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1 | Introduction

‘We needed a war because we needed our identity cards. Without an identity card you are nothing in this country.’ A fighter for the rebel ‘new forces’ in Côte d’Ivoire condensed the argument of this book into two short sentences: that the denial of a right to citizenship has been at the heart of many of the conflicts of post-colonial Africa, and that it is time to change the rules. Côte d’Ivoire may be an extreme case, but political crises since independence in the Democratic Republic of Congo, Zimbabwe, Mauritania, Uganda and elsewhere show the same pattern: political leaders seek to buttress their support among one part of their country’s population by excluding another from the right to belong to the country at all.

Hundreds of thousands of people living in Africa find themselves non-persons in the only state they have ever known. They cannot get their children registered at birth or entered in school or university; they cannot access state health services; they cannot obtain travel documents, or employment without a work permit; and if they leave the country they may not be able to return. Most of all, they cannot vote, stand for office or work for state institutions.

Ultimately such policies can lead to economic and political disaster, or even war. Even where they do not, they have been used to subvert the democratic process and reinforce or prolong the hold on power of one group at the expense of another. At the expense, too, of national stability and economic progress. The result has been the mass suffering of people whose only fault may be to have the wrong last name.

Alternatively, questions of citizenship have been used to prevent specific individuals from challenging for political position or to silence those who criticize the government. At one time it

seemed as though half the most important opposition politicians in Africa were allegedly not citizens of the country where they lived and worked – allegations often based on absurd arguments about ancestral origins on the wrong side of colonial borders that did not exist at the time of the individual's or his parents' birth. Kenneth Kaunda of Zambia and Alassane Ouattara of Côte d'Ivoire – a former president and a former prime minister – are only the most high-profile politicians or critics who have found themselves excluded from office or denied citizenship in this way.

Common to all these situations is the manipulation of citizenship laws: the detailed rules and regulations by which individuals can obtain recognition of their right to belong to a state, to claim equal protection under its laws, to vote in its elections and stand for office. Much as discrimination in these cases is always multifaceted, with raw violence at its extremes, the apparently dry detail of the rules for obtaining papers can hide an ocean of discrimination and denial of rights. The use and abuse of the law frames and enables the politics of ethnic exclusion. Reform of the law can be the first step back from conflict and the start of a politics of inclusion.

The pattern of these crises of citizenship is not haphazard. They are closely linked to the colonial heritage of each country; and in particular the migration and land expropriation that was implemented or facilitated by the colonial authorities. It is not a coincidence that the countries where citizenship has been most contentious are often the countries that saw the greatest colonial-era migration; migration not only of Europeans and Asians to the continent, but in even greater numbers of Africans within the continent.

Today, however, the children, grandchildren and great-grandchildren of those who migrated are now regarded as foreigners without a true claim to belong to the new polity. Yet they are in the land of their birth and lifelong residence and have no claim on the protection of any other state. Millions of people are thus presumed to have the right to exercise citizenship rights,

including the right to vote or stand for office or be appointed an official, only in some other country that they have never seen. Politically disenfranchised, there is no demonstration of loyalty that can satisfy the requirements of the law.

This injustice is multiplied by a gender inequality in the law which still in many countries disallows women who marry non-citizens from passing their own citizenship to their children or their husband, though men can do so without question. The victims of this sort of discrimination are mostly invisible in the media, because they are dispersed throughout wider populations, yet those affected must number in the millions across the continent.

Citizenship law in Africa: a history of discrimination and exclusion

Africa's 'artificial' borders are often blamed for Africa's wars. The borders of all the African states, even those that were not themselves colonized, were set by European colonial powers; most of them during the notorious Berlin conference of 1884–85 that marked the end of the 'Scramble for Africa'. In 1964 the Organization of African Unity (OAU), the club of Africa's newly independent states, decided to stick with these borders and not renegotiate them. There has been much discussion about the wisdom of this decision, and whether the leaders of the newly independent countries should rather have aimed to redesign African borders along more 'natural' lines: that is, along lines that followed boundaries of language and ethnicity and pre-colonial political structures, rather than being set with ruler and map by people thousands of miles away who had never seen the land they were dividing up.

Borders throughout the world have been established by war and conquest, and Africa is unusual rather in the abruptness of the transition than in the arbitrariness of the outcome. Yet the rapidity both of the creation of African colonies and of the winning of independence from the late 1950s at the end of less than a century of European rule meant that the leaders who took control

of Africa's new states faced a particular challenge to create an 'imagined community'¹ among groups of people thrown together without their own permission. The colonial period was both long enough to do very serious damage to pre-existing institutions of government, and too short to create strong new institutions that had more than the most superficial legitimacy in the eyes of the populace. Africa's post-colonial history shows how difficult it has been to create a functioning polity from scratch among peoples without a history of common political organization; but also how surprisingly persistent is the attachment to the units created by the colonizers.

