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# REPORT ON CITIZENSHIP LAW: NIGERIA

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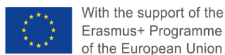
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## Report on Citizenship Law

### Nigeria\*

*Bronwen Manby<sup>2</sup> and Solomon Oseghale Momoh<sup>3</sup>*

## 1. Introduction

Nigeria is one of the few countries in the world that creates an explicitly ethnic basis for its citizenship law. The 1999 Constitution of the Federal Republic of Nigeria, which provides the framework for acquisition and loss of citizenship, relies heavily on the idea of membership of a ‘community indigenous to Nigeria’ as the primary determinant of entitlement to citizenship. There is no definition of this term in the constitution, and the rules on acquisition and loss of citizenship are provided only in the constitution, without any detail established by legislation or regulation.

Nigerian citizenship was first defined with the adoption of the 1960 Independence Constitution. Transitional provisions established the conditions for acquisition of citizenship by those already living in Nigeria, and a *ius soli* regime going forward, so that any person born in Nigeria after independence automatically became a citizen at birth. Additional detail on acquisition of citizenship by registration (on application, provided certain conditions were fulfilled) and naturalisation (discretionary grant based on long residence) was provided in a Citizenship Act, amended in 1961. Since the 1960 Constitution, the most important reforms to the provisions on citizenship were enacted in 1974 and in 1979. The 1974 amendments established a modified double *ius soli* regime for acquisition at birth, so that a child born in Nigeria would be automatically attributed citizenship at birth only if one parent or grandparent was also born there. The 1960 and 1961 Citizenship Acts were also repealed. Chapter III of the 1979 Constitution introduced an ethnic dimension to Nigerian citizenship for the first time, moving away from rights based on birth in the territory towards a rule based on descent and membership of a ‘community indigenous to Nigeria’. The citizenship regime introduced by the 1979 Constitution is still largely retained in the current 1999 Constitution. The constitution

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\* This report has benefitted from academic exchange with and country expertise from the UNHCR Nigeria. Views expressed in this report reflect the opinion of individual authors and not those of the UNHCR.

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provides for acquisition of citizenship through registration (based on marriage or through a grandparent), and naturalisation (based on long residence), and for automatic transmission to the children of citizens. In practice, the Ministry of Interior has questioned the right to citizenship of the children of naturalised citizens.

This paper sets out the history of Nigerian citizenship law since the colonial era and the current provisions in force. It then describes the institutions responsible for implementing and interpreting the citizenship provisions of the 1999 constitution. Finally, it outlines the most important current controversies surrounding citizenship – in particular the concept of ‘indigeneity’ and the definition of ‘community indigenous to Nigeria’.

## 2. History of Citizenship Law in Nigeria

### 2.1 Pre-colonial and colonial period

Prior to the arrival of the Europeans, the territory of present-day Nigeria was made up of many different political entities. They included the Yoruba kingdoms of today’s south-west Nigeria, the Hausa-Fulani cities and emirates of the north, the Nupe kingdom centred on the Niger River, the Edo (later Benin) kingdom in the south, and other numerous small states, as well as non-centralised communities such as the Igbo society of today’s south-east Nigeria. These different polities operated with a variety of political structures and concepts of nationhood.<sup>4</sup> Prior to the advent of British colonialism in Nigeria, there were no formal citizenship laws applicable to the territories now comprising Nigeria.

British law first became applicable to part of the territory that is now Nigeria in 1861 when, by treaty, the island and territory of Lagos were ceded to the British Crown, with the status of ‘colony’ in British law. The inhabitants of Lagos became ‘British subjects’. In the 1880s, British influence expanded, and British control over most of the territory within the current borders of Nigeria was recognised by the Berlin Conference of 1884-85. By the end of the 19<sup>th</sup> century the territory was divided into two protectorates, of northern and southern Nigeria, whose residents had the status of ‘British protected persons’. The political entity that is modern Nigeria was created on 1 January 1914, through the unification of the Northern and Southern Protectorates and the Nigeria Colony, which were then referred to collectively as the Colony and Protectorate of Nigeria.<sup>5</sup>

The inhabitants of the Colony and Protectorate of Nigeria retained their former status in British law as British subjects (if born in the colony) or British protected persons (if born in the protectorate). In theory, a British subject born in Lagos or any other colony had the same status as one born in Britain; in practice, the status was differentiated throughout the British empire, with each colony deciding its own laws that frequently discriminated on racial grounds.

