momoh as his successor. Pulled by the tide of reform that swept across Africa with the end of the cold war, Momoh instituted a constitutional review process. A new constitution was adopted in 1991 that provided for multiparty elections but did not address the citizenship questions, endorsing the discrimination established in the citizenship acts.<sup>66</sup>

In March 1991, fighters from a group calling itself the Revolutionary United Front (RUF) entered Sierra Leone from Liberia,

launching a rebellion to overthrow the APC government. The outbreak of the war brought fresh instability to Sierra Leone's politics. In 1992, Momoh was overthrown in a military coup by Captain Valentine Strasser, whose National Provisional Ruling Council (NPRC) ruled until it was itself overthrown in 1996, by his deputy, Brigadier Julius Maada Bio. Later in 1996, multi-party elections were held and won by Ahmad Tejan Kabbah, head of the SLPP, who pledged to bring about an end to the war. Peace negotiations failed, and in May 1997 President Kabbah was himself overthrown in a coup led by army major Johnny Paul Koroma, heading the Armed Forces Revolutionary Council (AFRC), which then invited the RUF to join them in the new government. Regional intervention by west African troops reinstated President Kabbah as president in March 1998. Only in 1999 was a peace agreement signed, and only in 2002, following the deployment of a large UN peacekeeping force, was the conflict finally declared over. Elections held the same year returned President Kabbah's SLPP to office for a second term.

When the NPRC took power, they launched a process to reform the 1991 constitution, with the professed aim of addressing the corruption of APC rule. Ahmed Tejan Kabbah, Solomon Berewa and Banda Thomas (subsequently president, vice-president and minister of internal affairs, respectively) were all members of the National Advisory Council appointed to lead the review process. The draft new constitution, published in 1994, proposed removing citizenship discrimination based on race or ethnicity and granting citizenship by birth to any person born to parents who were ordinarily resident in Sierra Leone for a continuous period of fifteen years. It also provided equal rights to naturalize, due-process protections for the revocation of citizenship (by naturalization only), and excluded naturalized citizens from only the very highest offices of state. These reforms were never implemented, as governments came and went and civil war racked the country during the 1990s. Nevertheless, despite the continued racial basis of the law, both the minister of justice and the deputy defence minister were of Lebanese ancestry in the government of

*Lebanese Sierra Leoneans tell their stories*

Abraham Bamin came to Sierra Leone in the 1800s as one of the first Lebanese settlers in the country. He naturalized in his new-found home on 23 April 1907. His son Elias, born in the country, was at the forefront in the country's struggle for independence from Britain, and was jailed for his efforts. Despite his contribution, he was deprived of Sierra Leonean citizenship by the post-independence amendments to the Citizenship Act.

Elias's own son, Tommy, also born in Sierra Leone over sixty years ago, still lives in Freetown. He has not been granted citizenship. He has never been to Lebanon, does not speak a word of Arabic and speaks flawless Krio, Sierra Leone's lingua franca. Three generations on, his grown-up children can also not become Sierra Leoneans otherwise than by naturalization. They use British passports, from the country their grandfather resisted, because they cannot obtain the Sierra Leonean documents he struggled for.

A Lebanese lawyer opines that the legal changes and political appointments are all just a fig leaf, emphasizing that 'there is still legal and official xenophobia against people of Lebanese ancestry ... and it will stay forever until governments become more sincere with themselves'. Moreover, although the 2006 Citizenship Amendment Act has removed the gender discrimination, another member of the Lebanese community argues that nothing has changed: 'It is the race clause that should be expunged from the law books.'

Others complain that extortion at the hands of law enforcement agencies is commonplace, simply because the Lebanese are perceived as non-citizens. 'If we refuse to bribe law enforcement officers, we will pay far more to settle the courts,' one businessman laments. His mother is a native of Sierra Leone, which under the amended citizenship law makes him a citizen by birth; but he says his skin colour

still draws all sorts of prejudices against him by other citizens.<sup>67</sup>

In 2002, Lila, a second-generation Lebanese woman, who had become a naturalized citizen in 1990, applied for a new passport [under the requirement to acquire a machine-readable version]. Her application was denied because, after scrutiny, the Immigration Office found that she had naturalized 'illegally' when she was over the age limit of 21. She could not, however, have obtained naturalization before the age of 21, because she had to wait for her father to take the Oath [of allegiance]. To qualify for a new passport, she had to take the Oath herself, but the President at the time had suspended the process of naturalization. On the surface, Immigration Officers seemed concerned about implementing Immigration Laws, but underlying that façade was a hidden message: By showing that the law cannot be used to facilitate renewal of the passport, the bribe expected is higher than it would be if the law had applied. An Officer suggested that Lila change her birth certificate to make the nationality of one of her parents Sierra Leonean, i.e. of Negro African descent. This way, she could obtain citizenship based on the amended [law] that states that one of her parents should be Sierra Leonean at her birth. After bribing the staff, she then took her falsified birth certificate to immigration, bribed the Immigration Officer and received a new passport.<sup>68</sup>

President Ahmad Tejan Kabbah; President Ernest Koroma, who took office after new elections in 2007, appointed one minister of mixed Lebanese ancestry, born to a native Sierra Leonean mother. Lebanese money remained important for the funding of political parties.

With the restoration of a stable civilian government since 2002, there have been some steps towards repealing the discriminatory provisions. In October 2006, a law was adopted to amend the 1973

Citizenship Act to remove gender discrimination in citizenship by descent. But at least one parent or grandparent still has to be 'of negro African descent', even though it can now be the 'mother or grandmother' as well as the 'father or grandfather'.<sup>69</sup> Dual citizenship was also permitted for the first time. The strict requirements for naturalization of those not of 'negro African descent' by the new definition were, however, left unchanged.<sup>70</sup> In 2004, the 1969 Non-citizens (Trade and Business) Act was repealed, freeing up foreign-owned business, though not addressing the underlying question of who is a foreigner.<sup>71</sup> In 2001, the immigration department announced that, in an effort to combat corruption, all Sierra Leonean passports had to be replaced by new, machine-readable passports.<sup>72</sup> The Law Reform Commission has also put forward proposals for a more thoroughgoing reform of citizenship law: the draft of a new Citizenship Act presented to the government in 2007 would finally do away with the racial and gender provisions of the existing law. Yet the law had yet to be presented to parliament by the end of 2008.

### *The Banyarwanda of eastern Democratic Republic of Congo*

Together with that of Côte d'Ivoire, the post-independence history of the current Democratic Republic of Congo (DRC) most clearly illustrates the negative consequences for peace and security of a focus on authenticity and blood descent in citizenship matters. Even today, Congo's *jus sanguinis* citizenship law renders hundreds of thousands of people who have never lived in any other country doubtful as to their rights and legal status; and this uncertainty has repeatedly been used as a justification or excuse for taking up arms.

Because those affected are almost exclusively of the same skin colour as those whose right to Congolese citizenship has not been disputed, the connections to the crises of citizenship in Zimbabwe, Sierra Leone or Uganda have not been widely noted; yet, just as in those countries, one of the most critical issues in DRC for the past five decades has been the legal status today of the descendants of those who migrated during the colonial

era – with the added complication of managing the integration or peaceful repatriation of hundreds of thousands of refugees of those ethnic groups that have arrived since 1960 from neighbouring countries.