In addition to bequeathing an inherent institutional weakness to the new states, the European empires also left a legacy of legal systems that had created a many-tiered citizenship structure whose central feature was racial discrimination. The colonies were founded on a basis of racial and ethnic distinction that justified the gaps in standard of living and legal rights between rulers and ruled. On the one hand there were European settlers – who were full citizens with the same rights as their relatives who lived in the 'home' country of the colonizers; and on the other there were African 'natives' (*indigènes*) – who were subjects.² With the exception of a small minority admitted to full citizenship, the native or *indigène* was a subordinate being without full rights, and regarded as essentially a child under European guardianship. Those from other continents (especially Asia) or of mixed race occupied a middle position often with their own specific rules. Throughout Africa, racial discrimination determined not only political rights, but also freedom of movement, and most importantly the right to hold land. In the 'settler colonies' deemed suitable for large-scale white immigration the distinctions were particularly marked, but throughout Africa whites were eligible for freehold title to land granted by the colonial state; Africans' rights to hold land were often both geographically restricted and conceptually limited to what the colonial power interpreted their subjects' 'traditional' laws to be.

At the same time, paradoxically, the law often favoured those

Africans who were believed to be ‘native’ to a place over those other Africans who had migrated there more recently – including those who had moved with the encouragement or coercion of the colonial government. There were clear differences in the structures of government introduced by the different colonial powers, with the civil-law countries favouring a more assimilationist approach, and the British preferring where they could to co-opt pre-existing institutions to the system that became known as indirect rule. But there were also commonalities. Institutions were created that for the most part followed the logic of what Europeans called ‘tribe’, grouping together people whom the colonizers (and their anthropologists) decided had a common language and culture. ‘Chiefs’ of these groups, approved or created by the colonizers, were authorized to take lower-level decisions affecting their own ethnic subjects. The higher-level courts and administrators backed up this authority (so long as there was no challenge to the colonizers’ power), based where necessary on their own interpretation of the relevant ‘customary’ law. Individuals who found themselves outside the geographical zone of the ‘tribe’ to which it was determined they belonged could be doubly disadvantaged. These migrants benefited neither from the legal rights given those subject to ‘European’ law, nor from the ‘customary’ protections given those who could make a claim on a particular ‘tribal’ leader.³

At independence, the laws of the new states were designed to reassert the equal rights of all races and ethnicities. New citizenship laws were adopted, largely based on models from the power that had colonized them, but using the versions that had applied at home to their own full citizens rather than in their colonies. As in other regions of the world, these new laws generally based the right to citizenship on a combination of descent from parents who themselves were citizens and the fact of birth in the country. Though gender bias was a common feature of these laws – as it was at the time in the European states – formal equality between races was the norm. The term ‘native’ itself was reappropriated in the former British colonies to be a term

of pride and not denigration (though the same did not happen to *indigène* in French).

To a great extent this process was both necessary and positive. The reclaiming of political and economic space sometimes went further, however: beyond steps to create equality before the law and to redress the economic and political inequalities that the colonial era had created, to measures that excluded those who had arrived in the wake of empire from the right to protection by the new state at all. Some of the countries most affected by migration created rules for membership that explicitly or implicitly denied citizenship to people whose parents had been immigrants – but who themselves had been born in the country and knew no other home. As ‘native’ became a positive label, ‘settler’ came to be a term of abuse.

Transitional rules were of course needed everywhere to cater for the handover of legal authority from the colonial power to the new states. Although international law is clear on the basic principle that individuals who were ordinarily resident in the former state become nationals of the new state, the rules were in some cases written or rewritten to exclude those who were asserted to have insufficient ‘historical’ connection to the territory concerned. Many of the problems related to citizenship rights described in this book have their root causes in the manipulation and exploitation of the rules that governed the transition to independence. A number of states from the outset aimed to exclude from citizenship those who could not claim an ancestral link to the land; and several others amended their laws in the years after independence to strengthen a racial or ethnic element in the law. The detail of the dates at which a person’s ancestor arrived in the country became of critical importance to their rights today.

Thus, citizenship laws were written in many new African states that introduced rules specifically designed to exclude recent migrants from full citizenship rights; and in particular to exclude the descendants of European and Asian immigrants from citizenship by birth, even if they might have the right to naturalize. In

some countries (Uganda and the Democratic Republic of Congo) the constitution itself still limits those who may be citizens by birth to the ethnic groups present in the country on a particular date, with many arguments about what that date should be; in others (Sierra Leone and Liberia) only those ‘of negro descent’ can be full citizens; in yet others (among them Nigeria) there is an implied preference for the native over the immigrant in citizenship laws that require descent from ancestors who were born in the country.

A similar distrust was applied to those potential citizens of the new states who might have a claim on another passport; the great majority of African countries prohibited dual citizenship either at or soon after independence (though the rules have often changed in recent years). They wished to ensure that those who might have a claim on another citizenship – especially those of European, Asian or Middle Eastern descent – had to choose between their two possible loyalties. Those who did not take the citizenship of the newly independent country were then regarded with suspicion, as a possible ‘fifth column’ for the former colonial powers and other interests.

