

# Notes

## 1 Introduction

1 Benedict Anderson, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* (London: Verso, 1991).

2 Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, (Princeton, NJ: Princeton University Press, 1986).

3 For a discussion on the use of the term 'tribe', see, Chris Lowe, 'Talking about "tribe": moving from stereotypes to analysis', *Africa Action*, updated version, February 2008, available at: [www.africaaction.org//bp/ethall.htm](http://www.africaaction.org//bp/ethall.htm).

## 2 Empire to independence

1 This summary of African citizenship law is based on a comprehensive comparative study published by the Open Society Institute, *Citizenship Law in Africa: A Comparative Study* (forthcoming, 2009), from which full references to the laws cited and further details can be obtained.

2 In the last few years of colonial rule, Portugal and France extended citizenship rights in the metropolitan territory to all in their colonies, but not on a completely equal basis.

3 Protocol to the African Charter on Human and Peoples' Rights

on the Rights of Women in Africa, Article 6.

## 3 Natives and settlers

1 Constitution of Zimbabwe Amendment Act, No. 3 of 1983.

2 Citizenship of Zimbabwe Act, No. 23 of 1984.

3 Constitution of Zimbabwe (Amendment No. 11) Act, No. 30 of 1990, inserting Article 3(1)(b) to Schedule 3 of the constitution.

4 *Rattigan and others v. Chief Immigration Officer, Zimbabwe, and others*, 1995 (2) SA 182 (ZS).

5 'Mugabe tries to bar whites from Zim poll', AFP, 13 May 2000.

6 The registrar-general's office is responsible for maintaining the voters' roll and other aspects of elections, citizenship, passports, births, marriages and deaths, and for national population registration and the system of national identity cards.

7 'Court rules on Zimbabwe citizenship', AP, 1 December 2000; *Carr v. Registrar-General*, 2000 (2) ZLR 433 (S).

8 'Registrar-General loses citizenship case', *Daily News*, 17 January 2001.

9 Citizenship Amendment Act No. 12 of 2001, section 3(c), repealing section 9(7) of the

Citizenship of Zimbabwe Act, chapter 4:01, and substituting the text here. The amendment act also inserted a provision in Article 13 to revoke the citizenship of a person who is absent from the country for five years.

10 *Sunday Mail*, quoted in the *Zimbabwe Human Rights Bulletin*, Issue 5, Zimbabwe Lawyers for Human Rights, September 2001.

11 'Zim threatens to take away critics' passports', *The Star* (Johannesburg), 17 February 2001. Moyo later argued against just this position once he left ZANU-PF to become an independent MP. See Professor Jonathan Moyo, 'Constitutional madness will not save Zanu PF', *NewZimbabwe.com*, 26 August 2005.

12 'Citizenship law under scrutiny', *Zimbabwe Independent*, 19 October 2001.

13 'Zimbabwe loses second citizenship case', *The Star* (Johannesburg), 12 June 2002.

14 Zimbabwean Lawyers for Human Rights, 'Zimbabwe Lawyers for Human Rights submissions on the interpretation of citizenship laws to the Parliamentary Committee on Defence and Home Affairs', 7 March 2007, available at [www.zlhr.org.zw/Citizenship/Citizenship%20submissions%20to%20committee.doc](http://www.zlhr.org.zw/Citizenship/Citizenship%20submissions%20to%20committee.doc), accessed 28 November 2007.

15 *Petho v. Minister of Home Affairs, Zimbabwe and Another* (07/06/02) [2002] ZWSC 80; *ZWNNews*, 9 March 2003.

16 *Tsvangirai v. Registrar-*

*General and Others* (HC 12092/01) [2002] ZWHHC 29, 27 February 2002.

17 *Todd v. Registrar-General of Citizenship and Another* (HC 55/2002) [2002] ZWHHC 76, 7 May 2002.

18 'Zimbabwe loses second citizenship case', *The Star* (Johannesburg), 12 June 2002.

19 *Tsvangirai v. Registrar-General of Elections and Another, Tsvangirai v. Registrar-General of Elections and Others* (HC 11843/01, HC 12015/01) [2002] ZWHHC 22, 25 January 2002.

20 *Registrar-General of Elections and Others v. Tsvangirai* (30/2002) [2002] ZWSC 12, 28 February 2002.

21 *Peter Jackson and 634 Others v. Registrar-General* (HC 2434/02), 7 March 2002 (unreported).

22 Constitution of Zimbabwe Amendment Act (No. 17 of 2005), section 20(b), repealing schedule 3, Article 3(1)(b) of the constitution on 'Qualifications and disqualifications for voters'. See also 'Representations on the Bill Made by the Zimbabwe Human Rights NGO Forum to the Portfolio Committee on Justice, Legal and Parliamentary Affairs', 4 August 2005.

23 Judith Todd, 'When would-be heroes turn bad', *Mail & Guardian*, Johannesburg, 3 May 2007.

24 Basildon Peta, 'Zimbabwe strips former PM Smith of his citizenship', *Independent*, London, 28 March 2002.

25 General Notice 584 of 2002.  
 26 Fourth Report of the Portfolio Committee on Defence and Home Affairs on the Citizenship of Zimbabwe Act, 13 June 2007.

27 *Registrar-General of Citizenship v. Todd* (58/02/01) [2003] ZWSC 4, 27 February 2003.

28 *Job Sibanda v. Registrar-General of Citizenship and Other* (HH 3626/02); 'Man born of foreign parents is Zimbabwean – judge', *Legalbrief Today*, 20 June 2005.

29 'Zimbabwe Lawyers for Human Rights submissions on the interpretation of citizenship laws to the Parliamentary Committee on Defence and Home Affairs', 7 March 2007.

30 *Trevor Ncube v. Registrar-General* (HH 7316/06), 25 January 2007.

31 Citizenship of Zimbabwe Amendment Act, No. 12 of 2003, chapter 4, Article 9A(d).

32 Indigenization and Economic Empowerment Bill, 2007, preamble and Article 2.

33 Constitution of the Republic of Kenya, 1963, Articles 87 and 88; Constitution of the Republic of Uganda, 1962, Articles 7–12.

34 Constitution of the Republic of Kenya, 1963, Article 92; Constitution of the Republic of Uganda, 1962, Articles 7–12.

35 In Zanzibar also, as early as 1964, the government of the island deprived some seven thousand people of Asian descent of the Zanzibari citizenship they had chosen in preference to British.

See Rhoda E. Howard-Hassmann, *Human Rights in Commonwealth Africa*, Rowman and Littlefield, 1986, p. 102.

36 Kenya Citizenship Act, 1963, section 3(1)(b)(ii). The applicant or one of his parents must be born in a country to which the section applies, or have been resident in that country or Kenya for a period of five years. Further, he has to have adequate knowledge of Kiswahili or the English language, be of good character and a suitable citizen of Kenya. In practice, very few apply for citizenship under this provision. The 1963 constitution provided, in addition to the transitional provisions relating to acquisition of citizenship at independence, for citizenship by registration for Commonwealth citizens or citizens of another African country – but did not make reference to African descent.