In particular, 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 conflicts that have afflicted the region with devastating consequences since the early 1990s.

The two Congo wars, from 1996 to 1997 and from 1998 to 2003, involved most of the neighbouring countries and some farther afield,<sup>73</sup> killed perhaps hundreds of thousands of people in direct violence, may have indirectly caused the deaths of more than five million, and displaced millions more – hundreds of thousands of them across international borders.<sup>74</sup> In all this conflict, the question of who belongs to Congo and when they arrived has been central, with different laws setting the ‘date of origin’ variously at 1885, 1908, 1950 and 1960. 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.

The DRC, with a population estimated, in the absence of any census for several decades, to be around sixty million,<sup>75</sup> comprises several hundred ethnic groups: it is one of the most diverse countries in Africa. In North and South Kivu, among the most troubled provinces over the past fifteen years, the majority ethnic groups are the ‘indigenous’ Nande (North Kivu), Bashi and Barega (South Kivu), with substantial minority populations made up of other ‘indigenes’, including pygmy groups, and many speakers of Kinyarwanda, the language of Rwanda. Known collectively as Banyarwanda, these rwandophones are mainly Hutu, with a minority Tutsi. It is their status which has been and remains most contested in the conflict. While Tutsi are traditionally regarded as pastoralists, and Hutu and the ‘indigenous’ groups have been cultivators, most groups have always raised cattle when they can. As in many parts of Africa, disputes over land ownership and use

both among and between pastoralists and cultivators have often been the trigger for wider conflict.

The origins of the Banyarwanda in DRC are diverse and much argued over. Some Congolese maintain that there are in fact no indigenous Banyarwanda in Congo. Parts of the territory that is now DRC were, however, prior to colonization, subject to the Rwandan king and already occupied by rwandophone populations. Their inhabitants (the Banyabwisha) became de facto Congolese citizens in February 1885, with the recognition of the Belgian king Leopold II's 'private' Congo Free State by the Berlin conference. In 1908 the Congo Free State was taken over by the Belgian government and became a colony of the Belgian state. In a 1910 agreement between Germany, Belgium and Britain, new borders were established, ceding some parts of what had been Congo Free State territory to the German colony of Rwanda, and other portions to the British colony of Uganda. Following the First World War, the German colonies of Rwanda and Burundi (whose language and ethnic make-up are close to those of Rwanda) were handed over to Belgium by the League of Nations in 1922, and in 1925 Belgium annexed them under the name Rwanda-Urundi to the Belgian Congo. The Belgian colonial administration then established a policy of organized transplantation of tens of thousands of Banyarwanda, both Hutu and Tutsi, from the already densely populated and famine-prone Rwanda and Burundi to districts in what is now North Kivu in eastern Congo (especially Masisi). These *transplantés* formed a source of labour (often forced) for agricultural plantations and mines established by the colonial authorities. Many others migrated independently of this programme.

One subgroup of the Banyarwanda today in DRC are for the most part descendants of Tutsi pastoralists who migrated to the area around Mulenge in what is now the province of South Kivu from Rwanda, Burundi and Tanzania, mainly in the eighteenth and nineteenth centuries, but some of them perhaps earlier. From the mid-1970s, this group began to use the term 'Banyamulenge' (people of Mulenge) to describe themselves, as part of a conscious



effort by their leaders to affirm a separate identity from other South Kivu ethnic groups in the battle to increase their influence in regional and national politics – and to distinguish themselves from other, more recently arrived, Banyarwanda. From the mid-1990s, the term Banyamulenge often came to be used to mean ‘Congolese Tutsi’ in general.

Since independence, the Kivu provinces<sup>76</sup> have also taken in other Banyarwanda economic migrants as well as refugees fleeing violence in Rwanda and Burundi. In 1959, thousands of Tutsi fled to Congo during the pre-independence Hutu uprising against the prior Belgian-supported Tutsi dominance in Rwanda; and more refugees arrived in further outbreaks of violence in the early 1960s and 1973 (from Rwanda), in 1972 and 1978 (from Burundi), and in the early 1990s (from both Rwanda and Burundi), before the major influx – of hundreds of thousands – following the Rwandan genocide of Tutsi by extremist Hutu that began in April 1994. All those fleeing Rwanda were Tutsi until July 1994, when Tutsi rebel forces advancing from Uganda overthrew the Hutu extremist Rwandan government and ended the genocide. The ethnicity of those crossing the border then changed, and Western television screens became filled with startling images of massed Hutu refugees flooding into DRC; provoking an immediate relief effort where the genocide itself had notably failed to receive the attention it deserved.

The first law that governed nationality in Congo was a decree of 27 December 1892, which gave Congolese nationality to ‘every child born in Congo of Congolese parents’. From 1908, the date of the transformation of the Congo Free State into the Belgian Congo, Congolese nationality no longer existed and Congolese became Belgian subjects, though deprived of the civil and political rights accorded to the white residents of the colony.

The status of the Kinyarwanda-speaking populations of eastern Congo was already controversial during the lead-up to independence of what became the Republic of Congo in 1960. The 1960 ‘Brussels Round Table’ that negotiated the terms of independence was held just months after the arrival of tens of thousands of Tutsi

refugees from the pre-independence violence in Rwanda. The status of these refugees and the *transplantés* of previous decades was a critical issue in the competition for power as independence approached and each party sought to co-opt the newcomers to increase its ethnic power base. There was heavy resistance to any grant of citizenship to the rwandophone immigrants, whose arrival had changed the ethnic calculations among political players. Resolution No. 2 of the Round Table ultimately stated that only those who were citizens under existing law – effectively the 1892 decree on nationality – would be able to vote and stand for office in the 1960 elections. The *transplantés* and refugees would be permitted to vote but not to stand for office.

Article 6 of the ‘Luluabourg’ Constitution of 1964 – the first constitution of the new state and the first legal determination of nationality – declared to be ‘Congolese as of 30 June 1960 all persons one of whose ancestors was or had been a member of a tribe or part of a tribe established in the Congo before 18 October 1908’, the date on which the Belgian Congo was created. This position was confirmed in the nationality law of 18 September 1965. The Banyarwanda (and others) who had migrated to Congo after 1908 were thus not citizens of the new state; which left their status as citizens of any state uncertain, since there was no possibility for many of them of returning to their country of origin. Arguments that the presence of *some* rwandophones on Congolese territory before 1908 meant that all could claim citizenship were not accepted.