Not coincidentally, these rules were most problematic in those countries where colonial-era migration and dispossession of land had been most marked, where the numbers of those who had arrived during empire remaining after independence were largest, and where the political power of those affected was weakest. As happened later following the collapse of the Soviet Union, when the European empires in Africa retreated they left behind a legacy of resentment of incomers and their privileges that still reverberates today. But the migration of the first half of the twentieth century was not only of Europeans and Asians: hundreds of thousands of Africans also moved, sometimes under duress, as a result of the political and economic changes brought by colonization. Despite the strong rhetoric of African solidarity that all governments express, these migrants also find their right to citizenship and belonging under threat today.

Some of the most egregious cases of citizenship discrimination

in Africa are described in detail in this book. They illustrate the consequences for peace and security of national citizenship law, policy and rhetoric that found their structure on an ethnic or racial basis; the use and abuse of citizenship law to silence political opponents; and the everyday injustice to ordinary people that results. Though it is tempting for politicians all over the world to mobilize an 'in-group' of supporters by blaming an 'out-group' of alleged foreigners for all their troubles, the consequences of a focus on blood-and-soil connection to the country can be disastrous not only for that group, but for the country as a whole.

Denationalized groups

In the Democratic Republic of Congo (DRC), the disputed 'indigenous' or 'non-indigenous' status of the Banyarwanda populations (speaking dialects of the Kinyarwanda language centred on modern-day Rwanda) of the eastern provinces has been at the heart of the conflicts that have afflicted the region. Disputes over the law have been at the heart of the wider debate. The changing balance of political power at national level has been reflected first in the decision to create an ethnic definition for citizenship in the constitution, and then in the repeatedly amended laws that have shifted the 'date of origin' for an ethnic group to qualify for citizenship back and forth with the political tide. At different times, this date was set at 1885 (the date of creation of the Belgian king's personal colony, the 'Congo Free State'), 1908 (the date the colony was transferred to the Belgian state), 1950 and 1960 (the date of independence). Those excluded by these laws form the core of the rebel groups that have challenged central authority since the late 1990s.

This ethnic focus has its roots in population displacements of the years under colonial rule. Although parts of the territory that is now DRC (formerly Zaire) were, prior to colonization, already occupied by Kinyarwanda speakers, the Belgian colonial authorities greatly increased these numbers by transplanting tens of thousands of people from the already densely populated

Rwanda and Burundi to eastern Congo to form a source of labour for commercial agricultural plantations. Then, at the moment of independence, eastern Congo also took in huge numbers of refugees fleeing violence in Rwanda and Burundi (sadly, a pattern to be repeated).

The status of the Banyarwanda was thus already of key importance in the jockeying for position among different ethnic groups during the lead-up to independence. In 1964, the first constitution adopted by the new state declared that to qualify as a Congolese citizen a person had to have an ancestor who was 'a member of a tribe or part of a tribe established in the Congo before 18 October 1908' – thus excluding those who had come under the Belgian population transfers. During the 1970s, the law was changed to provide more recent dates; but in 1981 a new code of nationality included only those who could show that their ancestors were established in the country when its borders were first set in 1885. With the arrival of hundreds of thousands of refugees in the aftermath of the Rwandan genocide, resentment of this influx and of the Rwandan army interventions that followed built to the point where the national parliament adopted a resolution declaring all Banyarwanda to be foreigners who had acquired citizenship fraudulently. Two successive rebellions plunged the country into a decade of war, in which half a dozen of Congo's neighbours also became involved.

The terms agreed in a peace deal in 2004 form the basis of the new constitution and citizenship law, which recognize as a Congolese citizen by birth 'every person belonging to the ethnic groups and nationalities of which the individuals and territory formed what became Congo at independence'. Yet active hostilities still continue in the east, and the status of the different Banyarwanda as indigenes or non-indigenes remains central to that conflict. Despite the date change to 1960, the law still founds the basis of Congolese nationality on ethnicity, rather than on birth, residence or other objective criteria; meaning that the argument still centres on claims to ancestral origin and bloodline. Hate speech and exclusion flourish in this legal environment.

In Côte d'Ivoire, meanwhile, the instability and civil war that have devastated the country'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. Central to the peace negotiations has been a regularization of nationality status.

During the 1930s, the French colonial authorities both modified borders and encouraged the movement of several hundred thousand agricultural workers from what are now Burkina Faso and Mali south to fertile land in what was to become Côte d'Ivoire. While Côte d'Ivoire enjoyed a post-independence economic boom, the status of this group was relatively uncontroversial; but from the mid-1990s, as economic conditions deteriorated with a decline in global commodity prices, the status of the 'non-indigenous' population – estimated in the 1998 census to form 26 per cent of the total – became increasingly contested. Once northerner Alassane Ouattara tried to run for president, southern politicians increasingly mobilized rhetoric and law to insinuate that anyone with a possible northern support base was in essence a foreigner. Ouattara himself was said to have a parent from Burkina Faso, and the law was changed to require both parents of a presidential candidate to be Ivorian by origin. Meanwhile, those ordinary people alleged to be migrants faced ever-increasing difficulties in obtaining the necessary identity cards and certificates of nationality to claim their other citizenship rights, including voting, registration of children in school, running businesses and owning land.