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<sup>4</sup> Ubaku, Kelechi Chik *et al*, ‘Impact of Nationalist Movement on the Actualization of Nigerian Independence’, 1914-1960. *International Journal of History and Philosophical Research* Vol.2, No.1, pp54-67 at p. 54, March 2014

<sup>5</sup> Emmanuel Oladipo Ojo, Nigeria, 1914-2014: From Creation to Cremation? *Journal of the Historical Society of Nigeria*, Vol. 23 (2014), pp. 67-91 at p.67.; Paul Eric, The Amalgamation of Nigeria: Revisiting 1914 and the Centenary Celebrations. *Canadian Social Science* (Canadian Academy of Oriental and Occidental Culture) Vol. 12, No. 12, 2016, pp. 66-68 at 66. See also, Ikelegbe, A. *Politics and government: An introductory and comparative analysis*, (1995). Uri Publishers, Benin City Edo State, Nigeria.

British protected persons were in general subject to the customary law of the ‘tribe’ concerned, as modified by statute and interpreted by British officials and courts.

Following the First World War, the Colony and Protectorate of Nigeria also administered the regions known as the Northern and Southern Cameroons, which had been the western part of the German colony of Kamerun, mandated to Britain by the League of Nations (the larger eastern part of German Kamerun was mandated to France). League of Nations Mandates were converted into UN Trust Territory status on the adoption of the Charter of the United Nations in 1945.<sup>6</sup>

## 2.2 Citizenship regime at independence in 1960

At independence on 1 October 1960, the transitional provisions for the acquisition of Nigerian citizenship followed the standard template for the Commonwealth countries, negotiated with Britain. Citizenship was granted by operation of law to those born in the territory before independence who were ‘British protected persons’ or ‘citizens of the UK and colonies’, provided that one parent or grandparent was also born there; and to those born outside the territory before independence if their father qualified under these rules. Those who were born in Nigeria before independence but did not have a parent or grandparent also born there could register as citizens during a transitional period (a non-discretionary grant, on application, if the facts were proved), as could some other categories with connections to Nigeria or another Commonwealth country.<sup>7</sup>

As in other newly independent African states, the transitional provisions created significant opportunity for confusion on who became a citizen at independence, especially in the context where records of place of birth were rare. Depending on the borders drawn by the colonial powers, different members of the same ethnic group could be British protected persons, citizens of the UK and colonies, or ‘aliens’ (French nationals, or nationals of a newly independent French territory), and their rights to Nigerian (or British) nationality under the transitional provisions would vary accordingly. A large number of people resident in Nigeria did not automatically become citizens by operation of law on the date of independence; for example, many members of the sizeable community of Lebanese descent, but also many people originating from neighbouring countries in West Africa.

Those born after the entry into force of the new constitution obtained Nigerian nationality on a *ius soli* basis (based purely on birth on the territory, with standard exceptions for children of fathers who were diplomats, if the mother was not a citizen), or on the basis of their father’s citizenship if born outside the country. Women married to Nigerian men could also register as citizens, whether the marriage was before or after independence. Those who did not qualify under any of these provisions could naturalise, a discretionary process, based on long residence and fulfilment of other conditions, an option which remained available on an ongoing basis. Citizenship Acts adopted in 1960 (originally an Ordinance, adopted before independence) and 1961 (amending and supplementing the 1961 Act)

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<sup>6</sup> For a detailed history of citizenship law in Nigeria during the colonial period and the transition to independence, see Laurie Fransman, Adrian Berry, and Alison Harvey, *Fransman’s British Nationality Law*, 3rd ed. (Bloomsbury Professional, 2011), catalogue entry on Nigeria; Manby, *Citizenship in Africa*, chapters 3.1 and 7.7.