In the years after independence there were outbreaks of violence in eastern Congo and elsewhere, as the political structures and coherence of the fragile new state came under immediate stress. The southern provinces of Katanga and Kasai began secessionist struggles. A period of national instability and civil war followed, ended in 1965 by a United States-backed coup putting Joseph-Désiré Mobutu in power. During this period a rebellion led by Pierre Mulele, formerly a minister in the cabinet of murdered prime minister Patrice Lumumba, broke out in Kivu and Orientale provinces in 1964. The Mulelist rebels espoused a variant

*An indigene comments on the Kanyarwanda war*

In the 1960s we had the war that we called Kanyarwanda. It was a war that was in some sense caused by the government because it was often the administrators who alerted the people to be against the Rwandans, the immigrants. Because they also, they were numerous and every time they looked for power, they were always excluded from power; they themselves, when they started to try to enter and share power with the others, the others would say, 'No, you are Rwandans, you have no claim on anything here, no question, and if you don't immediately quit your lands we are going to massacre you.'<sup>77</sup>

of communist philosophy, though support for their cause from the dominant Bashi ethnic groups in South Kivu was based on personal and ethnic alliances rather than ideology; the Banyamulenge sided with the then-Congolese National Army to crush the revolt. In North Kivu, meanwhile, politicians of the 'indigenous' ethnic groups mobilized supporters by labelling as foreigners even those Banyarwanda who could trace their ancestry to the Congolese side of the colonial borders from before 1908. From 1963 to 1965, fighting known as the 'Kanyarwanda war' pitted the North Kivu Banyarwanda (Tutsi and Hutu) against the indigenous Nande, Hunde and Nyanga as each group agitated for autonomous provinces and districts where they would be in control. Not insignificantly, the Kanyarwanda war centred on Masisi, the location of the largest number of Banyarwanda *transplantés*.

A new constitution was adopted in 1967 which maintained the nationality rules of the 1964 constitution (and 1974 and 1978 revisions did not affect these provisions). Under the influence of Barthélémy Bisengimana, however, a Tutsi from North Kivu appointed by President Mobutu to be the director of the president's office and thus a figure of great power in the government, laws were adopted to favour the position of the Banyarwanda. First, a

decree law adopted in 1971 specifically addressed the situation of persons originating from Rwanda and Burundi, provided that, if they were established in Congo before 30 June 1960, they had Congolese nationality.<sup>78</sup> In 1972, a general nationality law promulgated soon after the change of the country's name to Zaire moved the date back ten years, provided that persons originating from Rwanda or Burundi who had taken up residence before 1 January 1950 acquired Zairean nationality as of independence in 1960.<sup>79</sup> These highly controversial laws thus aimed to give citizenship by origin to those Banyarwanda who had arrived in the country after 1908, though there was no constitutional amendment to that effect. At the same time, Bisengimana favoured his ethnic group in official appointments, while an equally controversial land law was adopted in 1973 and used to benefit Tutsi elites: most of the colonial-era plantations in the Kivus then ended up in Banyarwanda hands.<sup>80</sup> It was during this period that the question of the status of the Banyarwanda in general and Tutsi in particular was elevated from a regional preoccupation to an issue of general national concern.

Bisengimana fell from favour in 1977, and the nationality question immediately returned to the table. In 1981, a new code of nationality was adopted by the Zairean parliament which reversed the changes of the 1970s, created the most exclusionary rules yet implemented, and effectively denationalized a large segment of the Banyarwanda population. Law No. 2 of 29 June 1981 provided nationality only for 'any person one of whose ancestors was a member of one of those tribes established in the territory of the Republic of Zaire as defined by its frontiers of 1 August 1885', the date on which the borders of the Congo Free State were officially recognized. This law took the date at which an ethnic group could claim to be 'indigenous' back to its farthest yet. In implementation of the law, Decree No. 061 of 1982 also cancelled the certificates of nationality issued under the law of 1972, leaving these people stateless unless they applied for naturalization.

Although some of the Banyarwanda could trace the arrival of their ancestors to a date preceding 1885, proof was difficult to

establish and in practice they were treated as denationalized: they were prevented from participating in local elections during the 1980s, and many were expelled.<sup>81</sup> At the same time, however, a Banyarwanda elite still held wealth and land amassed from official patronage during the 1970s, an economic dominance that continued to fuel resentment of their position.

During the early 1990s, the regime of Joseph-Désiré Mobutu weakened under international pressure and the termination of United States support for his government with the end of the cold war, and he was forced to agree to the creation of a 'sovereign national conference' to debate the future structures of government in what was still Zaire. The prospect of elections and new political arrangements encouraged ethnic mobilization to control political space, using the language of autochthony where it was useful, or simple political deal-making where it was not: alliances formed and re-formed in different locations according to local politics. A 1991 population census to identify and register citizens in advance of anticipated elections contributed to the raising of tensions, since the voting power of the Banyarwanda, if recognized as nationals, would have a significant effect on the electoral outcomes. Ultimately, Banyarwanda were largely excluded from the sovereign national conference itself, as President Mobutu decided that delegates should represent only provinces where they could be considered 'indigenous'; a stipulation that also affected other ethnic groups straddled between provinces within Zaire's borders. A sub-commission of the national conference adopted a report proposing four categories of Banyarwanda – *autochtones* (from before 1885), *transplantés*, refugees and *clandestins* (undocumented immigrants) – with only the first entitled to citizenship.

As these debates were going on in Kinshasa, the politics of Rwanda and Burundi also impacted negatively on the situation in the east. The Uganda-based Rwandan Patriotic Front (RPF) began its military campaign to overthrow the Hutu-controlled and discriminatory Rwandan government in 1990, and also organized and recruited among the Congolese Tutsi. Meanwhile, the

Rwandan government similarly formed links with and supported Hutu groupings within Congo's eastern provinces. In October 1993, a Tutsi-led coup in Burundi accompanied by massacres sent thousands of Hutu refugees across the borders.

In March 1993, the already tense situation erupted into violence in North Kivu. Electoral arithmetic, coupled with tensions over land use, had generated a coalition of 'indigenous' groups (led by the largest, the Nande) and Tutsi against the Hutu, especially in Masisi, where Hutu are the majority. The 'Masisi war', in which the provincial authorities encouraged attacks on Hutu in the region, began a process of 'ethnic cleansing' that has continued to date, with previously mixed-ethnicity communities becoming exclusively Hutu, Nande, Hunde, Nyanga, Tutsi and so on. In some areas, the Tutsi fought as part of a general Banyarwanda group; in others Hutu attacked Tutsi; in yet others they were outside the local conflict. In the short term, the Masisi war caused political damage to the Nande, as Governor Kalumbo, a Nande, was removed from office in July 1993.

Hostilities had hardly begun to die down under efforts to negotiate peace, when, from April 1994, the Rwandan civil war and genocide spilled over into Zaire. Rwandan Hutu extremists murdered nearly one million Rwandan Tutsi and Hutu who opposed the policy, in a government-organized campaign of violence that was unleashed just as negotiations to end the increasingly powerful RPF rebellion had seemed to reach a conclusion. First Rwandan Tutsis, and then, following the military success in Rwanda of the Tutsi-dominated RPF, several hundred thousand Hutus, including both innocent civilians and perpetrators of the genocide, fled across the border. They were then held in refugee camps placed largely among Hutu communities, thus further blurring the distinction between Congolese and Rwandan Hutu and potentially drastically altering the ethnic calculus of regional politics.