37 Gibson Kamau Kuria, 'Is the Kenya Constitution colour blind? The Constitution and the Africanisation of the economy, with particular reference to Africanisation of commerce', n.d. According to information received from an immigration officer this provision has in fact never been used; telephone interview by Rose Ayugi, 2005.

38 Uganda Citizenship Ordinance (No. 63 of 1962).

39 Constitution of the Republic of Uganda, 1967, Article 4.

40 *Wadhwa and Others v. City Council of Nairobi* [1968] E.A. 406;

see also Alan H. Smith, 'Prevention of discrimination under Kenyan law', *International and Comparative Law Quarterly*, 20(1), January 1971, pp. 136–42.

41 The council argued that its resolution was not racially discriminatory since the term African should be taken to mean not a person whose forefathers were born in Africa but rather a citizen of any country on the continent of Africa, without regard to race. The judge rejected this line of argument on the grounds that the provisions on citizenship did not extend automatically to citizens of other countries in Africa, except as listed in the Citizenship Act. In a somewhat similar case heard before the Kenya High Court in 1968, *Fernandes v. Kericho Licensing Court*, the question of citizenship arose once again. The plaintiff was of Indian origin and was denied renewal of a liquor licence on the basis that he was not a citizen. The court found in favour of the plaintiff, on the grounds that under the relevant law (Liquor Licensing Act, Laws of Kenya, chapter 121) the liquor court had power to refuse to renew the applicant's licence only if he was suffering from one of the six disqualifications set out in the Act, and lack of citizenship was not one of them.

42 Patrick Keatly, 'Britain could face influx of 80,000 Asians', *Guardian* (London), 5 August 1972.

43 Immigration (Cancellation of Entry Permits and Certificates of Residence) Decree (No. 17 of

1972), 9 August 1972; Immigration (Cancellation of Entry Permits and Certificates of Residence) (Amendment) Decree (No. 30 of 1972), 25 October 1972.

44 Uganda Expropriated Properties Act, Laws of Uganda, 2000, chapter 87, transferred the properties and businesses of Asians that had been acquired or expropriated during the military regime to the Ministry of Finance and ensured their return to former owners or their lawful disposal by government.

45 The issue led to several court cases. In *Kayondo v. Asian Property Custodian Board* (HCCS No. 345 of 1981), the presiding judge stated that the seizure of businesses and other properties by the military government from Asians was unconstitutional. On appeal (HCB No. 17 of 1982), however, it was held that the takeover of the property amounted to nationalization and therefore was not a violation of the constitution. Some cases relating to ownership of formerly Asian-held properties took years to resolve; others continue to be fought out in the courts.

46 Evelyn Kwamboka and Juliet Otieno, 'Stateless man's agony after a year of life at the airport', *The Standard*, 15 June 2005; Adam Mynott, 'Kenya airport dweller is British', BBC News, 12 July 2005. In the 2004 film *The Terminal*, Tom Hanks played an immigrant trapped at JFK airport in New York in similar circumstances.

47 Uganda Constitutional Review Commission report, December 2003, p. 157, available from [www.ugandaonlinelawlibrary.com/files/constitution/Commission\\_of\\_Inquiry.PDF](http://www.ugandaonlinelawlibrary.com/files/constitution/Commission_of_Inquiry.PDF), accessed 20 November 2007.

48 Constitution of the Republic of Uganda, 1995, Article 10.

49 Constitution of the Republic of Uganda, 1995, third schedule; Uganda Constitution (Amendment) Act, 2005.

50 In Kenya, meanwhile, a draft constitution produced in 2002 after an extensive national consultation, but never formally adopted, moved in the other direction, removing gender discrimination and providing much due-process protection to all. *The People's Choice: The Report of the Constitution of Kenya Review Commission*, September 2002.

51 See Konia T. Kollehlon, 'On race, citizenship and property in Liberia', *The Perspective*, Atlanta, GA, 19 March 2008.

52 Constitution of Sierra Leone, 1961, section 1(1).

53 Sierra Leone Constitution (Amendment) (No. 2) Act, No. 12 of 1962, and Constitution (Amendment) (No. 3) Act, No. 39 of 1962.

54 Sierra Leone Constitution (Amendment) (No. 2) Act, No. 12 of 1962, section 2(b).

55 The Non-Citizens (Interests in Land) Act of 1966. The Sierra Leone Provinces Land Act, 1960, also made a distinction between 'natives' who were originally from the provinces and 'non-natives'

who were from the Western Area (where the capital, Freetown, is located). A native is defined in the Sierra Leone Citizenship Act of 1973 as follows: "native" means a citizen of Sierra Leone who is a member of a race, tribe or community settled in Sierra Leone, other than a race, tribe or community: (a) which is of European or Asiatic or American origin; or (b) whose principal place of settlement is the Western Area'.

The Krios (descendants of various groups of freed slaves landed in Freetown in the eighteenth and nineteenth centuries and estimated to form about 3 per cent of the population today) and any person whose background cannot be traced to the provinces are 'non-natives'; 'natives' are those from a tribe or community from the provinces. This distinction continues to apply in Sierra Leone. Customary law is applied to 'natives' particularly in matters of personal law and in the settlement of certain disputes in the local courts; 'non-natives', even if they are living outside the Western Area, are not subject to customary law. A 'non-native' such as a Krio can acquire a leasehold interest in the land only in the provinces. A 'native' can hold and use land without any limitation, including in the Western Area.

56 Non-Citizens (Restriction of Retail Trade) Act, 1965; Non-Citizens (Restriction of Trade and Business) Act, 1965; Non-Citizens (Trade and Business) Act, 1969. A

1966 Act was repealed the same year. See also Alusine Jalloh, *African Entrepreneurship: Muslim Fula Merchants in Sierra Leone*, Ohio University Press, 1999, pp. 85–6.

57 Non-Citizens (Registration, Immigration and Expulsion) Act, 1965.

58 *Akar v. Attorney General*, Sierra Leone Supreme Court, 1967; *Attorney General v. Akar*, Court of Appeal Decision, 1968; *Akar v. Attorney General*, Privy Council Appeal No. 20/68, 30 June 1969. See *African Law Reports Sierra Leone Series 1967–68*; 'John Joseph Akar v. Attorney General', *Journal of African Law*, 12(2) (Summer 1968), pp. 89–109; 'John Joseph Akar v. Attorney General', *Journal of African Law*, 13(2) (Summer 1969), pp. 103–16. Akar was appointed ambassador for Sierra Leone to the United States while the appeal was still pending.

59 Sierra Leone Citizenship Act, No. 4 of 1973.

60 Sierra Leone Citizenship Act, 1973, sections 7 and 8.

61 Act No. 11 of 1983. Although the birth certificate was later amended to require the parents' nationality (rather than race) to be stated, 'Lebanese' may be recorded in cases where the parents are of Lebanese origin, even though the *nationality* of the parents is not Lebanese.

62 'Every person of full age and capacity, neither of whose parents is a person of negro African descent who is resident in Sierra Leone and has been contin-

uously so resident for a period of not less than fifteen years may on application being made by him in the manner prescribed, be granted a certificate of naturalization if he satisfies the Minister that he is qualified for naturalization under the provisions set forth in the Third Schedule.' Sierra Leone Citizenship Amendment Act, No. 13 of 1976, amending section 8(3) of the principal Act. The third schedule and section 9 of the Act set out requirements related to a clean criminal record, knowledge of an indigenous Sierra Leonean language, an oath of allegiance, and payment of fees.