<sup>7</sup> Constitution of Nigeria, 1960, chapter II.

provided greater detail on procedures for registering or naturalising as a citizen and for loss and deprivation of citizenship.<sup>8</sup>

In 1961, one year after Nigeria's independence, a referendum was held on the status of the Northern and Southern Cameroons. The Southern Cameroons voted to join the former French-mandated part of German Kamerun in the new state of Cameroon, while the Northern Cameroons voted to join Nigeria. Special provisions on the Nigerian citizenship of the residents of the Northern Cameroons were introduced into the 1960 constitution. By these provisions the status of persons connected with the territory transferred to Nigeria following the referendum was to be determined as if the territory had been part of Nigeria on the date of independence.<sup>9</sup>

### 2.3 Amendments to the citizenship regime in 1974

The 1960 independence constitution was replaced in 1963 to create a republic, but there were no significant changes to the provisions on citizenship. The citizenship provisions were also unaffected by the suspension of parts of the constitution following a military coup that overthrew the civilian government in 1966, leading directly to the Biafran civil war of 1967-70.

In 1974, a decree adopted by the military government in office since the coup of 1966 replaced chapter II of the constitution and repealed the Citizenship Acts of 1960 and 1961. The new chapter repealed the provisions providing for automatic acquisition of citizenship based on birth in Nigeria, and effectively applied the transitional rules that had attributed citizenship automatically at independence to those born afterwards. A person born in Nigeria after independence would now automatically acquire citizenship at birth only if one parent or grandparent was also born there.<sup>10</sup> Those born in the country with one parent who was a citizen by registration or naturalisation were also citizens; those born outside only if *both* parents were citizens of any category.<sup>11</sup> There was no statement preserving the rights of those who were already citizens, and the law was drafted in such a way as to imply it had retroactive effect (although the usual assumption in law would be that existing citizens retained their status).

<sup>8</sup> See generally, Arthur V.J. Nylander, *The Nationality and Citizenship Laws of Nigeria* (Lagos: University of Lagos, 1973); K. C. Okoli, 'Nigerian Citizenship Law: A Current Perspective', *Journal of African Law* 34, no. 01 (March 1990): 27–41.

<sup>9</sup> The Nigeria Constitution First Amendment Act No.24 of 1961 introduced provisions repeated in section 10 of the 1963 Constitution, stating that: '(1) For the purpose of determining the status of persons connected with the part of Northern Nigeria which was not included in the Federation in the thirty-first day of May 1961, the foregoing provisions of this Chapter and subsection (3) of section 17 of this Constitution shall have effect as if: (a) for any reference to a particular date there were substituted a reference to the last day of the period of eight months beginning with the day next following the date, and (b) for any reference to the former Colony or Protectorate of Nigeria (other than the second reference in section 7) there were substituted a reference to the part aforesaid, and (c) that other reference included a reference to the part aforesaid. Nothing in subsection (1) of this section shall prejudice the status of any person who is or may become a citizen of Nigeria apart from that subsection.' Annotated text of the amended constitution reproduced in Nylander, *The Nationality and Citizenship Laws of Nigeria*.

<sup>10</sup> There was an exclusion if neither parent was a citizen and any parent or grandparent had lost his citizenship by any means (i.e. including by acquiring another nationality). Constitution (Amendment) Decree, No.33 of 1974, Section 7(3) and (4).

<sup>11</sup> Constitution (Amendment) Decree, No.33 of 1974, section 7(5). See E. I. Nwogugu, 'Recent Changes in Nigerian Nationality and Citizenship Law', *International and Comparative Law Quarterly* 25, no. 2 (1976): 423–39.

## 2.4 The 1979 Constitution creates a new framework

Military rule continued from 1966 until 1979, under a series of different leaders. Civilian rule was restored in 1979, following elections held under a new constitution creating a US-style presidential government.

The 1979 Constitution fundamentally altered the framework for acquisition of citizenship. It both introduced an ethnic dimension to citizenship, and moved away from rights based on birth in the territory towards a descent-based rule. Chapter III of the 1979 Constitution established the basic rule that a person became a citizen at independence if he or she was born in the country and either parent or any grandparent ‘belongs or belonged to a community indigenous to Nigeria’; it also retained the rule that citizenship was only acquired on this basis by those born in Nigeria before independence if one parent or grandparent was also born in Nigeria. For those born in Nigeria after independence, citizenship was now granted based on descent from a parent or grandparent who was a citizen, of any category; those born outside acquired citizenship automatically if one parent was a citizen.<sup>12</sup>

Section 268 of the 1979 Constitution also provided that anyone who had acquired citizenship ‘by birth, naturalisation or registration’ under previous constitutions remained a citizen. That is, those born in Nigeria between 1960 and 1979 who had acquired citizenship based on the rules in force during that period remained citizens, and therefore also their children. It was not clear how this provision on continuity of citizenship interacted with the new provision requiring membership of an indigenous community in relation to those who became citizens at independence.