Hutu militia continued their violence against Zairean Tutsi after crossing the border, and divisions between Zairean Tutsi and Hutu were stirred into active violence. In some cases, Hunde,

Nande and Nyanga militia joined with Hutu *interahamwe* militia from the Rwandan genocide to attack Tutsi Banyarwanda; elsewhere Hutu militia attacked the 'indigenous' groups. Zairean government forces either stood by or actively assisted the Hutu militia in this violence against Tutsi, including by providing weapons; but other official comments supported 'indigenous' groups in efforts to expel all Banyarwanda. Several tens of thousands of Tutsi moved from Congo to Rwanda during late 1994 and 1995.

On 28 April 1995, the transitional parliament adopted a 'resolution on nationality' describing all Banyarwanda as foreigners 'who have acquired Zairean nationality fraudulently'. The resolution included a list of people to be arrested and expelled, the cancellation of any sale or transfer of assets, the replacement of existing governors and commanders with new officials, and the banning of Tutsi from all administrative and other posts.<sup>82</sup>

In South Kivu, in September 1995, the district commissioner of Uvira ordered an inventory of all property and land owned by the Banyamulenge. Evictions of South Kivu Banyamulenge from their homes became common, as were deportations to Rwanda or Burundi, escalating during 1996. Ultimatums were issued for the Banyamulenge to leave the country, and slogans adopted supporting ethnic cleansing: '*Opération rendre les rwandais au Rwanda*'; '*Bukavu et Uvira villes propres*'.<sup>83</sup> In early September, 'indigenous' ethnic militia, supported by government soldiers, began attacking Banyamulenge villages, killing and raping, and forcing survivors to flee. On 8 October 1996 the deputy governor of South Kivu decreed that all Banyamulenge must relocate to temporary camps within a week. On 31 October 1996, the Haut Conseil de la République – Parlement de Transition announced the expulsion of Rwandan, Burundian and Ugandan nationals. Scores of Banyamulenge were arrested and reports of executions and disappearances were widespread. Violence against Tutsi escalated throughout the eastern regions and many more refugees fled over the borders; many had their Zairean identity cards confiscated by guards at the border and destroyed.

In response to these physical and rhetorical attacks on their

presence in Congo, from around September 1996 the South Kivu Banyamulenge organized and armed themselves both to rebel against the central government and to defend themselves from the militia now operating in their territory. In mid-October four groups (including both Banyamulenge and other, indigenous, ethnic groups) came together in an alliance of convenience to form the Alliance des Forces Démocratiques pour la Libération du Congo-Zaïre (ADFL). This became the catalyst for a regional war in which the ADFL rebels, who came to be led by Laurent-Désiré Kabila, a former Lumumbist originally from Katanga, were backed by both Rwanda and Uganda, whose troops crossed the border into Zaïre in late 1996, and later by Angola. The Rwandan government stated that it was seeking to eliminate the organized Hutu militia that still raided into Rwanda from the refugee camps in Zaïrean territory; though Congolese largely regarded this argument as simply an excuse for Rwandan violation of Congolese territorial sovereignty and extraction of Congolese resources. By late 1996 a large percentage of the Hutu refugees had been driven back into Rwanda; ADFL soldiers were responsible for extensive and systematic massacres in this process. The rebels eventually ousted President Mobutu from power in May 1997 and installed Kabila as president in Kinshasa; as well as instituting their own administration in much of the east. The country was renamed the Democratic Republic of Congo.

Kabila's support among the Banyamulenge was effectively ended in August 1998 when he decided to expel Rwandese and Ugandan contingents from his army. A new war involving the Banyamulenge broke out in the east, in which the rebel Rassemblement Congolais pour la Démocratie-Goma (RCD-Goma), with the active backing of Rwanda, stated that it championed the cause of the Banyamulenge and Congolese Tutsi more generally. Among the disputed objectives of the RCD-Goma during the war (and in the negotiations that ended it) was the establishment of the specific administrative territory of Minembwe, where Banyamulenge would be in the majority. Rwanda itself again sent troops across the border, again justifying its presence in



DRC as self-defence, as well as part of an effort to protect the Banyamulenge communities.<sup>84</sup> Kabila also armed both 'Mai-Mai' and Congolese Hutu militia in response to the Rwandan army's supply of weapons to RCD-Goma.

For the Tutsi Banyarwanda of eastern Congo, including the Banyamulenge, the consequence of these events was that, whatever the reality for each individual, they were presumed by the Zairean/Congolese government and many of its people to be supporters of the Rwandan invaders and of the armed groups that the Rwandans were backing. The fact that Banyarwanda refugees often fled to Rwanda or Burundi for safety seemed to confirm conspiracy theorists' views that their true loyalties were over the border. Illegal extraction of Congo's resources by foreign interests – whether Rwandan, Ugandan or from farther afield – increased the general resentment of 'non-indigenous' involvement in the region. Hate-speech leaflets multiplied, denouncing Banyarwanda invaders and their puppets, who allegedly sought a central African Tutsi (or Banyarwanda in general; the categories slip) domination.<sup>85</sup> In 1998, hate speech was particularly virulent: among other official statements, Foreign Minister Abdulaiye Yero-dia Ndombasi publicly asserted that Tutsi were 'vermin' worthy of 'extermination', allegedly leading directly to the massacre of several hundred Tutsi.<sup>86</sup>

After the assassination of Laurent-Désiré Kabila in January 2001, his son Joseph took over power. Joseph Kabila quickly began steps to end the war, and peace meetings were held in Lusaka, Zambia, and Sun City, South Africa, culminating in a 'global and all-inclusive agreement on the transition in the DRC' signed on 17 December 2002. A transitional government was formed in 2003, and elections held in 2006. The transitional constitution negotiated at Sun City provided, as a critical element of the effort to find a permanent solution to the discrimination that had contributed to the recent wars, that 'The ethnic groups and nationalities whose representatives and territories made up what became the Congo at independence should enjoy equal rights and equal protection of the law as citizens.'<sup>87</sup>

Nevertheless, violence among Banyarwanda populations and the 'indigenous' groups continued in North and South Kivu provinces, and between the supposedly newly integrated armed forces (Forces Armées de la République Démocratique du Congo, FARDC) and dissidents who refused to accept the settlement and rejected the government's control over the eastern parts of DRC.<sup>88</sup> Among those who returned to the bush were two officers of the RCD-Goma, General Laurent Nkunda (a Tutsi from North Kivu) and Colonel Jules Mutebusi (a member of the Banyamulenge community). During 2004, thousands of settlers from Rwanda crossed the border into DRC with Rwandan military support, and cleared land for farming in the Virunga National Park, a UNESCO World Heritage Site. Though the Rwandan government alleged that the operation was defensive, reports suggested that influential Rwandan businessmen intended to reap financial benefit from the new agricultural land.<sup>89</sup>

In November 2004, a new nationality law was adopted, after heated debate in the transitional parliament, which returned the foundation date for nationality to 1960, as it had been in the decree of 1971. But this law still founds Congolese nationality on ethnicity, rather than on birth, residence or other objective criteria, giving nationality by origin to 'every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence'.<sup>90</sup> No further guidance is given on which ethnic groups are included in this description. (Moreover, the upper house of parliament, the Senate, did not approve this critical article; though under the transitional constitution the views of the lower house took precedence.)