63 Sierra Leone Citizenship Act, 1973, section 24.

64 In April 1998, following the restoration of the elected government of President Kabbah, twenty-two people, mostly 'Lebanese', were expelled from Sierra Leone because of their activities during the rebel regime. See Sierra Leone Web News Archive, available at [www.sierra-leone.org/slnewso498.html](http://www.sierra-leone.org/slnewso498.html), accessed 5 December 2007.

65 Sierra Leone Citizenship Act, 1976, section 8(5); see also Constitution of Sierra Leone, 1991, Article 76(1).

66 The provisions of the non-discrimination clause in the 1991 constitution are stated not to apply to laws affecting non-citizens, registered or naturalized citizens, and laws limiting rights to citizenship. Constitution of Sierra Leone, 1991, Article 27(4).

67 Based on text and interviews by Umaru Fofana, Freetown, April 2008.

68 Lila's story extracted from Lina Beydoun, 'Lebanese migration to Sierra Leone: issues of transnationalism, gender, citizenship, and the construction of a globalized identity', PhD thesis, Wayne State University, submitted 1 January 2005.

69 Sierra Leone Citizenship (Amendment) Act, No. 11 of 2006.

70 With the exception of an additional right to appeal against the minister's decision in case of deprivation of citizenship by naturalization.

71 Article 20, Investment Promotion Act, 2004.

72 See Immigration and Refugee Board of Canada, Responses to Information Requests, SLE40893.FE, 14 January 2003, [www.cisr-irb.gc.ca/en/research/rir/?action=record.viewrec&gotorec=441394](http://www.cisr-irb.gc.ca/en/research/rir/?action=record.viewrec&gotorec=441394).

73 Among those whose troops became directly involved were Angola, Burundi, Chad, Namibia, Rwanda, Uganda and Zimbabwe.

74 The International Rescue Committee has conducted surveys of 'excess mortality' in DRC since 2000, and estimates that during the period 1998 to 2007 5.4 million excess deaths attributable to the war occurred in DRC, more than two million of them since the formal end of the war in 2002: *Mortality in the Democratic Republic of Congo: An Ongoing Crisis*, International Rescue Committee,

2007. In 2003, the UN Special Rapporteur on the DRC reported 2.7 million displaced persons: *Interim Report of the Special Rapporteur on the Situation of Human Rights in the Democratic Republic of the Congo*, UN Doc. A/58/534, 24 October 2003. The UN High Commissioner for Refugees reported more than 600,000 refugees from DRC in neighbouring countries in 1996, diminishing to 200,000 by 2005: *2005 UNHCR Statistical Yearbook: Dem. Rep. of the Congo*.

75 Population Division of the Department of Economic and Social Affairs, *World Population Prospects: The 2006 Revision*, United Nations, 2007.

76 Except for a couple of years from 1962, when many new provinces were briefly established, there was only one Kivu Province until 1987, when it was split into North and South Kivu and Maniema.

77 Interview with 'Juma', Goma, 10 June 1999, quoted in Stephen Jackson, 'Sons of which soil? The language and politics of autochthony in eastern DR Congo', *African Studies Review*, 49(2), 2006, p. 101.

78 *Ordonnance-loi no.71-020 du 26 mars 1971 relative à l'acquisition de la nationalité congolaise par les personnes originaires du Rwanda-Urundi établies au Congo au 30 juin 1960*.

79 *Loi no.72-002 du 5 janvier 1972 relative à la nationalité zairoise*.

80 *The 1973 Loi foncière -*

which is still in force – greatly enhanced state control over land and thus allowed for award of land to favoured individuals for political reasons.

81 Uganda also displaced a large number of Banyarwanda in the early 1980s, including some forty thousand people who claimed Ugandan citizenship and 31,000 people registered with UNHCR as refugees, forcing most of them to seek refuge in Rwanda. See Bonaventure Rutinwa, 'The end of asylum? The changing nature of refugee policies in Africa', *Refugee Survey Quarterly*, 21(1/2), April 2002, p. 6.

82 Le Haut Conseil de la République – Parlement de Transition, '*Résolution sur la nationalité*', Kinshasa, 28 April 1995, cited in Stephen Jackson, 'Of "doubtful nationality": political manipulation of citizenship in the DR Congo', *Citizenship Studies*, 11(5), November 2007, pp. 481–500. See also 'Briefing on the conflict in South Kivu', IRIN, 10 July 1996.

83 'Operation return the Rwandans to Rwanda'; 'Bukavu and Uvira clean cities': from *Déclaration de la communauté banyamulenge à la conférence sur la paix, la sécurité et le développement au Nord et au Sud Kivu*, January 2008.

84 In early 2002, RCD-Goma officer Patrick Mazunzu rejected the rebel movement's authority and took many supporters with him, causing a continuing split in the Banyamulenge community.

RCD-Goma troops tried unsuccessfully to suppress Mazunzu's group. Rwandan government soldiers then joined in attacking the Banyamulenge, a people whose security had once been a pretext for the Rwandan army presence in Congo. See Human Rights Watch, *World Report 2003: Democratic Republic of Congo*, New York, 2003.

85 The discredited colonial-era 'Hamitic hypothesis', in which 'Nilotic' pastoralist invaders were said to have dispossessed Bantu cultivators throughout much of east and central Africa, still has much currency in the discourse of difference today, despite the lack of evidence to support it.

86 Prosecutors in Belgium issued an international arrest warrant for Yerodia in 2000 in connection with these statements, accusing him of breaches of the Geneva Conventions and crimes against humanity (in 2002 the International Court of Justice ruled that Belgium had violated international law in issuing the warrant against a serving minister). See Pieter H. F. Bekker, 'World Court orders Belgium to cancel an arrest warrant issued against the Congolese foreign minister', *ASIL Insights*, February 2002.

87 *Constitution de la Transition*, 5 April 2003, Article 14.

88 After the entry into force in 2002 of the treaty establishing an International Criminal Court, the Kabila government referred the situation in the DRC to the



ICC; several cases are under investigation from Ituri Province, north of the Kivus, in relation to atrocities committed by different ethnic militia (including Tutsi militia) as well as the army, and arrest warrants have been issued. Updates on the investigation into the situation in DRC are available on the website of the International Criminal Court, [www.icc-cpi.int/cases/RDC/so104/so104\\_all.html](http://www.icc-cpi.int/cases/RDC/so104/so104_all.html), accessed 23 November 2007.

89 Stefan Lovgren, “Gorillas in the Mist” park slashed by squatters’, *National Geographic News*, 12 July 2004; Finbarr O’Reilly, ‘Mountain gorilla region under threat’, *Scotsman*, 23 August 2004; see also information on Virunga National Park at the UN Environment Programme website on the Great Apes Survival Project, at [www.unep.org/grasp/Information\\_Material/press\\_rl.asp](http://www.unep.org/grasp/Information_Material/press_rl.asp), accessed 21 July 2008.