## 2.5 The 1999 Constitution

The civilian government elected in 1979 was overthrown by another coup in 1983, leading to a period of successive military governments, until a long-promised return to civilian rule was finally achieved in 1999, and elections held under a new constitution, which remains in force.

The citizenship provisions of the 1979 Constitution and the 1999 Constitution are practically the same. The main difference between the two is that the 1979 Constitution did not allow for dual citizenship for any Nigerian citizens, while the 1999 Constitution allows for dual citizenship for Nigerian citizens by birth and those naturalising, but creates an unusual prohibition on dual naturalised citizenship (see further below, heading on dual citizenship).

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<sup>12</sup> 1979 Constitution, Section 23.



## 2.6 Tracing attribution of citizenship at birth

The following table summarises the citizenship provisions in force at different dates.

<b>Attribution of Nigerian citizenship at birth, based on date and location of birth</b>		
<b>Date of birth</b>	<b>Born in Nigeria</b>	<b>Born outside Nigeria</b>
Before 1 Oct 1960	One parent or grandparent also born in Nigeria	Father was born in Nigeria of one parent or grandparent also born there
Between 1 Oct 1960 and 7 Oct 1974	Automatic at birth (unless father a diplomat and mother not a citizen)	Father a citizen
Between 8 Oct 1974 and 30 Sept 1979	One parent or grandparent also born in Nigeria; OR One parent a citizen [ <i>unless</i> neither parent a citizen, and any parent or grandparent had lost citizenship]	Both parents citizens
Between 1 Oct 1979 and 28 May 1999	One parent or grandparent a citizen; OR Descent from a person born in the country before 1 October 1960 with one parent or grandparent born in the country who 'belongs or belonged to a community indigenous to Nigeria'	One parent a citizen
Since 29 May 1999	[Unchanged]	[Unchanged]

## 3. Current Citizenship Regime

The citizenship provisions of the 1979 constitution were repeated largely unaltered in the 1999 Constitution, still in force. The Citizenship Acts of 1960 and 1961 repealed in 1974 have never been replaced, and the only law governing citizenship is the 1999 Constitution.

### 3.1 Automatic attribution of citizenship at birth

Section 25(1) of the 1999 constitution states that:

*The following persons are citizens of Nigeria by birth – namely:*

- a) *every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria; Provided that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents nor any of his grandparents was born in Nigeria.*
- b) *every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and*
- c) *every person born outside Nigeria either of whose parents is a citizen of Nigeria.*

Section 31 states that ‘a parent or grandparent of a person shall be deemed to be a citizen of Nigeria if at the time of the birth of that person such parent or grandparent would have possessed that status by birth if he had been alive on the date of independence’ (that is, if born in the country of a parent or grandparent also born there).

As in 1979, Section 309 of the 1999 Constitution states that those who were already citizens under earlier constitutions remain citizens of Nigeria. The legal history of the basis of attribution of citizenship at birth (see table at heading 2.6) thus remains relevant in deciding if someone is a Nigerian citizen, especially in relation to Section 25(1)(b) and (c).

Both the 1979 and 1999 constitutions delegated authority to the president to make regulations, while also including citizenship within the exclusive legislative list for the National Assembly.<sup>13</sup> No legislation has been enacted or regulations promulgated, enabling a high degree of executive discretion in implementing the constitutional framework.

### *3.1.1 No provision for foundlings, otherwise stateless, or adopted children*

The constitutional provisions do not include the presumption that a child found in Nigeria of unknown parents should be presumed to have been born in Nigeria of parents with Nigerian citizenship. The constitution also does not establish that a child born in Nigeria who does not acquire the nationality of one of his or her parents should have the right to Nigerian citizenship. These protections are required by articles 1 and 2 of the 1961 Convention on the Reduction of Statelessness and by article 6 of the African Charter on the Rights and Welfare of the Child, to both of which Nigeria is a party.<sup>14</sup>

Finally, the constitution contains no protection for foreign or stateless children adopted by Nigerian citizens, to ensure that they can acquire the citizenship of their adoptive parents. The Child Rights Act of 2003 does not explicitly remedy this omission, although it does provide in general terms for an adopted child to be treated as a biological child in relation to legal rights and obligations.<sup>15</sup>

### *3.1.2 Lack of definition of ‘community indigenous to Nigeria’*

Neither the 1979 nor the 1999 Constitution provide any definition for the phrase ‘community indigenous to Nigeria’, leaving uncertain the interpretation of this controversial clause.