Law no. 04/028 of 24 December 2004 on the electoral register, meanwhile, provided for those wishing to register to vote to produce five witnesses who had already been registered, and had been resident for at least five years in one constituency, to give evidence of the applicant's citizenship. Although this process did not define citizenship on an ethnic basis, *de facto* discrimination remained pervasive. Many still argue that because

the Banyarwanda are not regarded as having a 'territory' within Congo, they are not included within the 2004 law; meanwhile, the failure of the Congolese state to recognize Banyarwanda 'customary' claims to land remains one of the principal complaints of the Banyarwanda themselves.

A referendum in December 2005 overwhelmingly approved a new constitution, which came into force in 2006. Article 10 again recognizes members of ethnic groups that were present in the territory of the state at the time of independence in 1960 as citizens by origin of the DRC.<sup>91</sup> The 2004 law still remains in effect, with the new constitution providing an intended final settlement of the question of which groups are to be considered indigenous. In theory, the great majority of Banyarwanda should be included within these groups, but the wording of the law leaves a dangerous level of ambiguity in its interpretation. The rights of naturalized citizens were also substantially improved in the same legal reforms, and exclusions of naturalized citizens from public office – which had been extremely broad – restricted to only the very highest posts. Excluded from naturalization are those who are guilty of economic crimes or have worked for the profit of a foreign state, common accusations against the Banyarwanda.

Dual nationality remains prohibited under the law, though in 2006 the newly elected National Assembly hastily adopted a resolution purporting to bring in a six-month moratorium on the enforcement of the provision, after it emerged that a large number of politically important (and non-Banyarwanda) members of the Assembly in fact held two passports. A special committee was appointed to propose a solution to the problem. Two years later, the moratorium appeared to be still in effect, and the committee had still not reported.

An end to discrimination in practice will be difficult to achieve. In the context of the continued weakness of the central Congolese state and the presence of massive natural resources in eastern Congo, the temptation to manipulate the ethnic and citizenship issues for political or economic gain is likely to remain irresistible to some. In May 2006, during the election campaign,

Abdoulaye Yerodia, by then one of Congo's four vice-presidents in the transitional government and a supporter of presidential candidate Joseph Kabila, once again verbally attacked Congolese Tutsi at a rally in Goma, saying they should leave the country. In August 2007, hundreds of people rioted and attacked UN staff in the town of Moba, Katanga Province, after rumours of the return to their homes of displaced Banyamulenge.

The 2006 election confirmed the political eclipse of the Tutsi-dominated RCD-Goma: from being one of the four political forces governing the country during the transition period, it was wiped out electorally and ended up having virtually no political significance at the national level. A short-lived effort to re-create a united Hutu-Tutsi rwandophone coalition had also failed. And the Banyamulenge demand for Minembwe to be a territory of its own for the elections was denied. Laurent Nkunda, a Rwandan-trained Congolese Tutsi who had been a commander for the RCD in North Kivu and one of those who had refused to disarm in 2004, then returned to arms as self-appointed protector of the political and economic interests of Congolese Tutsi, under the name *Congrès National pour la Défense du Peuple* (CNDP). Active hostilities resumed in late 2006 and 2007, between the CNDP and the new Congolese army; and with a second armed Hutu group, known as the *Forces Démocratiques de Libération du Rwanda* (FDLR).

At January 2008 peace talks in Goma, provincial capital of North Kivu, the status of the Congolese Tutsi and the return of Congolese Tutsi refugees from Rwanda remained among the most difficult issues to resolve: Tutsi representatives at the talks complained of continued daily discrimination against their community, including exclusion from public office;<sup>92</sup> while 'indigenous' groups made clear that they regarded them still as immigrants, without a real claim on the land, and possibly working on behalf of the Rwandan government. Later the same year, CNDP forces with Rwandan backing once again went on the offensive, killing thousands, displacing hundreds of thousands, and threatening to overwhelm the UN forces protecting Goma.

*Côte d'Ivoire's war of conjunctions: the 'and' and the 'or'*

Just as in the DRC, the instability and civil war that have devastated Côte d'Ivoire's once prosperous economy since 1999, displacing some 750,000 people and causing 3 million to require humanitarian assistance, have some of their deepest roots in conflicts over the definition of who is a 'real' citizen of the country. As one of those who took up arms stated: 'We needed a war because we needed our identity cards.'<sup>93</sup>

Also as in the DRC, colonial-era cross-border migration, and the failure to create an effective and widely accepted legal regime for the integration of these people and their descendants as Ivorian citizens, sowed the seeds of today's tensions. More recent migration – in Côte d'Ivoire largely for economic reasons rather than as refugees from war in neighbouring states – kept the tensions alive and ready for exploitation by unscrupulous politicians.

Ethnic groups whose ancestors came from the 'right' side of the colonially established borders of Côte d'Ivoire have come to be victimized by their presumed association with more recent immigrants from the other side of those same borders; especially from the countries to the north, Mali and Burkina Faso. Systems for recognition of nationality have in practice often failed to make the distinction between the two groups, and have not provided for effective naturalization and integration procedures for long-term migrants and their descendants. Once politicians chose to exploit the legal ambiguities in the context of electoral and economic competition, war was ultimately the result.

The targets of ethnic discrimination in Côte d'Ivoire are two-fold: both foreigners, that is non-citizens who are resident in Côte d'Ivoire; and members of various northern-based ethnic groups collectively known in Côte d'Ivoire as Dioula, which fall within the larger ethno-cultural group of the Malinké, themselves a subgroup of the Mandé. It is commonly believed that the Dioula were migrants mainly from Mali and Guinea-Conakry and, unlike the traditional ruling elites in Côte d'Ivoire, they are predominantly Muslim. The 1998 population census revealed that of the

approximately fifteen million inhabitants of the country just over a quarter were non-citizens, more than half of them of Burkinabé origin, and almost half born in the country; of the 11 million citizens, approximately 35 per cent were Dioula.<sup>94</sup> Côte d'Ivoire is one of the top twenty countries in the world for absolute numbers of international migrants making up its population.<sup>95</sup>

Historical explanations for the perception of the Dioula as foreigners can be traced back to the 1920s and 1930s and the promotion of population movements by the then colonial power, France. In 1933 France modified the borders between its territories of Côte d'Ivoire and Burkina Faso, then called Haute Volta (Upper Volta). The new territory of Haute Côte d'Ivoire brought together three-quarters of the territory of Haute Volta and the northern parts of Côte d'Ivoire, in order to facilitate the forced transplantation of agricultural workers from Haute Volta to plantations farther south. Forced labour was ended in 1946, and the Haute Côte territory was redivided between Côte d'Ivoire and Haute Volta in 1947, though the policy of encouraging migration continued. By independence in 1960 up to 700,000 people had migrated from farther north to the present-day area of Côte d'Ivoire.