A Christmas Eve military coup in 1999 was followed by deeply flawed elections in late 2000. Southern leaders deployed both administrative measures and violence to exclude from voting or standing for office those of migrant origin as well as northerners and Muslims deemed suspect by association. This exclusion brought a rebellion, a period of active civil war and the de facto partition of the country into two zones, a partition that continues today.

Guillaume Soro, leader of the rebel New Forces, emphasized the foundation of the war in citizenship rights by stating: 'Give us our identity cards and we hand over our Kalashnikovs.' Citizenship issues have been among the core questions to be resolved in the negotiations to end the war. A programme of identification through public hearings before magistrates had by May 2008 issued new documents to 600,000 of some 3.5 million Ivoirians believed to be eligible. Yet these documents were only the basis for a nationality application, and not confirmation of nationality itself. Continuing problems with the identification system meant that elections were in late 2008 postponed once again to the next year as the voters' register could not be completed.

In Zimbabwe, the different structure of the colonial state has brought a different type of conflict over the issue of 'who belongs'. Though what was formerly Rhodesia ceased to be a British colony in 1961, majority rule was obtained only in 1980, following a bitter guerrilla war in which the right to land was as much an issue as the right to vote. Ultimately, the war was ended by negotiation, and an official policy of reconciliation left the wealthy white population largely undisturbed. Land reform was undertaken, but thanks to the terms of the peace settlement was required to be on a 'willing-seller, willing-buyer' basis for the first decade. Nevertheless, measures were progressively taken to require white Zimbabweans to declare their loyalty to the new state, principally by focusing on and denying their possible right to other citizenships.

Although the 1980 Zimbabwean constitution allowed dual citizenship, the 1984 Citizenship of Zimbabwe Act introduced a prohibition on dual citizenship, together with a requirement that Zimbabwean citizens with an entitlement to another citizenship renounce that right. An estimated 30,000 whites renounced their foreign citizenship before Zimbabwean officials and kept or obtained Zimbabwean passports as a result.

As the popularity of the government of President Robert Mugabe declined, the ban on dual citizenship was taken to absurd extremes as part of an effort to blame others for the country's

economic decline. The unexpected success of the opposition in a February 2000 constitutional referendum and June 2000 parliamentary elections led the ruling party to seek to disenfranchise the groups it most blamed for the results: white Zimbabweans, as well as around 200,000 farm workers working on white-owned farms. In 2001, the government amended the citizenship law to require those with a possible claim to another citizenship to renounce it under the relevant foreign law as well as under Zimbabwean law – even if they had never in fact held a passport or identity document from any other country but Zimbabwe. Surreal interactions ensued at the embassies of Malawi, Mozambique, Britain and other countries, where those whom the Zimbabwean government alleged had an entitlement to foreign citizenship tried to find a way to renounce a non-existent status. And in subsequent elections these alleged non-citizens found themselves unable to vote.

In Sierra Leone, as in its neighbour Liberia, an economically advantaged group have found themselves excluded in a less dramatic but similar way. The 1961 independence constitution of Sierra Leone followed the standard model for British colonies and created a single nationality without any distinction by race, ethnic group or sex. Within a year after independence, the constitutional provisions on citizenship were amended to insert a requirement that only a person ‘of negro African descent’ – defined as having a father or grandfather ‘of negro African descent’, thus adding gender to race discrimination – could be a citizen of the new country. Subsequent laws restricted the rights of non-citizens to acquire property or carry out certain businesses.

The change to the law was directed against the less than 1 per cent of the country’s population known collectively as ‘Lebanese’, whose parents and grandparents settled in Sierra Leone from the Middle East. In particular, the motivation was to exclude Lebanese and mixed-race Sierra Leoneans from the right to contest for office in the 1962 elections. Although John Akar, a prominent Sierra Leonean whose mother was a black Sierra Leonean and father of Lebanese origin, argued in court

all the way to the Privy Council in London that the amendments were unconstitutional, and won the case, the government simply re-enacted the law and abolished the right to appeal from the Sierra Leonean courts. The distinctions were retained in the 1973 citizenship law that is still in force today. Those with Lebanese fathers were excluded from citizenship in the land of their birth and the only home they had ever had. Only in 2006 was the law reformed to end gender discrimination; but the requirement that at least one parent or grandparent had to be of 'negro African descent' was retained.