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<sup>13</sup> Constitution, 1999, Section 32; and Section 4 with schedule 2.

<sup>14</sup> For more detail on gaps in the constitutional provisions, Civil Society Legislative Advocacy Centre (CISLAC) and UNHCR, ‘Discrepancies between the International Legal Obligations and the 1999 Constitution of the Federal Republic of Nigeria relating to the Prevention and Reduction of Statelessness’, Submission to the Upper House of the National Assembly, 29 June 2012.

<sup>15</sup> Child Rights Act, No.26 of 2003, section 141.

In practice, ‘indigeneity’ is determined by Nigeria’s 774 local government authorities (LGAs), which issue certificates confirming that a person is from a community ‘indigenous’ to that particular locality. This practice is not regulated by any law, and creates uncertainty over who is in fact a Nigerian citizen under the provisions of article 25(1)(a) of the 1999 Constitution (see further below, heading on current controversies and proposals for law reform).

## 3.2 Acquisition of citizenship by registration

### 3.2.1 Marriage

Nigeria’s rules on acquisition through marriage continue to discriminate on the basis of the sex of the spouse. Section 26 of the constitution provides that a woman married to a Nigerian man can acquire citizenship by registration, but not a man married to a Nigerian woman.<sup>16</sup> Although an easier process than naturalisation, acquisition of citizenship by a woman on the basis of marriage is discretionary, requiring the applicant to satisfy the president that she is of good character – as well as showing the intention to remain domiciled in Nigeria, and taking the oath of allegiance.<sup>17</sup>

The foreign husband of a Nigerian woman can only acquire citizenship through naturalisation, on the same terms as any other foreigner.

### 3.2.2 Born abroad and one grandparent is a citizen

Section 26 of the constitution also provides for the possibility of acquisition of citizenship by registration by ‘every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria’.<sup>18</sup> The provision thus opens up the possibility of acquisition through a grandparent to those born outside; whereas if born in the territory the grandchild of a citizen automatically acquires citizenship at birth (section 25(1)(b)). The conditions applied are the same as those for the wife of a Nigerian citizen: good character, intention to be domiciled in Nigeria, and oath of allegiance.

## 3.3 Naturalisation based on long residence

Nigeria’s law and practice on acquisition of citizenship through naturalisation based on long residence is quite restrictive. In addition to requiring a residence period of 15 years, long by international standards, the other conditions applied are also challenging to fulfil. Section 27(2) of the constitution provides that:

*No person shall be qualified to apply for the grant of a certificate of naturalisation, unless he satisfies the President that -*

*(a) he is a person of full age and capacity;*

*(b) he is a person of good character;*

*(c) he has shown a clear intention of his desire to be domiciled in Nigeria;*

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<sup>16</sup> Constitution 1999, section 26(2)(a).

<sup>17</sup> Ibid. Section 26(1).

<sup>18</sup> Ibid., section 26(2)(b)

*(d) he is, in the opinion of the Governor of the State where he is or he proposes to be resident, acceptable to the local community in which he is to live permanently, and has been assimilated into the way of life of Nigerians in that part of the Federation;*

*(e) he is a person who has made or is capable of making useful contribution to the advancement; progress and well-being of Nigeria;*

*(f) he has taken the Oath of Allegiance prescribed in the Seventh Schedule to this Constitution; and*

*(g) he has, immediately preceding the date of his application, either-*

*(i) resided in Nigeria for a continuous period of fifteen years; or*

*(ii) resided in Nigeria continuously for a period of twelve months, and during the period of twenty years immediately preceding that period of twelve months has resided in Nigeria for periods amounting in the aggregate to not less than fifteen years.*

An application for naturalisation is made to the Ministry of the Interior, and the dossier is then reviewed by a range of different state agencies, including the State Security Service, the Immigration Service, the police, the governor of the state and chair of the local government area where the person is resident, and other agencies. Ultimately, the dossier is passed to the Federal Executive Council<sup>19</sup> for review and recommendation and the final decision is made by the president. Naturalisation is not automatic for minor children of those whose applications are successful, and a separate application must be made at majority.<sup>20</sup>