90 ‘*Est Congolais d’origine toute personne appartenant aux groupes ethniques et nationalités dont les personnes et le territoire constituaient ce qui devenu de Congo (présentement la République Démocratique du Congo) à l’indépendance.*’ *Loi n° 04/024 du 12 novembre 2004 relative à la nationalité congolaise, art. 6.*

91 *Constitution de la République démocratique du Congo, 2006.* The constitution did not, however, repeat the term ‘nationalities’ from the 2004 law.

92 *Déclaration de la communauté banyamulenge à la*

*conference sur la paix, la sécurité et le développement au Nord et au Sud Kivu*, January 2008.

93 ‘Côte d’Ivoire: what’s in a name? A fight for identity’, IRIN, 1 November 2005.

94 This outline simplifies the story: among the Burkinabé, many are Mossi from Burkina Faso’s central plateau, not one of the Mandé groups; many Mossi are also not Muslim. Among the northern ethnic groups are also the Senoufo, whose members include those who follow Muslim, Christian or traditional religions.

95 Department of Economic and Social Affairs, Population Division, *Trends in Total Migrant Stock: the 2005 Revision*, United Nations, February 2006.

96 Articles 17–23 and 105 of the *Code de la nationalité*, 1961.

97 Articles 25–26 of *Loi no. 61-415 du 14 décembre 1961 portant Code de la nationalité ivoirienne, modifiée par loi no. 72-852 du 21 décembre 1972.*

98 *Loi electoral no. 80-1039, du 1er septembre 1980*, Article 57.

99 *Loi no. 98-750 du 23 décembre 1998 relative au Domaine foncier rural.*

100 Article 25, Constitution of Côte d’Ivoire, 2000. (‘*Le Président de la République ... doit être ivoirien d’origine, né de père et mère eux mêmes ivoiriens d’origine. Il doit n’avoir jamais renoncé à la nationalité ivoirienne. Il ne doit être jamais prévalu d’une autre nationalité.*’)

101 Extracted from: *The New*

*Racism: The Political Manipulation of Ethnicity in Côte d'Ivoire*, Human Rights Watch, August 2001.

102 *Notre Voie*, 28 July 2002, cited in Ruth Marshall-Fratani, 'The war of "who is who": autochthony, nationalism and citizenship in the Ivorian crisis', in Sara Dorman, Daniel Hammett and Paul Nugent (eds), *Making Nations, Creating Strangers: States and Citizenship in Africa*, Brill, 2007.

103 Christian Bouquet, 'La crise ivoirienne par les cartes', *Géococonfluences*, 4 June 2007, available at [geoconfluences.ens-lsh.fr/doc/etpays/Afsubsah/AfsubsahDoc5.htm](http://geoconfluences.ens-lsh.fr/doc/etpays/Afsubsah/AfsubsahDoc5.htm), accessed 17 January 2008.

104 Formed by an amalgamation in March 2003 of the MPCJ with the Mouvement Populaire Ivoirien du Grand Ouest (MPIGO) and the Mouvement pour la Justice et la Paix (MJP), both based in the south-west.

105 'La présidentielle envisagée par Gbagbo pour fin 2007', *L'Humanité*, 8 August 2007.

106 *Loi no. 2004-412 du 14 août 2004*.

107 *Loi no. 2004-662 modifiant et complétant la loi 61-415; Loi no. 2004-663 du 17 décembre 2004 portant dispositions spéciales en matière de naturalisation*, as implemented by *Décision no. 2005-04/PR du 15 juillet 2005*. See also Habibou Bangré, 'Côte d'Ivoire: révision du code de la nationalité et de la naturalisation; les amendements apportent des

progrès mitigés', 21 December 2004, available at [www.afrik.com/article7981.html](http://www.afrik.com/article7981.html), accessed 23 November 2007.

108 See Summary of Committee of Ministers meeting 31 May 2006, available at [www.cotedivoire-pr.ci/index.php?action=show\\_page&id\\_page=388](http://www.cotedivoire-pr.ci/index.php?action=show_page&id_page=388), accessed 29 May 2008.

109 See Statement of the Ministry of Justice and Human Rights on the mobile court process at [www.audiencesforaines.gouv.ci/faq4.php](http://www.audiencesforaines.gouv.ci/faq4.php), accessed 29 May 2008; Seventeenth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire; UN Security Council Document S/2008/451, 10 July 2008.

110 African soldiers fighting for the French army.

#### 4 *Mass denationalization*

1 Bonaventure Rutinwa, 'The end of asylum? The changing nature of refugee policies in Africa', *Refugee Survey Quarterly*, 21(1/2), April 2002, p. 6.

2 Rhoda E. Howard-Hassmann, *Human Rights in Commonwealth Africa*, Rowman and Littlefield, p. 104.

3 Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights*, Nigeria, 13 May 1998, E/C.12/1/Add.23.

4 'Migrants expelled from Gabon', *Migration News*, 2(4), University of California, Davis, March 1995.

5 African Commission on Human and Peoples' Rights (ACHPR), Communication 71/92, *Rencontre Africain pour la Défense des Droits de l'Homme v. Zambia*, (2000); *African Human Rights Law Review* (AHRLR) 321 (ACHPR 1996); Communication 159/96, *Union Interafricaine des Droits de l'Homme and Others v. Angola*, (2000) AHRLR 18 (ACHPR 1997); Communication 249/02, *African Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v. Republic of Guinea*, (2004) AHRLR 57 (ACHPR 2004).

6 'Operation deports 270,000 foreign citizens', Angola Press Agency, 19 April 2005.

7 'Hundreds march in Niger calling for Arabs expulsion', Reuters, 28 October 2006.

8 Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Libyan Arab Jamahiriya*, CERD/C/64/CO/4, 10 May 2004; Human Rights Watch, *Stemming the Flow: Abuses against Migrants, Asylum Seekers and Refugees in Libya*, September 2006.

9 Report on the African Union Conference of Ministers of Immigration, Ex.CL/197(VII)

28 June–2 July 2005; see also 'African ministers push for protocol on deportation, mass expulsion', PANA, 30 June 2005.

10 This section relies heavily on *The Horn of Africa War: Mass Expulsions and the Nationality Issue (June 1998–April 2002)*, Human Rights Watch, January 2003; many of the notes also come from citations in the original text.

11 'Agreement on Security and Other Related Matters between the Ministries of Internal Affairs of the Governments of Ethiopia and Eritrea', Addis Ababa, 13 May 1994, Article 2.3.

12 Eritrean Nationality Proclamation No. 21/1992, Articles 2–4.

13 Ethiopian Nationality Law, 1930, Article 33(1). The 2003 Proclamation on Ethiopian Nationality removed the gender discrimination, but still prohibits dual nationality.

14 Agreed minutes of the Fourth Ethio-Eritrean Joint High Commission Meeting, 18–19 August 1996, para. 4.3.4.

15 'Government says never to change policy on relations with Eritreans', *Press Digest*, V(25), 18 June 1998, quoting the *Ethiopian Herald* of 13 June 1998.

16 'Eritrea's baseless accusations', Ethiopia Office of Government spokesperson, 9 July 1999.