At its most extreme, governments have simply expelled en masse those alleged to be non-citizens. The best-known case of mass expulsion in Africa is that of the Ugandan Asians driven out of the country by the government of Idi Amin. Yet many other African countries have also expelled citizens en masse, often in appalling conditions, and without any right to a hearing. Uganda itself, in a much less well-known episode that took place under President Milton Obote, displaced a large number of Banyarwanda (many of them tracing their ancestry to the Ugandan side of the border) in the early 1980s. Among the most egregious cases described in this book are the expulsion of tens of thousands of Ethiopians of Eritrean descent who had their Ethiopian nationality arbitrarily cancelled and nationality documents destroyed, before their forced expulsion to Eritrea following the eruption of war between the two states in 1998 – and tens of thousands of Eritreans of Ethiopian descent subject to reciprocal expulsions in the other direction; and the expulsion of around 75,000 black Mauritians from their country in 1989 and 1990. Numerous other countries have periodically engaged in sweeps to expel first-generation migrants.

Less dramatic but more widespread is denial of citizenship rights by bureaucracy. The discretion given to administrative officials in the individual small decisions to issue identity documents or passports, accept an application for naturalization, or add someone to the electoral or the school roll means that those perceived as outsiders can be effectively excluded from the

benefits of citizenship even if their nationality is never formally taken away. Members of these groups across Africa report difficulties in getting travel documents, voting, holding on to their land, or accessing public services supposedly available to all. Frequently these problems are exacerbated by a gender discrimination that means that the children of a woman who 'married out' are regarded as not being full members of the community. An absence of necessary documentation to prove citizenship then has the same effect as a formally adopted law denying citizenship; with the added disadvantage that each person affected has to fight separately for her rights, rather than being able to mobilize collectively in one single battle on the principles at stake.

The same problems of citizenship at national level are often repeated within African states at provincial or local level. An individual from (or descended from parents who are from) another part of the country, or from an ethnic group that crosses the border between two provinces, will not be regarded as being eligible for full rights within that province. Just as at the national level, disputes over who 'owns' a province can lead to violence and breakdown of civil order. In some cases, well-intentioned efforts to address the challenges of multiethnicity have made the situation worse.

In Nigeria, for example, the federal constitution has over the years been altered to create more and more federating states, now numbering thirty-six, effectively though not explicitly on the basis of ethnicity (though sometimes several ethnic groups have to share one state). There are also provisions requiring that each government structure reflect the 'federal character' of Nigeria, and include officials who are representative of all the groups that are 'indigenous' to the federation or to the state or local government area. But these measures intended to promote inclusivity have created a position where, within each state, those who are not members of an ethnic group 'from' the state – who have moved from another part of Nigeria or who are the children of those who have migrated – are not regarded as being 'indigenous' to the state, and not entitled to the state benefits resulting from

the 'federal character' provisions. They cannot stand for office, are not eligible for state education scholarships or other grants, and increasingly may not obtain jobs in the civil service of the state. This system has inadvertently created a population of millions who are not regarded as full citizens in any particular place in Nigeria. Though they may vote, there is no state in which they may hold public office and take part in the government of their country. Perhaps the only public office open to them would be the presidency itself; though in practice that, too, would be difficult without a clear support base in an individual state.

Ethiopia, the only other fully federal constitution in Africa, remarkably provides for any self-defined group to make a bid for self-determination, up to and including complete independence. But the results of this effort to give full realization to minority rights have included the displacement of large numbers of people from areas now 'owned' by another group, where they then feel threatened. There are similar problems in many countries without explicitly federal constitutions, especially those that are most diverse; notably, the DRC. The ethnic violence following the disputed Kenyan elections of late 2007 had among its causes a persistent failure by government to provide an equitable process to resolve the rights to land and to protection of the law of those living in a different part of the country from their 'original' home.

Silencing individuals

Citizenship law has also proved a useful tool to incumbent governments wishing to silence critics, or exclude from elections opposition politicians who threaten to unseat them. A wide range of African governments have used, abused or rewritten citizenship and immigration law to silence those who have criticized them or sought to challenge their hold on power. They have changed the qualifications for citizenship, or simply asserted that someone is not a citizen and then deported them, with no right to challenge in court either the deportation or the assertion of non-citizenship. Although there are other means of silencing

journalists and blocking political candidates, denationalization has the particular usefulness of effectively taking the individual outside the realm of legal rights and into what is claimed to be an area of exclusive and discretionary executive power.

In Côte d'Ivoire, Alassane Ouattara was just the most famous victim of a general citizenship crisis. But these cases are not confined to those countries that have become notorious for citizenship conflict. In Botswana, one of Africa's longest-standing democracies, John Modise found his right to citizenship by descent denied once he founded an opposition political party. Although the government allowed him citizenship by naturalization, the presidency in Botswana is restricted to citizens by birth or descent. Born in South Africa of Botswana parents prior to the independence of Botswana, he had been brought up in Botswana. Expelled from Botswana in 1978 and declared an 'undesirable immigrant' once his political ambitions were apparent, he was deported and re-deported to and from South Africa and its nominally 'independent' homeland of Bophuthatswana, spending years in a Kafkaesque legal limbo that effectively quashed his political aspirations. A complaint lodged with the African Commission on Human and Peoples' Rights in 1993 was eventually decided in his favour in 2000; but too late to have any practical effect on his ability to run for public office.