### 3.4 Dual citizenship

The one significant change made to the constitutional chapter on citizenship in 1999 was that section 28 removed the prohibition on dual citizenship for those who hold Nigerian and another citizenship from birth; however, a naturalised citizen cannot hold any other naturalised citizenship.<sup>21</sup> Forfeiture of citizenship by a naturalised citizen who acquires or retains another naturalised citizenship is automatic, and acquisition of Nigerian citizenship by a person who is

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<sup>19</sup> The Federal Executive Council, also known as cabinet members, is a branch of the Executive arm of Government, comprising the President, the Vice-President, Secretary of the Government of the Federation, the Head of Service, and the Ministers. The Council members advise the Presidency and make decisions at executive level. See the Nigeria government website Accessed 14/05/2020 via <https://nigeria.gov.ng/members-of-the-federal-executive-council/>

<sup>20</sup> Confirmed by Nigerian National Immigration Service, Abuja, July 2014; see Bronwen Manby, 'Migration, Nationality and Statelessness in West Africa' (UNHCR and IOM, 2015), pp.39-40.

<sup>21</sup> Section 26(1) of the 1979 Constitution provided that '*subject to the other provisions of this section, a person shall forfeit forthwith his Nigerian citizenship if he acquires or retains the citizenship or nationality of a country other than Nigeria.*' Section 28 of the 1999 Constitution provides that '*(1) subject to the other provisions of this section, a person shall forfeit forthwith his Nigerian citizenship if, not being a citizen of Nigeria by birth, he acquires or retains the citizenship or nationality of a country, other than Nigeria, of which he is not a citizen by birth. (2) Any registration of a person as a citizen of Nigeria or the grant of a certificate of naturalisation to a person who is a citizen of a country other than Nigeria at the time of such registration or grant shall, if he is not a citizen by birth of that other country, be conditional upon effective renunciation of the citizenship or nationality of that other country within a period of not more than five months from the date of such registration or grant.*'

See also Solomon Oseghale Momoh, *Statelessness and Right to Nationality: Avoiding the Uncertainties Under the Nigerian Constitution*. p. 9.

already naturalised elsewhere requires effective renunciation of the other naturalised citizenship.

### **3.5 Renunciation of citizenship**

Section 29 of the constitution permits an adult to renounce Nigerian citizenship on application to the president. The provision was added in 1999, when loss of citizenship on acquisition of another was no longer automatic. However, the president may withhold consent if Nigeria is at war or if the renunciation is contrary to public policy. The section does not provide protection against statelessness by conditioning renunciation on the possession or acquisition of another nationality.

### **3.6 Deprivation of citizenship**

Section 30 of the constitution permits the president to deprive a naturalised citizen (but not a citizen by birth or registration) of his or her citizenship on various grounds, including conviction of a crime and sentencing to a prison term, or if ‘the person has shown himself by act or speech to be disloyal towards the Federal Republic of Nigeria’, or has associated with the enemy in various ways if Nigeria is at war.

## **4. Institutional Arrangements for Determination of Citizenship**

The most important government department responsible for determining citizenship is the Ministry of the Interior, especially the Nigeria Immigration Service, which falls under its authority, and its Citizenship and Business Department. The National Identity Management Commission and the Independent National Electoral Commission also play an important role in documenting persons as citizens for day-to-day purposes; while the National Population Commission is responsible for birth registration. However, an extra-legal system of identification through local governments is in most cases the foundational document to provide evidence of membership of a ‘community indigenous to Nigeria’ and therefore entitlement to citizenship.

### **4.1 The Nigeria Immigration Service**

The Nigeria Immigration Service is given the power to issue passports by the Immigration Act No.8 of 2015.<sup>22</sup> The Act states in section 9 that passports ‘shall be issued only to bona fide Nigerians’, and section 12 makes it an offence for a non-citizen to hold a Nigerian passport. Section 116, on interpretation of the Act, states that ‘citizen of Nigeria has the meaning assigned thereto by [the constitution], unless the context otherwise permits’.<sup>23</sup>

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<sup>22</sup> Immigration Act, No.8 of 2015, Part II.