The independence constitution of 1960 left the details of nationality law to be determined by legislation. In 1961, the nationality law then gave 'nationality of origin' to every person born in Côte d'Ivoire unless both of his or her parents were foreigners. Acknowledging prior migration to Côte d'Ivoire, however, the law did allow children under eighteen born in Côte d'Ivoire of foreign parents to acquire Ivorian nationality 'by declaration' through a judicial process if they had lived in Côte d'Ivoire for more than five years. As a transitional provision, those who had their permanent residence in Côte d'Ivoire before independence could also be naturalized as citizens without further requirements if they applied within one year.<sup>96</sup> In 1972, amendments to the Ivorian nationality law repealed the possibility of claiming nationality by declaration, which had in any event been used by few people. Foreign nationals of whatever origin could in theory still acquire Ivorian citizenship by naturalization in the normal

way under the apparently generous requirement of a five-year residence period.<sup>97</sup>

Côte d'Ivoire's first president, Félix Houphouët-Boigny, kept a close hold on power, favouring his own south-central Baoulé ethnic group, a subgroup of the Akan. Nevertheless, in the context of a strong post-independence economic boom, he and his Parti Démocratique de la Côte d'Ivoire (PDCI) continued to encourage economic migration from neighbouring African states and adopted a generous attitude towards both the pre-independence and more recent migrants, without ever directly addressing the question of citizenship. Côte d'Ivoire also received refugees, especially in the west of the country from Liberia, though in much smaller numbers than DRC came to host from Rwanda and Burundi. In the interests of building electoral support in the north and centre of the country, as well as satisfying a need for labour, Houphouët-Boigny promoted both the migration-friendly policy that 'the land belongs to those who work it' (*la terre appartient à ceux qui la cultivent*), and the relatively liberal grant of identification documents and political rights. From 1980, the electoral law provided that non-Ivorians of African origin would be allowed to register and vote in national elections.<sup>98</sup> Tensions related to migration were already evident: as early as 1970, a Bété uprising in the south-western plantation country briefly declared an independent state, whose demands included departure of the migrants. The uprising was brutally suppressed. In the 1990 elections, the main opposition party, the Front Populaire Ivoirien (FPI) led by Laurent Gbagbo (a Bété from the south-west with close links to the French Socialist Party), mobilized around a campaign that accused the PDCI of favouring foreigners.

Houphouët-Boigny died in 1993, just at the time that large falls in the global price of cocoa and coffee, Côte d'Ivoire's principal exports, brought economic recession; and with it, in the classic way, popular resentment against immigrants. Long-standing but previously suppressed tensions came to the fore and were exploited for political purposes by Houphouët-Boigny's successor, Henri Konan Bédié, also a Baoulé.

President Bédié abandoned Houphouët-Boigny's unofficial policy of ethnic balance in political appointments and introduced a new political definition of the concept of *ivoirité* ('Ivorian-ness') that had previously been used to promote common cultural values. A group of PDCI intellectuals devised a manifesto promoting a highly restrictive interpretation of Ivorian citizenship, limiting it to those whose parents were both members of one of the 'autochthonous' ethnic groups of Côte d'Ivoire. This new interpretation effectively defined the Dioula as foreigners and denied their right to live and hold property outside their 'traditional' area. Dioula faced ever-increasing difficulties in obtaining the identity cards and certificates of nationality necessary to claim their other citizenship rights, especially the right to vote and to hold land. Those who could not prove their citizenship and had Dioula names could often only obtain receipts that indicated they had made an application to obtain identity documents, but never actually obtained the cards.

The emphasis on *ivoirité* was designed both to undercut the FPI's ethno-nationalist demands and to exclude Bédié's strongest opponent for the presidency, Alassane Dramane Ouattara, an ethnic Dioula Muslim from the north of Côte d'Ivoire. Ouattara had been prime minister under Houphouët-Boigny (1990–93) and left the government to join and become the leader of a new opposition party, the Rassemblement des Républicains (RDR), which drew heavily on support from the largely Muslim north. Bédié accused Ouattara of not being a native Ivorian citizen but rather from Burkina Faso. The fact that Ouattara had spent most of his professional life outside the country working for the World Bank and the International Monetary Fund, responsible for the application of austerity programmes in Côte d'Ivoire as elsewhere in Africa, did not help his case.

Under the independence constitution and the electoral law in effect until the death of Boigny, the holders of the highest national offices – president of the republic and president or vice-president of the National Assembly – had, simply, to be Ivorian citizens. Bédié's administration changed the electoral law in



December 1994 and August 1995 to forbid individuals from running for these offices unless both their father *and* mother were of 'Ivorian origin'. This requirement was aimed at Ouattara (whose mother was said to be from Burkina Faso, though the origin of his parents was never proved), and he did not stand for president in the 1995 elections, which were won by Bédié. The 1995 electoral law also restricted the right to vote to citizens alone, a reversion to the pre-1980 position that immediately greatly increased the importance of citizenship to long-term migrants. During 1999, the government instituted a judicial investigation into Ouattara's nationality certificate, and it was annulled by a court on 27 October 1999 on the grounds of irregularity in its issue. Protests and riots followed, for which several RDR politicians were convicted under laws allowing organizers of demonstrations to be held responsible for violence. In November 1999, an arrest warrant for Ouattara was issued while he was staying abroad, on the grounds of alleged use of forged documents to support his eligibility to run in the elections in October 2000.

Bédié's administration also introduced changes to the land law, in part under pressure from the World Bank, which favoured the introduction of a system of written evidence of title to land rather than the unregistered systems of tenure that had existed up to then. Since the colonial period, the dominant system in the south-west of the country, for example, had been the *tutorat*, in which 'indigenous' landholders ceded land to others in exchange for a range of cultural and economic obligations, including payment in labour and cash. The 1998 land law provides that only the state, public entities and Ivorian citizens (*personnes physiques ivoiriennes*) have full rights to own land in rural areas. Customary rights have to be confirmed by a certificate acquired within ten years after publication of the land law. Rights of land users not suitable for transfer into exclusive title have no status under the law.<sup>99</sup>

In the context of the increasingly xenophobic national mood, the legislation provided a further basis for attacks on northerners and foreign migrants farming in their own right or working on

others' land in the south and west of the country. During September 1999, more than ten thousand people, mainly Burkinabé migrants and Dioula, were expelled from their land and villages in the south-west without any intervention to protect them by the police, administrative or political authorities. Similar incidents continued into 2000.

It was against this background that General Robert Guéï, Bédié's retired chief of army (a Yacouba from the far west of the country), led Côte d'Ivoire's first *coup d'état* on 24 December 1999. Initially, it seemed that the new regime would roll back some of the political exclusion of the previous five years. Guéï formed a broad-based administration which included ministers from leading opposition parties, including the RDR and the FPI. Guéï pledged to clean up corruption, rewrite the constitution, and hold fresh elections. These stated ambitions were, however, soon diverted.