In Zambia, a new constitution adopted in 1996 by the Movement for Multiparty Democracy (MMD) government elected in 1991 introduced a requirement that both parents of any presidential candidate must be Zambians by birth. The intention, as everyone understood, was to disqualify former president Kenneth Kaunda from standing for the presidency in the 1996 elections on the ticket of the United National Independence Party (UNIP), since his parents had been missionaries from what later became Malawi. Even without this amendment, in 1994 the MMD government had abused citizenship and immigration laws to deport two other leading UNIP politicians, William Steven Banda and John Lyson Chinula, on the grounds that they were not citizens and were 'likely to be a danger to peace and good order'. The African

Commission on Human and Peoples' Rights ruled against the Zambian government in both Kaunda's and Banda and Chinula's cases – but again not in time to enable them to contest for political office when they wished.

The Tanzanian government, despite its mostly positive record, has also attempted to use citizenship law to denationalize several journalists and other critics. In 2001, the government declared four individuals – including Jenerali Ulimwengu, a leading publisher, journalist and media proprietor; and the country's then high commissioner to Nigeria, Timothy Bandora – to be non-citizens. In 2006, the government again stripped two journalists of their nationality, accusing them of being 'unpatriotic and enemies of the state'.

These cases continue. In Zimbabwe, as in Côte d'Ivoire, a general programme of denationalization has had the benefit of providing scope for the government also to silence troublesome individuals (or simply to humiliate past enemies). In December 2005, the Zimbabwean government informed Trevor Ncube, owner of two independent newspapers that were highly critical of President Mugabe's policies, that he had forfeited his Zimbabwean citizenship because he had failed to renounce his Zambian citizenship – which he had never claimed but was allegedly entitled to because his father was born in Zambia. Ncube's passport was restored to him following a court order. Others who had their passports taken away for good included the last Rhodesian prime minister, Ian Smith, and his predecessor Sir Garfield Todd, deposed as head of government when he tried to liberalize Rhodesia's apartheid-style rule – and then also deprived of his passport by Ian Smith's government. Judith Todd, daughter of Garfield Todd and herself a high-profile opponent of the former white minority regime and an activist under the new government, was also deprived of her passport on the basis that she had a notional entitlement to New Zealand citizenship.

The scale of the problem

The true number of people affected by the crisis of citizenship and statelessness in Africa is difficult to estimate, but they are certainly in the millions and possibly in the tens of millions. The largest groups include at least a quarter of Côte d'Ivoire's 17 million people; several hundred thousand Banyarwanda in the DRC; hundreds of thousands of Zimbabweans of European or Malawian, Mozambican and other African descent; around 150,000 Ethiopians of Eritrean descent still living in Ethiopia; around 25,000 black Mauritians expelled from their country in 1989/90 who were as of early 2007 still refugees (though a repatriation process began under a new Mauritanian government in 2007, the process was thrown into doubt by an August 2008 military coup); perhaps 50,000 Muslims in Madagascar; thousands of Sierra Leoneans of Lebanese descent; and tens of thousands of Ugandans of Asian descent. Moreover, there are uncountable numbers of people with a citizen mother and foreign father who are denied citizenship in all those countries in Africa that still discriminate on the basis of gender in the right to pass citizenship to children (at least sixteen states on paper; many more in administrative practice).

Added to these totals must be long-term refugees in countries that do not recognize the right of refugees to naturalize after a period of residence: these include tens of thousands of refugees in Egypt, especially those of Palestinian origin, as well as the more than a hundred thousand refugees from the Moroccan-occupied territory of Western Sahara, largely still living in camps in Algeria, with identity documents issued by a liberation movement which are recognized only by a small minority of countries, most of them African.

Moreover, many would include in the list of those who are effectively stateless those Africans who are members of pastoralist, hunter-gatherer or other nomad populations who find themselves on the margins of African states, often the object of government suspicion or excluded from the benefits of citizenship. Their legal status as citizens may not be officially denied, but

they operate essentially beyond the reach of state structures and the rights to political participation and legal and social protection that citizenship should provide.

Some countries have populations in all categories: in Kenya, for example, Asian Kenyans came with colonization and had their citizenship rights restricted at various times; Nubian Kenyans are black Africans yet still regarded as not eligible for full Kenyan citizenship because they ‘originally’ came from somewhere else; the ethnic Somali population has been consistently suspected of support for pan-Somali unity and subject to security-force harassment and denial of citizenship rights as a result; nomadic pastoralist populations are excluded from many of the public services that are extended to other Kenyans. Refugees hosted in Kenya are in practice largely excluded from naturalizing as citizens, while children born outside the country with just a Kenyan mother cannot claim citizenship, though children with a Kenyan father can do so.

Among these groups, some individuals have had recognition of their citizenship in the form of documents that were later invalidated by the state; some still hold citizenship documents but are in danger of losing them at any time; some have never had citizenship documents but would encounter difficulties or denial if they tried to obtain them; and some hold documents, but suffer legally mandated restrictions or discrimination that denies them equal treatment with other citizens. All of them are vulnerable because the legal basis of their rights – citizenship – is non-existent, in question or under threat.