<sup>23</sup> The specific reference is to Sections 23 to 25 of the Amended Constitution of the Federal Republic of Nigeria, 2011, signed into Law by the President of the Federal Republic of Nigeria on the 10th day of January, 2011; renumbered but unaltered from sections 25 to 27 of the constitution as adopted in 1999. For a consolidated

Neither the Immigration Act nor the Immigration Regulations of 2017<sup>24</sup> include a procedure by which it shall be determined if a person is a ‘bona fide Nigerian’. However, the handbook on ‘Immigration Services and Facilities at a Glance’, published in 2017, provides a list of supporting documents for a passport application, including a ‘Letter of identification from Local Government/State of origin or residence or National Identity Card or Letter of introduction for employees of government as a Nigerian citizen’; a birth certificate is stated to be required for those born after 1992, for others an age declaration will suffice.<sup>25</sup> The list provided on the Department of Immigration website is similar but not identical.<sup>26</sup> The fee payable is ₦15,000 (approx. €35) for a standard adult passport if applying in Nigeria.<sup>27</sup>

In addition, Section 28 of the Immigration Act provides for ‘Determination of nationality in special cases’, stating that ‘the Minister may give such directives as he thinks fit for the determination of the nationality of any person’; these directives may be challenged in court only ‘in the case of any person in or resident in Nigeria and claiming to be a citizen of Nigeria’.<sup>28</sup>

A passport is not, however, proof of Nigerian citizenship. Even if a person holds a passport it is still for that person to prove his or her citizenship if that status is questioned, and not for the person challenging the status to prove that the holder is not a citizen. Section 100 of the Immigration Act states that:

*In any proceeding under this Act or Regulations made under this Burden of Act, or on examination by an immigration officer, if the question arises—*  
*(a) whether any person is in possession of a passport, visa or permit,*  
*(b) whether any person is a citizen of Nigeria, or*  
*(c) whether any person is a citizen of any other country,*  
*the burden of proof that the person is in possession of a passport, visa or permit, or that he is a citizen of Nigeria, or that he is a citizen of that other country, lies on that person.*

It is likely that only a small percentage of Nigerians hold an international passport (no statistics are published).

For Nigerian citizens outside the country, consulates can accept applications for the issue or replacement of passports and ECOWAS travel documents.<sup>29</sup> Applications for replacement of lost or damaged passports are forwarded to the Immigration Headquarters in

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version of the amended constitution with renumbered sections, visit the Constitution section of the Ministry of Justice website via <https://www.justice.gov.ng/index.php/laws/constitution?task=document.viewdoc&id=35>

<sup>24</sup> Immigration Regulations, SI No. 3 of 2017, 1 March 2017; Part VI on Issuance of Nigerian Passports and Other Travel Documents.

<sup>25</sup> ‘Handbook on the Operationalisation of Executive Order One (EO1) in the Nigeria Immigration Service’, June 2017, pp.20-22.

<sup>26</sup> The list of ‘General Documents required for interview’ for a standard passport given on the Immigration Service website is: ‘1. Local Government letter of identification; 2. Birth certificate / age declaration; 3. Recent colour passport photographs; 4. Guarantor’s form sworn to before a commissioner of Oaths / Magistrate / High Court Judge; 5. Parents’ letter of consent for minors under 16 years; 6. Marriage certificate where applicable; 7. Police report in case of lost passport.’ See <https://portal.immigration.gov.ng/pages/passportguidelines>.

<sup>27</sup> Ibid.

<sup>28</sup> This section is included in Part IV of the Immigration Act, headed ‘Control of Crews and Stowaway’.

<sup>29</sup> Immigration Regulations, section 38(4) and (5). See also ‘Handbook of Immigration Facilities and Services’, Nigeria Immigration Service, June 2017, available at <https://immigration.gov.ng/wp-content/uploads/2017/06/Handbook-of-Immigration-Facilities-and-Services.pdf>.

Nigeria for processing;<sup>30</sup> all applications on behalf of registered or naturalised citizens, and in case of adoption, are also processed by Immigration Headquarters.<sup>31</sup>

#### **4.2 The Ministry of the Interior Citizenship and Business Department, the Federal Executive Council and the Presidency**

The 1999 Constitution gives the president the final authority to approve applications for naturalisation, registration or renunciation of citizenship. These are initially processed by the Citizenship & Business Department of the Ministry of the Interior,<sup>32</sup> and they are then approved by the Federal Executive Council, before the application is finally granted by the president. In addition, the Citizenship and Business Department has a procedure for ‘confirmation’ of citizenship, discussed further below (section 5.3).