In late July 2000, a flawed referendum was held to approve a new constitution which, among other things, inserted into the constitution itself the requirements of Bédié's electoral laws that candidates for the presidency must be 'Ivorian by origin', born to a father *and* a mother who are themselves both Ivorian by origin.<sup>100</sup> Although the phrasing '*ivoirien d'origine*' could be argued to be simply a paraphrase of the nationality code's reference to 'nationality of origin' as opposed to 'nationality by acquisition' (by marriage, naturalization, etc.), the provision effectively created a new constitutional concept of *ivoirité*. The nationality code states that an individual has Ivorian 'nationality of origin' if born to one parent who is a citizen; and it still did so after the 2000 constitution was adopted. Yet the anchoring of the right to run for elected office in a requirement to prove 'Ivorian-ness of origin' by both paternal and maternal lineage led to a popular acceptance that to be Ivorian required something deeper than birth in the territory of a citizen parent. Rather, it confirmed the idea of a pure ancestry connected to Ivorian soil 'from time immemorial'. Following the referendum, the government of General Guéï led an 'identification campaign' during which many Dioula (or those with Dioula

fathers) found themselves designated foreigners, despite the constitutional bill of rights' prohibition of discrimination on grounds of origin, race, ethnic group, sex or religion.

With the new constitution in place, presidential and parliamentary elections were held in October and December 2000. On 6 October, the Supreme Court, which had been dissolved and reconstituted following the 24 December coup and was widely believed to have been hand picked by Guéï himself, disqualified fourteen of the nineteen presidential candidates, including Ouattara and Bédié. Nevertheless, the coup leaders did not obtain the 'right' result. After early results showed Laurent Gbagbo leading in the 22 October presidential polls, General Guéï dissolved the National Electoral Commission and proclaimed himself the winner. Massive popular protests were met with a violent response, but General Guéï ultimately fled the capital and Gbagbo declared himself president. Ouattara's RDR demanded fresh elections, leading to further fighting characterized by religious and ethnic divides, as security forces and civilians supporting President Gbagbo clashed with the mostly Muslim northerners who formed the core of support for the RDR. President Gbagbo imposed a curfew and state of emergency; among other abuses, around sixty RDR supporters were killed by security forces in the 'massacre of Youpougon' on 29 October. On 30 November 2000, the Supreme Court barred Ouattara from standing in the parliamentary elections scheduled for 10 December, again because of questions about his citizenship. Nevertheless, the parliamentary election went ahead, boycotted by the RDR. The FPI won a slight majority, with ninety-six seats, followed by the former ruling party, the PDCI, which won ninety-four seats.

In March 2001, local elections were held, which the RDR contested, winning more constituencies than any other party. President Gbagbo immediately instituted a new process of national identification, claiming that most of those on the electoral roll were not citizens and therefore not eligible to vote. By the time of departmental elections in July 2002, some 20 per cent of potential voters had not obtained their new registration

*Killed because of a name*

Human Rights Watch described how, during violence surrounding the disputed elections of late 2000, ‘Scores of victims from Mali, Burkina Faso, and Guinea, or Dioula from northern Côte d’Ivoire, described being dragged out of their homes, pulled off buses, stopped randomly in the street, or chased by groups of gendarmes or police. Numerous witnesses described members of non-northern ethnic groups being allowed to proceed at checkpoints and freed from detention after verifying their place of origin.’

In one witness statement taken by Human Rights Watch, a fifty-two-year-old bus driver who was captured while on his way home from work was one of seven men, including several foreigners, gunned down in a field near the railway. He was shot through the stomach and pretended he was dead. Three died on the spot and the others who were wounded were taken away:

‘At around 2:00 p.m. on Thursday [October 26], as I was on my way home, I was halted by some gendarmes. I saw they had been capturing other people who were gathered off to one side. I gave my ID card and driver’s licence to one of them and heard him ask his boss, “Look, this is a bus station worker from the local station.” Then his boss replied, “I don’t care about the place he works, just look where he comes from.” When they saw I had a Dioula name, the boss

cards; others attempting to register found themselves given a foreign resident’s card in place of a national identity document. When individuals attempted to register in their place of residence, they faced demands that they return to their ‘village of origin’ to establish their identity, or produce local witnesses from their ‘village of origin’ to testify to their citizenship. The director of the *Opération Nationale d’Identification* publicly stated that ‘whoever claims to be Ivorian must have a village. Whoever

said, “He’s one of those Burkinabés who wants to burn the country and give it to Alassane [Ouattara]. But today we’re going to do the burning.”

‘After a few minutes the gendarmes, there were about fifteen of them, marched us across the railway line. Then they made us take off all our clothes and told us to lie down. Among us were at least three Malians; two brothers and an older man. The two brothers tried to explain that they’d just come on the bus from Daloa to visit their parents. They still had their luggage bags. But the gendarmes didn’t have time for explanations. They beat us in that place for about two hours. They kept saying one of their bosses had been killed, and that some of their guns had been stolen. While they were beating us we could hear a lot of shooting going on. I saw them opening fire into people’s homes. It was like a war going on.

‘Then at around 4:00 they told us to lay face down and said, “It’s your turn now – look up at the sky and then look down at the earth and say good bye because we’re going to finish you off.” The gendarmes were all around; there was no way to escape. While lying there I’d given myself to God. But all I wanted to do was ask them permission to go say goodbye to my children and my wife. I could hear the two Malian brothers softly reciting their prayers, “there is but one God”, and then the shooting started.’<sup>101</sup>

has done everything to forget the name of his village or who is incapable of showing he belongs to a village is a person without bearings and is so dangerous that we must ask him where he comes from’.<sup>102</sup> Those unable to produce proper documentation faced heavy fines and security-force harassment; ethnic violence in the mixed neighbourhoods of Abidjan and elsewhere escalated in this atmosphere of official permission. Alassane Ouattara was, however, given a certificate of nationality in June 2002.

In August 2002, facing pressure from the European Union and other international actors, President Gbagbo announced a government of national reconciliation, with representation of the four principal political parties in his cabinet. An attempt to demobilize many of the soldiers who had been brought into the army by General Guéï led, however, to a rebellion by some of those affected. Calling themselves the Mouvement Patriotique de Côte d'Ivoire (MPCI), they launched an attempted *coup d'état* on 19 September 2002. Though they failed to topple the central government, the rebels took control of the northern Ivorian town of Korhogo and the central town of Bouaké, engaging in fierce fighting with government soldiers. A short-lived ceasefire from mid-October gave way to further fighting in which the mid-west cocoa capital of Daloa saw heavy combat. The south-west also burst into conflict between and among autochthonous and immigrant groups; many immigrants or northerners were driven out. MPCI leader Guillaume Soro emphasized the foundation of the war in citizenship rights: 'Give us our identity cards and we hand over our Kalashnikovs.'<sup>103</sup>

The French government swiftly intervened with military force, launching *Operation Licorne* in September 2002 to reinforce troops already based in Côte d'Ivoire. Though controversial, because seen as self-interested and (in the first instance) hostile to Gbagbo's government, the intervention eventually helped to establish an often misnamed 'zone of confidence' in the main areas of tension. The French were soon joined by west African soldiers mandated by the Economic Community of West African States (ECOWAS), and from early 2003, the joint forces were authorized to act to re-establish security by the United Nations Security Council. Active fighting gradually gave way to a de facto partition of the country into two separate zones, controlled by the government of Gbagbo in the largely Christian south (including the south-west, retaken by government forces), and by the rebel 'New Forces'<sup>104</sup> led by Soro in the Muslim north.