The flawed argument from ‘I was here first’

The principal argument used to deny full citizenship to the (relatively) recent migrants to and within Africa is that they are not really ‘from’ the place. The independent states of Africa need the undivided loyalty of their citizens, and the loyalties of these ‘immigrant’ groups or those of mixed parentage are suspect because of their presumed divided identities.

Yet the same states that deny the right of those descended

from the migrants of the nineteenth and twentieth centuries to be citizens of the new states have argued against the rights to any special recognition for those Africans who claim the same title of 'indigenous people' as Aboriginal Australians, Native Americans and others. Often nomadic and hunter-gatherer in terms of their economic base, these populations were displaced first by the settled African populations that arrived many centuries later, and then again by European colonization during the eighteenth and nineteenth centuries.

Although in Australasia and the Americas increasing mobilization has brought greater recognition of the rights of 'indigenous peoples' within the context of the international human rights movement, in Africa the concept of 'indigenous peoples' used in this way is highly contested.

The Botswana government, for example, denies that the Basarwa or Bushmen, descendants of peoples who migrated to southern Africa many thousands of years before the ancestors of today's dominant ethnic groups followed, should have any special recognition as a result. In particular, the government resists any suggestion that these 'older' natives may have rights that are not fulfilled by the democratic election to power of the 'newer' natives in place of the 'newest' (white) settlers and by the imposition of that group's conception of appropriate lifestyles for Botswanan citizens. Yet, turned on its head in a different historical outcome, the Basarwa could make the same arguments against the 'settler' Tswana as the government of Zimbabwe today uses against its white citizens.

The sensitivity over prior claims to being 'indigenous' that may be argued to give them rights over those regarded as 'natives' by the European colonizers is shared by sufficient African states for the African Union to be extremely nervous about efforts by the United Nations (UN) to adopt a Declaration on the Rights of Indigenous Peoples. African heads of state adopted a resolution in January 2007 in response to this initiative, affirming that 'the vast majority of the peoples of Africa are indigenous to the African continent'.

The complications of this argument illustrate the difficulty of basing citizenship rights on the playground principle of 'I was here first'. The reality is that in today's globalized world millions of people can trace ancestry to two or more different locations. Sometimes those locations are thousands of kilometres apart across the ocean; sometimes just the other side of a political border created for the first time a century or a decade ago. Many people of African descent are fighting for their rights to be fully acknowledged as citizens in the countries that previously colonized Africa.

Beyond citizenship law

The stories told in this book are partial histories, of course: the issues at stake in the civil wars in Congo and Côte d'Ivoire, in the old-fashioned interstate clash between Eritrea and Ethiopia, or in the discrimination against Europeans, Lebanese or Asians in Zimbabwe, Sierra Leone and Uganda are not restricted to the legal definition of who is a citizen of the states concerned. Citizenship law has been used as a tool to get at issues of economic and political power: control of land, commercial opportunities and public office. Extreme violence and discrimination are possible without any abuse of citizenship law to support their deployment, as the 1994 genocide in Rwanda shows. Marginalized groups can be excluded from *effective* exercise of citizenship rights even if their right to *legal* citizenship in itself is not contested, notably in the case of individuals subjected to slavery or its contemporary variations, or ethnic groups following a different lifestyle from the national norm, including nomads such as pastoralists or hunter-gatherers. The application of citizenship law may reflect as much as reinforce these and other deep-seated cultural beliefs or prejudices that exclude individuals from full participation in a community; perhaps most obviously in the case of gender discrimination.

There is a vast literature on the nature of nationalism and nation-building, identity, race, ethnicity, gender, autochthony and the politics of belonging, both in Africa and worldwide,

which attempts to grapple with these broader questions. Feminist writings in particular have pointed out that the concept of citizenship should move beyond the lawyer's link between individual and state to encompass ideas of individual autonomy and freedom to engage on a basis of equality in all aspects of public and private life. Notions of belonging and the right (or lack of it) to make claims on any particular community go far beyond the strictly legal or official, and operate at local and regional as well as national levels, and in terms of larger units as well. Individuals can have claims akin to what lawyers call citizenship on other entities, whether town or region or, in Africa in particular, on the structures of governance that operate at the level of ethnic group. Individuals and communities at the margins of African states may find these structures far more important – for good or ill – than the state itself. In African countries where the state is weakest, or most predatory, the idea of national citizenship may be irrelevant to most people most of the time.

Yet this book argues that a denial of the right to citizenship itself under national law is often central to the denial of other rights; and not only because of the symbolic value of the law in establishing public discourse. Ethnic and gender discrimination in citizenship law may exclude those affected not only from the right to vote and hold public office, but also from the right to access education, health and other goods, as well as from the right to freedom of movement. They have effects far beyond the question of individual legal status.