17 Extracted from *The Horn of Africa War*, p. 3.

18 Proclamation to Provide Foreign Nationals of Ethiopian Origin with Certain Rights to be Exercised in their Country of

Origin (270/2002), 5 February 2002.

19 Maureen Lynch and Katherine Southwick, *Ethiopia-Eritrea: Stalemate Takes Toll on Eritreans and Ethiopians of Eritrean Origin*, Refugees International, 30 May 2008. This report also notes that travel between Eritrea and Ethiopia is prohibited, there is no interstate phone system, and Ethiopians have reportedly been jailed for communicating with friends and relatives in Eritrea via the Internet. At the same time, Ethiopia does accept refugees fleeing political repression and military conscription in Eritrea; a camp on the border housed almost eighteen thousand people as of early 2008.

20 Award of the Eritrea-Ethiopia Claims Commission in *Partial Award (Civilian Claims)*, 44 ILM 601 (2005) at p. 610 (award of 17 December 2004).

21 The nomenclature used for this widely dispersed West African ethnic group (itself made up of several subgroups) is complex: in Commonwealth countries they are usually known as Fula; in countries of the Francophonie as Peul. Pulaar is the language group, and those who speak it are sometimes also known as Halpulaar(en). For a discussion of the issues, see the thread on 'Names for African peoples & language' on the H-Africa log for December 2007, available at [www.h-net.org/~africa/](http://www.h-net.org/~africa/), accessed 2 January 2008.

22 Report of the Mission of the

Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa to the Republic of Senegal, African Commission on Human and Peoples' Rights, 2005; David Stone, *Enhancing Livelihood Security among Mauritanian Refugees in Northern Senegal: a Case Study*, UNHCR, June 2005.

23 Human Rights Watch, *Mauritania's Campaign of Terror: State-sponsored Repression of Black Africans*, New York, 1994; see also Human Rights Watch, *World Report 1989 and 1990*.

24 African Commission on Human and Peoples' Rights, Communications 54/91, 61/91, 98/93, 164-196/97 and 210/98, *Malawi African Association and others v. Mauritania*, (2000) AHRLR 149 (ACHPR 2000).

25 See 'Global review of statelessness: Africa', in Maureen Lynch, *Lives on Hold: The Human Cost of Statelessness*, Refugees International, February 2005, p. 29.

26 After their expulsion, most Mauritanians settled along the southern bank of the Senegal river; these settlements are not closed and resemble the surrounding villages, although they usually lack the public services provided to Senegalese villages.

27 Human Rights Committee, 'Concluding observations of the Human Rights Committee: Mali', CCPR/CO/77/MLI, 16 April 2003.

28 'Refugees cautiously optimistic about new initiative',

IRIN, 10 July 2007; Kissy Agyeman, 'Exiled Mauritians begin tentative retreat back to homeland after 18 years', *Global Insight Daily Analysis*, 11 July 2007.

29 'Thousands of Mauritians to return home from Senegal with help of UN Agency', *UN News Service*, 13 November 2007; 'Is Mauritania ready for its refugees?', *IRIN*, 16 November 2007.

30 'Briefing paper on the return of expelled Mauritians to the Islamic Republic of Mauritania following the August 6, 2008 coup', *Institute for Human Rights and Development in Africa*, October 2008.

### 5 *Internal citizenship*

1 For Kenya, see, for example, S. N. Ndegwa, 'Citizenship and ethnicity: an examination of two transition moments in Kenyan politics', *American Political Science Review*, 91(3), 1997, pp. 599–616.

2 During the debates in the constitutional conference that was established in 1953 to decide the form of the future independent state, the British government appointed a commission of inquiry to advise on safeguards for minority rights. This commission, chaired by Henry Willink, reported in 1958. The commission considered each region of Nigeria (Northern, Western and Eastern) and the demands for state creation from minorities. In each case, it rejected the idea of new states on the grounds that: 'it is seldom possible to draw a clean boundary

which does not create a fresh minority; the proposed state had in each case become very small by the time it had been pared down to an area in which it was possible to assert with confidence that it was desired'. *Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them*, Presented to Parliament by the Secretary of State for the Colonies, July 1958, ch. 14, para. 3.

3 These were adopted in 1960, 1963, 1979 and 1999. A 1989 constitution never came into force.

4 'The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that government or in any of its agencies.' *Constitution of the Federal Republic of Nigeria*, 1979, Article 14(3).

5 *Constitution of the Federal Republic of Nigeria*, 1999, Article 147(3).

6 The closest to a definition is provided in the context of political parties. The 1999 constitution, Article 223(2)(b), provides that the members of the executive of a political party must 'belong to' at least two-thirds of the states of the federation. Article 318(1) in turn

provides that 'belong to', 'when used with reference to a person in a state refers to a person either of whose parents or any of whose grandparents was a member of a community indigenous to that state'.

7 Constitution of the Federal Republic of Nigeria, 1999, Article 42.

8 Human Rights Watch, *'They Do Not Own This Place': Government Discrimination against 'Non-indigenes' in Nigeria*, April 2006, p. 63.

9 Articles 5, 39 and 47 of the Constitution of the Federal Democratic Republic of Ethiopia, 1994, provides: '(3) The right of any Nation, Nationality or People to form its own state is exercisable under the following procedures: When the demand for statehood has been approved by a two-thirds majority of the members of the Council of the Nation, Nationality or People concerned, and the demand is presented in writing to the State Council; When the Council that received the demand has organized a referendum within one year to be held in the Nation, Nationality or People that made the demand; When the demand for statehood is supported by a majority vote in the referendum; When the State Council will have transferred its powers to the Nation, Nationality or People that made the demand; and When the new State created by the referendum without any need for application, directly

becomes a member of the Federal Democratic Republic of Ethiopia.'

10 Constitution of the Federal Republic of Ethiopia, 1994, Preamble and Articles 5 and 39; see also Paul H. Brietzke, 'Ethiopia's "leap in the dark": federalism and self-determination in the new constitution', *Journal of African Law*, 39(1), 1995, pp. 19-38; Jon Abbink, 'Ethnicity and constitutionalism in contemporary Ethiopia', *Journal of African Law*, 41(2), 1997, pp. 159-74; Lahra Smith, 'Voting for an ethnic identity: procedural and institutional responses to ethnic conflict in Ethiopia', *Journal of Modern African Studies*, 45, 2007, pp. 565-94.

## 6 *The importance of paperwork*

1 UNICEF, *Child Protection Information Sheets*, 2006, p. 13. See also concluding observations of the committee monitoring compliance with the UN Child Rights Convention, available at [www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf), accessed 3 December 2007.

2 Extracts (lightly edited for spelling and punctuation) from comments posted in 'Is a passport your right?', BBC News Forum discussion, October 2007, available at [newsforums.bbc.co.uk/nol/thread.jspa?forumID=3741&edition=1&ttl=20071028144851](http://newsforums.bbc.co.uk/nol/thread.jspa?forumID=3741&edition=1&ttl=20071028144851), accessed 10 April 2008.

3 Bureau of Democracy, Human Rights, and Labor, 'Swaziland', in *Country Reports on Human Rights Practices 2007*, US Department of State, 11 March 2008.

4 Bureau of Democracy, Human Rights, and Labor, 'Madagascar', in *Country Reports on Human Rights Practices 2007*, US Department of State, 11 March 2008.