The French also instituted a succession of peace negotiations and agreements that attempted to find a permanent solution to

the conflict, variously under the auspices of the French government, ECOWAS, the African Union and the United Nations. As of 2008, a UN peacekeeping force established in early 2004 was still in place, supported by French troops operating under their own command. Throughout these negotiations and in successive agreements, the question of citizenship as well as of land ownership has been central.

In January 2003, the Linas-Marcoussis agreement signed in France by all major political parties failed to end active hostilities in Côte d'Ivoire, but set the framework followed in subsequent talks (Accra I, II, III; Pretoria I, II). Among other provisions aiming at the formation of a new government with jurisdiction over all the territory of Côte d'Ivoire it established the principle of a general revision of citizenship law, including that the conditions for eligibility to senior public offices should be that candidates hold Ivorian citizenship and have a father *or* – not *and* – a mother who were Ivorian by origin. On that basis, and under pressure from South Africa's then president, Thabo Mbeki, who played a role in facilitating talks, President Gbagbo confirmed in April 2005 that all signatories of the Marcoussis agreement (which included Ouattara) would be able to run for office in the next presidential elections.<sup>105</sup>

Powerful economic interests affected by the war also intervened to ensure some changes to the 1998 land law in relation to the rights of non-citizens. Reforms adopted in August 2004 recognized the rights of those non-citizens who could prove legal title to land dating before the 1998 land law, including the right to pass title to others; though with the requirement that these rights took effect only if the owners were specifically listed in a decree of the Council of Ministers.<sup>106</sup> The new law did not change the situation of those who did not have written evidence of ownership and only just over one hundred non-citizens actually benefited from this legislation, out of which more than a third were French agribusinesses. The vast majority of non-citizen landholders were still left with no secure tenure.

Two laws adopted in late 2004 revised the nationality code and

established temporary special naturalization procedures that partially addressed some of the nationality problems.<sup>107</sup> The revisions to the nationality code related to the acquisition of citizenship by marriage and provided explicit restrictions on the exercise of public office by naturalized citizens. The temporary special naturalization procedures applied to all those who had been allowed to claim nationality from 1961 either during the transitional period of one year or until the procedures were repealed by the amendments to the nationality code in 1972 (that is, those aged under twenty-one at the date of independence and born in Côte d'Ivoire of foreign parents, those born in Côte d'Ivoire of foreign parents between 1960 and 1973, and those who habitually lived in Côte d'Ivoire before independence). The law established that people in these categories could, during a limited period, apply for naturalization with written evidence in the form of an original birth certificate or a *jugement supplétif* from a court, a form of late certification of birth in the country.

The Council of Ministers finally adopted the decree providing for implementation of the law on special naturalization procedures on 31 May 2006,<sup>108</sup> starting an initial one-year period for those who wished to apply for naturalization under its provisions. The government then implemented a programme of identification through a process of hearings before mobile magistrates' courts (*audiences foraines*). The process aimed to provide those eligible with the *jugement supplétif* required under the special law, an essential prerequisite to obtain a national identification card or a certificate of nationality. Claiming citizenship is then a second step of the process, regulated by existing law; the *jugements supplétifs* do not in themselves confer any authoritative indication of citizenship.

This special identification process was repeatedly postponed by Gbagbo and interrupted by his supporters: in July/August 2006 the FPI's Jeunes Patriotes (Young Patriots) militia responded to a party leadership call to arms and brought the hearings to a halt by staging violent demonstrations and attacking foreigners and opposition party organizers.



While this process was still blocked, Gbagbo and Soro finally signed an agreement in March 2007 in Ouagadougou, creating a government of national reconciliation. Gbagbo was to be president and Soro prime minister. Further measures agreed for the reunification of the country included the redeployment of administrative authorities throughout the country, the demobilization of militias, the disarmament of former combatants, a process to provide identity cards for the population, and the organization of fresh democratic elections within one year. The identification process then resumed, and by mid-May 2008, when it was declared completed after time extensions, the *audiences foraines* had issued more than 600,000 *jugements supplétifs*.<sup>109</sup>

Despite the ‘flame of peace ceremony’ in Bouaké on 30 July 2007 which symbolized the end of the war and the beginning of the reconciliation process, the establishment of a lasting peace remained uncertain. Elections were repeatedly postponed, owing to problems and delays with the voter registration process, closely linked to the wider identification issues. Fundamental questions remained about how the government would ensure the participation of all eligible Ivorian citizens and the long-term rights of the Dioula community. Many theoretically eligible people had not benefited from the *audiences foraines*; and others who could in theory naturalize under the regular provisions of the nationality code are regarded as foreign in practice, and unable in particular to enjoy secure tenure of land. Côte d’Ivoire was far from resolving its citizenship problems.

Tiken Jah Fakoly, 'Où veux-tu que j'aille'

Où veux-tu que j'aille?  
Pourquoi veux-tu que j'm'en  
aille?  
Où veux-tu que j'aille?  
T'as brûlé ma maison d'Abidjan  
Parce-que je ne suis pas de ton  
clan  
Mon grand-père t'a tout donné  
Mon papa a tant sué  
Moi je suis né là,  
Pourquoi veux-tu que j'm'en  
aille?  
Front la racaille!  
Où veux-tu que j'aille?  
Où veux-tu que j'aille?  
Pourquoi veux-tu que j'm'en  
aille?  
Où veux-tu que j'aille?  
...  
Nous sommes tous nés là  
Exilés sans autre choix  
Nos grands-pères se sont sacrifiés (tirailleurs!)

Nos papas se sont intégrés  
Même si on nous traite  
d'étrangers  
Pourquoi veux-tu qu'on s'en  
aille?  
Front la pagaille  
Où veux-tu qu'on aille?  
Mais où veux-tu que j'aille?  
Pourquoi veux-tu qu'on s'en  
aille?  
Où veux-tu qu'on aille?  
Dans les années soixante  
On a fait appeler là nos frères  
Rappelés au bord de la mer!  
Bukinabés, maliens et africains  
Pourquoi veux-tu qu'ils s'en  
aillent, compatriotes?  
Pourquoi tu en as honte?  
Où veux-tu qu'on aille?  
Pourquoi veux-tu que j'm'en  
aille?  
Où veux-tu qu'on aille?

Tiken Jah Fakoly, 'Where do you want me to go?'

Where do you want me to go?	Even if we are treated as
Why do you want me to go?	strangers
Where do you want me to go?	Why do you want us to go?
You burnt my house in Abidjan	Coalition for chaos
Because I am not from your	Where do you want us to
clan	go?
My grandfather gave you every-	But where do you want me
thing	to go?
My father sweated so much	Why do you want us to go?
for you	Where do you want us to go?
Me, I was born there,	In the 1960s
Why do you want me to go?	We called on our brothers
Rabble rousers!	To come to the edge of the
Where do you want me to go?	sea!
Where do you want me to go?	Burkinabés, Malians and
Why do you want me to go?	Africans
Where do you want me to go?	Why do you want them to
...	go, compatriots?
We were all born there	Why are you ashamed of
Exiles without any choice	them?
Our grandfathers were sacri-	Where do you want us to go?
ficed (tirailleurs! <sup>110</sup> )	Why do you want me to go?
Our fathers were integrated	Where do you want us to go?