These effects are felt even in those states that have abandoned their supposed role of physical and social protection and even when the supposedly more powerful are targeted. The allegations in North Kivu that the Banyarwanda are not 'really' Congolese, the insistence of President Mugabe that white Zimbabweans are 'really' tools for the recolonization of the country by the British, or the denial of citizenship to 'Lebanese' Sierra Leoneans have their power because they are based in resentment of past and present control over land and other economic resources. But the impact of the citizenship law discrimination is just as real and

just as unjust for the individuals affected, whatever the history may be. And the denial of citizenship to these groups means that in practice the issues of land and economic inequality are actually (perhaps even deliberately) made more difficult to resolve. Not only are the minds of those who should be governing the country or resolving the conflict distracted from serious attempts to address the underlying problems, but the validity of the participation of those who must be a part of the solution is denied. And without their participation, the other problems can only remain intractable, harming all who live in the state.

Redefining national citizenship

Different approaches to citizenship are possible, even in countries that are just as multiethnic as Côte d'Ivoire, DRC or Kenya. Citizenship is a dynamic concept, the notion of 'who belongs' surprisingly flexible over time, especially where those in authority lead the effort to redefine the rules. And those African countries that have taken an inclusive approach to citizenship, providing for a wide access to those who are born in their country, have been among the most peaceful since independence. Tanzania, one of the few African countries that provides citizenship to anyone born on its territory, has over the years repeatedly taken steps to integrate migrant and refugee populations to full citizenship rights, and has benefited with social peace. Several of the francophone countries of the West African Sahel provide non-discriminatory and generous provisions for citizenship for those born in the country, even though birth in the country does not provide citizenship in itself.

A trickle of reforms since the mid-1990s has brought increasing gender equality to citizenship law, even though a majority of African countries still do not allow women to pass citizenship to both their husbands and children on an equal basis with men. The steady changes to the rules on dual citizenship also provide cause for hope. Increasingly, African countries have relaxed their prohibitions on dual citizenship to allow their own diasporas now in Europe or North America to retain their links to the country

of nationality of their parents or grandparents. Roughly half of African states now allow dual nationality. The lobbying of these individuals with economic power has brought a political maturity to their states of ethnic origin in matters of citizenship where years of protest by European or South Asian governments at discriminatory treatment of their own emigrants to Africa had only a counterproductive effect. Though dual nationality will only ever be exercised by a minority in any state, those who hold two passports can provide a concrete demonstration that it is not necessary to have a 'pure' bloodline to be a good citizen.

South Africa, home of the most extreme version of the settler-native divide embodied in the notion of apartheid, had farthest to go to dismantle this system of discrimination and has achieved the greatest transformation of its legal system. In place of a baroque multiplication of different classes of citizenship based on race and ethnicity – both given an entirely inappropriate 'scientific' basis – the 1996 constitution creates a single united citizenship, and the rights of all citizens are equal. The new government sought to address the economic and political legacy of the past by offering citizenship to many long-term migrants brought to South Africa under apartheid labour policies; and by measures of affirmative action and economic empowerment for black people, rather than by denying the rights of those who had previously held power to be citizens at all. A new refugee law provided for the right to asylum and eventual grant of citizenship to recognized refugees. The Constitutional Court has confirmed that even non-citizens have certain claims upon the state for social protection.

South Africa also provides perhaps the most vivid illustration of the truth that adopting new laws is only a first step towards overcoming past and present injustice. The promise of the new democracy has been sorely tested by the continuing challenge of domestic racial inequality and racial prejudice, as well as by massive popular resentment at large-scale migration from elsewhere in Africa. In May and June 2008, ordinary South Africans erupted in violence that targeted African refugees and migrants: more than sixty people died, and thousands were displaced. The official

response was inadequate and sometimes abusive in practice. Then-president Thabo Mbeki, who had famously stated and re-stated his identification as 'an African' at the time of the adoption of the post-apartheid constitution, was inexplicably slow to speak out against the violence. Yet the leaders of the ruling African National Congress and most other senior politicians have largely continued to condemn xenophobia and re-emphasize the values of that constitution. Keeping to the vision of the 1955 Freedom Charter that 'South Africa belongs to all who live in it, black and white' will no doubt remain a challenge; abandoning it is a sure route to chaos. And integration of the Freedom Charter's vision into the laws of other countries could provide the basis for resolution of some of the most bitter conflicts Africa has faced.

The Freedom Charter

We, the People of South Africa, declare for all our country and the world to know:

That South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of all the people ...

Adopted at the Congress of the People, Kliptown, South Africa, 26 June 1955

About the author

Bronwen Manby works with the Africa Governance Monitoring and Advocacy Project (AfriMAP), an initiative of the Open Society Institute network's four African foundations established to monitor and strengthen compliance with the African Union's commitments on good governance and human rights. She was previously the deputy director of the Africa division of Human Rights Watch, and has also worked for human rights organizations in South Africa. She has written on a wide range of human rights issues in Africa, focusing especially on South Africa and Nigeria, and on continental legal developments.