5 See, Human Rights Watch, *Struggling through Peace: Return and Resettlement in Angola*, August 2003.

6 UN High Commissioner for Refugees, *Africa Newsletter*, third quarter 2006.

7 Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2007*.

8 *Deepak Chamanlal Kamani v. Principal Immigration Officer and 2 Others* [2007] eKLR; see also Peter Mwaura, 'Passport is a right for every citizen, not a privilege', *The Nation* (Nairobi), 7 July 2007; Obiora Chinedu Okafor, 'The fundamental right to a passport under Nigerian law: an integrated viewpoint', *Journal of African Law*, 40(1), 1996; *Cuthbert Mambwe Nyirongo v. Attorney-General* (1990-1992) ZR 82 (SC).

9 Citizenship and Immigration Control Act, 1999, section 39: 'Every Ugandan shall have the right to a passport or other travel documents.'

10 Committee on the Rights of the Child, Concluding observations: Kenya, CRC/C/KEN/CO/2, 19 June 2007, para. 30; Kenya country report presented at the Second Eastern and Southern Africa Conference on Universal Birth Registration, Mombasa,

Kenya, 26-30 September 2005.

11 *An Identity Crisis? Study on the Issuance of National Identity Cards in Kenya*, Kenya National Human Rights Commission, 2007; *The People's Choice: The Report of the Constitution of Kenya Review Commission*, 2002.

12 Children born outside Kenya, however, can under the law obtain citizenship only if their father is a citizen. 1963 Constitution, Article 90.

13 Legal notices No. 264 of 1966 and No. 185 of 1967. The Public Security (Control of Movement) Regulations, L.N.43, 1967.

14 By virtue of this Act the security forces have powers exceeding those of police officers and akin to those that can be used during a declared state of emergency in North-Eastern Province, Isiolo, Marsabit, Meru, Tana River, Lamu district, Samburu, Laikipia and territorial waters.

15 1963 Constitution, Article 81(3)(b). Also excluded are restrictions in the interests of defence, public safety or public order.

16 Preservation of Public Security Act, Laws of Kenya, ch. 57, section 4(2)(b). The Outlying Districts Act and the Special Districts (Administration) Act were repealed by the Statute Law (Repeals and Miscellaneous Amendments) Act, No. 10 of 1997. Although the Preservation of Public Security Act was also amended in 1997 to remove the provisions relating to detention of persons, the other provisions remain in force.

17 In 1984, more than a thousand Kenyan Somalis were killed by security forces in a massacre at Wagalla, North-Eastern Province, for which there has to date been no accountability.

18 Legal Notice No. 5320, *Kenya Government Gazette*, 10 November 1989.

19 Letter from the Office of the President to the District Officer of the Kiunga Division, Lamu, dated 29 July 1992 (on file with CEMIRIDE, the Centre for Minority Rights Development, Nairobi).

20 *Banditry and the Politics of Citizenship: The Case of the Galje'el Somali of Tana River*, MUHURI, 1999.

21 Miscellaneous Civil Application No. 28 of 1999 in Mombasa (on file with CEMIRIDE).

22 Letter from National Registration Bureau, 28 March 2008, cited in Adam Hussein, 'Making of stateless people – the Kenyan style', Open Society Justice Initiative, unpublished, 2008.

23 'Kenya: national registration process leaves minorities on the edge of statelessness', *Bulletin*, Refugees International, 23 May 2008.

24 A summary of the Nubian situation can be found in Maurice Odhiambo Makoloo, *Kenya: Minorities, Indigenous Peoples and Ethnic Diversity*, Minority Rights Group International/CEMIRIDE, 2005.

25 Report of the 1933 Kenya Land Commission, known as the Carter report, quoted in Makoloo,

*Kenya: Minorities, Indigenous Peoples and Ethnic Diversity*, p. 16.

26 It is claimed that for a long time the Kenyan maps continued to depict Kibera as a forest where nobody lived, and this was what the successive governments continued to claim. All this was in an effort to deny the reality that the Nubians inhabited the area. See, for instance, 'Kibera, the Forgotten City', UN Integrated Regional Information Network (IRIN), 13 September 2006.

27 High Court civil case no. 256 of 2003, Nairobi.

28 Communication 317/106, ACHPR: *The Nubian Community v. Kenya*.

29 Summaries of affidavits taken in 2005 by the Open Society Justice Initiative, CEMIRIDE and the Institute for Human Rights and Development in Africa, for the communication brought to the African Commission on Human and Peoples' Rights. Names have been changed.

## 7 *Excluding candidates*

1 Constitution of the Republic of Zambia, 1991, Article 34(3) (b), added by the Constitution (Amendment) Act No. 18 of 1996. The constitution also provides in Article 7(b) that a person may not be deprived of citizenship except on the grounds that they are the citizen of another country or they have obtained citizenship by fraud.

2 *Zambia Democratic Congress v. Attorney General*, Appeal No. 135/96, SCZ Judgment No. 37



of 1999. The Supreme Court of Zambia ultimately (long after the elections had come and gone) ruled against the petition, declaring that the Zambian parliament had the power to adopt the proposed amendment to the constitution without a referendum. The Legal Resources Foundation, a human rights organization, then lodged a complaint against Zambia with the African Commission on Human and Peoples' Rights following the Supreme Court's decision: in 2001 the African Commission ruled that the Zambian government was in violation of several provisions of the African Charter. *Legal Resources Foundation v. Zambia* (2001), AHRLR 84 (ACHPR 2001).

3 *Zambia: Elections and Human Rights in the Third Republic*, Human Rights Watch, December 1996.

4 In court, the Zambian government alleged that Banda's father was Malawian; although the trial court found that there was no admissible evidence that Banda was Malawian, it also found that there was insufficient evidence that he was Zambian either. *Amnesty International v. Zambia*, African Commission on Human and Peoples' Rights (communication 212/98), (2000) AHRLR 325 (ACHPR 1999), para. 29.

5 *Lewanika and Others v. Chiluba*, 1998 ZLR 86. The constitution at the time of independence provided in Article 3(1) as follows: '3(1) Every person who, having

been born in the former protectorate of Northern Rhodesia, is on 23rd October 1964 a British protected person shall become a citizen of Zambia on 24th October 1964.'

6 *Mushota and Another v. Kaunda and Another*, 1997/HN/357 unreported. The judgment was published in the *Times of Zambia* on 1 April 1999.

7 *Report of the Electoral Reform Technical Committee (ERTC)*, August 2004, p. 76.

8 *Report of the Constitution Review Commission*, 29 December 2005, pp. 301-4; *Government Reaction to the Electoral Reform Technical Committee Interim Report*, 7 January 2005, p. 14.

9 The government alleged that because Modise was born in the Republic of South Africa and was not a subject of the British Crown at the time of Botswana's independence in 1966, because his father (who had been born in a British protectorate) was not alive in 1966, and because he had not exercised his right to become a naturalized Botswana citizen by October 1968, he could not be considered a citizen of Botswana.

10 See *John K. Modise v. Botswana*, Communication No. 97/93, African Commission on Human and Peoples' Rights 14th Annual Activity Report, 2000, reported in (2000) AHRLR 30. The judgment in the decision contradicts itself on facts of the case in paras 5 and 91; what are stated here are believed to be the correct facts.

11 *Modise v. Botswana*, African Commission on Human and Peoples' Rights, para. 96.

12 In 2004 the government reportedly offered Modise 100,000 pula (around US\$21,000 at the contemporary exchange rate) as compensation for his 1978 deportation from Botswana in response to the African Commission's ruling, an offer he is said to have rejected. See Donny Dithato, 'State in secret talks with Modise', *Mmegi*, 25 August.

13 *Bhekindlela Thomas Ngwenya v. The Deputy Prime Minister*, 1970–76 SLR (HC) 88.

14 Immigration (Amendment) Act No. 22 of 1972.

15 *Bhekindlela Thomas Ngwenya v. The Deputy Prime Minister and the Chief Immigration Officer*, 1970–76 SLR (HC) 119.

16 *Bhekindlela Thomas Ngwenya v. The Deputy Prime Minister and the Chief Immigration Officer*, 1970–76 SLR (CA) 123.

17 See also Maseko Thulani Rudolf, 'The writing of a democratic constitution in Africa with reference to Swaziland and Uganda', LLM thesis, University of Pretoria, 2005.

18 Citizenship Order, King's Order in Council, 22 of 1974, 3 September 1974, *Swaziland Government Gazette*, 1974, cited in Hugh Macmillan, 'A nation divided? The Swazi in Swaziland and the Transvaal, 1865–1986', in Leroy Vail (ed.), *The Creation of Tribalism in Southern Africa*, James Currey, 1989.

19 See International Labour Organization, Committee on Freedom of Association, Swaziland (Case No. 1884), 23 May 1996, Report No. 306 (vol. LXXX, 1997, series B, No. 1).

20 'Enforcement of Immigration Act intensifies', *The Times of Swaziland*, 24 April 2003; *Legal-brief Africa*, issue No. 024, 21 April 2003. The Swaziland Citizenship Act 1992, the relevant legislation at the time and still in force, provides that those who have citizenship by registration may be deprived of it if they subsequently acquire another citizenship, but makes no other provisions on dual nationality. The 2005 constitution that has since come into force does not change this position. See also *Swaziland: Law, Custom and Politics: Constitutional Crisis and the Breakdown in the Rule of Law*, International Bar Association Human Rights Institute, March 2003; *Fact-finding Mission to the Kingdom of Swaziland*, Report of the Centre for the Independence of Judges and Lawyers, International Commission of Jurists, 10 June 2003; *Swaziland: Human Rights at Risk*, AI Index: AFR 55/004/2004, Amnesty International, July 2004.

21 'A person who has Khontaed, that is to say, has been accepted as a Swazi in accordance with customary law and in respect of whom certificate of Khonta granted by or at the direction of the King is in force, shall be a citizen of Swaziland.' Swaziland

Citizenship Act No. 14 of 1992, section 5. See also Constitution of Swaziland, 2005, Article 42, which provides that persons born before the constitution came into effect are citizens 'by operation of law' if either parent is a citizen and also if the person is 'generally regarded as Swazi by descent'. Article 43 of the constitution removes this (not entirely clear) ethnic basis for children born after the constitution came into effect, but entrenches gender discrimination, providing that citizenship is only passed by a father who is a Swazi citizen.

22 'Tanzania drops envoy to Nigeria over citizenship', *Guardian*, Dar es Salaam, 5 February 2001.

23 'Veteran editor stripped of citizenship', *Guardian*, Dar es Salaam, 8 August 2006; Ernest Mpinganjira, 'Intimidation of media exposes Tanzania's fear of criticism', *Sunday Standard*, 13 August 2006.

24 Zambia Immigration and Deportation Act, Laws of Zambia, ch. 123, section 26(2): 'Any person who in the opinion of the Minister is by his presence or his conduct likely to be a danger to peace or good order in Zambia may be deported from Zambia pursuant to a warrant under the hand of the Minister.'

25 *Jackson v. Attorney General* (1979) Z.R. 167; *Walulya v. Attorney General* (1984) Z.R. 89.

26 *Vijay Giri Anand Giri Goswami v. Attorney General* (HP/3671), 1994.

27 *Roy Clarke v. The Attorney General* (HP/003), 2004.

28 *Attorney General v. Roy Clarke*, SCZ Appeal No. 96A/2004, 24 January 2008.

29 Under section 7 of the Immigration Act, the categories of prohibited immigrants are: (a) people who are likely to become a public charge 'by reason of infirmity of mind or body' or because of insufficient means of support; (b) people who are 'idiot or epileptic', 'insane or mentally deficient', 'deaf and dumb, or deaf and blind, or dumb and blind'; (c) people who are infected by a proscribed disease; (d) people who are or ever have been a prostitute or involved with prostitution; (e) people who have either been sentenced in Botswana or elsewhere for an offence which 'if committed in Botswana, would be punishable with imprisonment without the option of a fine'; (f) anyone considered by the president to be an 'undesirable inhabitant'; and (g) the wife and minor children of the prohibited immigrant. See Botswana Immigration Act, Laws of Botswana, ch. 25:02, section 7. While section 11 allows for an appeal process for people who want to challenge their designation as a prohibited immigrant, no appeal is allowed for people who under section 7(f) have been declared a prohibited immigrant by the president. Moreover, 11(6) states that 'no court shall question the adequacy of the grounds for any such declaration'.

30 *Kenneth Good v. The Attorney General* (Civil Appeal No. 28 of 2005), 27 July 2005.

## 8 *Naturalization and integration*

1 Department of Home Affairs, *Annual Report 2006–2007*, Government of South Africa, 2008, p. 47.

2 'Accès à la nationalité sénégalaise: les mêmes textes pour tous les demandeurs', *APA News*, 13 August 2007.

3 'About 6000 foreigners may become Swazi citizens', *The Times of Swaziland*, 17 August 2005.

4 'Over 30,000 granted citizenship', *Daily News*, Gaborone, 31 March 2005.

5 United Nations Secretary-General, *Assistance to refugees, returnees and displaced persons in Africa*, report to the General Assembly, A/61/301, 29 August 2006.

6 Mulki Al-Sharmani, 'Livelihood and identity constructions of Somali refugees in Cairo', *Forced Migration and Refugee Studies Working Paper No. 2*, American University in Cairo, July 2003, p. 6.

7 Extracted from, Oroub El-Abed, 'Deportation from Cairo', 5 March 2004, available at [www.achr.nu/newen35.htm](http://www.achr.nu/newen35.htm).

8 Law No. 154 of 2004 amending some provisions of Law No. 26 of 1975 concerning Egyptian nationality, *Official Gazette*, vol. 28, 14 July 2004. See also [www.learningpartnership.org/citizenship/category/countries/egypt](http://www.learningpartnership.org/citizenship/category/countries/egypt), accessed 13 November 2007.

9 For further details see *Citizenship Law in Africa: A Comparative Study*, Open Society Institute, 2009.

10 Story contributed by Khoti Kamanga.

11 A discussion of these amnesties can be found in Bronwyn Harris, 'A Foreign experience: violence, crime and xenophobia during South Africa's transition', *Violence and Transition Series*, vol. 5, Centre for the Study of Violence and Reconciliation, South Africa, August 2001.

12 See essays in Jonathan Crush and Vincent Williams (eds), *The New South Africans? Immigration Amnesties and Their Aftermath*, Idasa, Cape Town, 1999; Human Rights Watch, *Prohibited Persons: Abuse of Undocumented Migrants, Asylum Seekers and Refugees in South Africa*, New York, March 1998.

13 South Africa Refugees Act (No. 130 of 1998), entry into force 2000; South Africa Immigration Act (No. 13 of 2002), entry into force 2003.

14 As of 2005, around thirty thousand people were recognized as refugees in South Africa, with more than a further 140,000 who had applied for asylum. UN High Commissioner for Refugees, *Statistical Yearbook 2005*; more than fifty thousand additional applications were made in 2006 and more than forty-five thousand in 2007, while the top five countries of origin in 2007 were Zimbabwe, DRC, Ethiopia, Malawi

and Somalia. 'South Africa gets 45,673 asylum seekers in 2007, warns of rising numbers', UNHCR press statement, 26 February 2008; Florencia Belvedere et al., *National Refugee Baseline Survey: Final Report*, Community Agency for Social Enquiry (CASE), Johannesburg, 2003, p. 6.

15 The Supreme Court of Appeal ruled in the 2003 *Watchenuka* case that asylum seekers were entitled to work and study while awaiting the determination of their applications. The Constitutional Court in the *Khosa* case upheld the right of permanent residents to receive social security. In the case of *S v. Manuel*, the High Court held that the right to legal aid that is recognized in section 35(3)(g) of the constitution applies to foreigners without correct immigration papers who are accused in a South African court. *Minister of Home Affairs and Others v. Watchenuka and Another*, 2004(4) SA 326(SCA); *Khosa and Others v. Minister of Social Development and Others*; *Mahlaule and Another v. Minister of Social Development and Others*, 2004(6) SA 505(CC); *S v. Manuel* 2001(4) SA 1351(W). See also *Larbi-Odam and Others v. Member of the Executive Council for Education (North-West Province) and Another*, 1998 (1) SA 745 (CC).

16 See, for example, *Citizenship, Violence and Xenophobia in South Africa: Perceptions from South African Communities*, Human Sciences Research Council, Pretoria, June 2008. South

African men in particular found the presence of the newcomers threatening.

17 The Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO), named after the two former Spanish provinces making up the territory.

18 UN High Commissioner for Refugees, *Statistical Yearbook 2005*.

19 Pablo San Martin, 'Nationalism, identity and citizenship in the Western Sahara', *Journal of North African Studies*, 10(3/4), September–December 2005; Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, December 2008; telephone interview with Francesco Bastagli, former Special Representative of the UN Secretary-General for Western Sahara, May 2008.

20 See the website of the UN Mission for a Referendum in Western Sahara (MINURSO), available at [www.un.org/Depts/dpko/missions/minurso](http://www.un.org/Depts/dpko/missions/minurso), accessed 3 December 2007. The 'Settlement Plan', based on a framework initially proposed by the OAU in 1983, was originally put forward by the UN and agreed to in principle by the parties in 1988. It was ultimately approved by UN Security Council Resolution 690 of 29 April 1991. For background and updates on the peace negotiations, see Issaka K. Souaré, 'Western Sahara: is there light at the end of the tunnel?', *ISS Paper 155*, Institute

of Security Studies, South Africa, November 2007.

21 San Martin, 'Nationalism, identity and citizenship in the Western Sahara', footnotes 7 and 47; Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, December 2008, p. 23.

22 For background, see Dr Sidi Omar, 'The right to self-determination and the indigenous people of Western Sahara', *Cambridge Review of International Affairs*, 21(1), March 2008.

23 A well-referenced list is maintained on Wikipedia at: [en.wikipedia.org/wiki/Legal\\_status\\_of\\_Western\\_Sahara](http://en.wikipedia.org/wiki/Legal_status_of_Western_Sahara), accessed 13 June 2008.

24 This position was confirmed in a 2002 opinion by the UN Legal Counsel, which recalled that Spanish Sahara was included in 1963 in the list of non-self-governing territories under Chapter XI of the UN Charter, and that the transfer of administrative authority over the territory to Morocco and Mauritania in 1975 did not transfer sovereignty nor affect the international status of Western Sahara as a non-self-governing territory. Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the president of the Security Council, UN Document S/2002/161.

25 In 2007, the Spanish Supreme Court ruled in favour of a Sahrawi refugee who had applied to be recognized as stateless by

the Spanish authorities, even though she had travelled to Spain on an Algerian passport granted to enable her to seek medical treatment seven years earlier. Case of Ms Khadijatou Bourkari Dafa, Recurso Casacion Num: 10503/2003.

26 Decree 2258 of 10 August 1976.

27 *Code de la nationalité marocaine*, ch. IV.

28 In 1998, the Moroccan Supreme Court declared itself unable to rule on the nationality of Abraham Serfaty, who, though not a Sahrawi, had spent seventeen years in prison for advocating self-determination for Western Sahara, from 1974 to 1991, and after his release was expelled from the country on the grounds that he was not Moroccan. Serfaty, who is Jewish, was born in Morocco, worked for years as a high-ranking civil servant and lived there until his expulsion. He was not given the opportunity to challenge the expulsion in court before he was forced into exile. He was, however, eventually allowed to return to Morocco. *Morocco/Western Sahara: 'Turning the Page': Achievements and Obstacles*, Amnesty International, 4 August 1999, Index Number: MDE 29/001/1999, and annual report sections on Morocco/Western Sahara.

29 *Morocco/Western Sahara: Stop the Judicial Harassment of Sahrawi Human Rights Defenders*, Amnesty International, 5 February 2007, Index Number: MDE 29/003/2007.

30 Human Rights Watch, *Letter to King Mohammed VI on the Trial of Sahrawi Human Rights Defenders in the Western Sahara*, 8 December 2005.

### 9 *Last words*

1 OAU Assembly, Res. 16 (II), Cairo Summit, 2nd Ordinary Session, 1964.

2 'Symposium on the African Union: Statement of Consensus', African Development Forum III: Defining Priorities for Regional Integration, Addis Ababa, Ethiopia, 3 March 2002.

3 Strategic Plan of the Commission of the African Union, 2004–2007; Report of the First Conference of Intellectuals of Africa and the Diaspora, Dakar, Senegal, 6–9 October 2004; Report on the African Union Conference of Ministers of Immigration to the African Union Executive Council Seventh Ordinary Session

28 June–2 July 2005, EX.CL/197 (VII).

4 At subregional level freedom of movement has made greater progress. The Economic Community of West African States has had a subregional passport and internal freedom of movement since 1979, as well as rules intended to make it easier to establish businesses across the regional borders. The revived East African Community has created a free-movement regime among the five countries that constitute it, with a common internal passport. Within the Southern African Development Community, however, disagreements over the content of a protocol on free movement led to a much watered-down version being adopted by the SADC summit in 2005, which provided very few additional rights to those already held. Other regional communities are further behind.

## Further reading

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