#### **4.3 The National Identity Management Commission**

In July 2014 the Economic Community of West African States (ECOWAS) approved the introduction by 2017 of a new standard-format national biometric identity card in all ECOWAS states.<sup>33</sup> These national identity cards are now sufficient for travel within the ECOWAS states, replacing the previous ECOWAS travel certificate. Nigeria introduced a national identity card for the first time, in line with this commitment.<sup>34</sup>

The National Identity Management Commission (NIMC) Act was enacted in 2007, and established the requirement for all adult residents of Nigeria to carry an identity card, although it was not implemented for some years. The NIMC began issuing its first ID cards in 2014, with the intention that all citizens and lawful residents of Nigeria over 16 years in age would carry one by 2019. The aim is to create a comprehensive identity system, harmonising the different existing registries, and discussions are underway to integrate the national identity card with other databases.<sup>35</sup> The identity cards issued include encoded biometric data and show on their face an identification number, date of birth and gender, and an indication of ‘whether or not the person is a citizen of Nigeria’, with reference to the constitutional provisions.<sup>36</sup>

The NIMC Act does not specify what information must be provided to the Commission for a card to be issued that confirms citizenship, but requires an applicant to ‘provide any particulars specified ... by the Commission’.<sup>37</sup> The NIMC website states that ‘any’ (not ‘all’) of the following supporting documents should be produced for an application: ‘1. Old National ID Card; 2. Driver’s License; 3. Voter’s card (Temporary or Permanent); 4. Nigerian International passport; 5. Certificate of origin; 6. Attestation letter from a prominent ruler in

<sup>30</sup> Immigration Regulations, section 39(b).

<sup>31</sup> Immigration Regulations, section 40.

<sup>32</sup> Ministry of Interior Department of Citizenship and Business eCitiBiz website. Accessed 31/03/2020 via <https://www.ecitibiz.interior.gov.ng/home/about> and <https://interior.gov.ng/citizenship-and-business/>.

<sup>33</sup> Final Communique: Forty-Fifth Ordinary Session of the Authority of ECOWAS Heads of State and Government, Accra, Ghana, 10 July 2014.

<sup>34</sup> Although a 1979 presidential decree proposed the issue of identity cards to all Nigerians over 18 (National Civic Registration Decree No.51 of 1979), this law was never implemented.

<sup>35</sup> National Identity Management Commission Act No.23 of 2007, sections 5 and 15; *Identification Systems Analysis Country Assessment: Nigeria*, World Bank, June 2015; .

<sup>36</sup> National Identity Management Commission Act No.23 of 2007, sections 17, 18, 19, 33, and second schedule.

<sup>37</sup> *Ibid.*, section 18.

your community; 7. Birth certificate; 8. Declaration of age; 9. Attestation letter from religious/traditional leader; 10. NHIS ID card; 11. Government staff id card; 12. Registered/recognised private organisation staff id card; 13. School ID Card private/Public.<sup>38</sup>

In October 2019, the Acting Director of the National Identity Management Commission informed Premium Times Newspaper that despite the fact that the national identity card is free, just a little over 37 million Nigerians had been registered, i.e., one third of the estimated 111 million population over the age of 16.<sup>39</sup>

#### 4.4 The Independent National Electoral Commission

The Electoral Act of 2010 (as amended) establishes the Independent National Electoral Commission (INEC) and gives it the role of creating a voters' register. The Electoral Act provides that applicants to register to vote should produce one of the following documents: '(a) birth or baptismal certificate; (b) national passport, identity card or driver's licence; or (c) any other document that will prove the identity, age and nationality of the applicant.'<sup>40</sup>

In practice, voters' cards are used as proof of identity for various purposes, but are not regarded as proof of citizenship: there is also a degree of circularity between the NIMC and Electoral Act lists, with each institution accepting the other's documents as supporting evidence of citizenship.

#### 4.5 The National Population Commission

The National Population Commission was established in 1992, when the birth registration system was restructured, and has responsibility to ensure registration of every child born in Nigeria, including the registration of "a living new-born child" found exposed.<sup>41</sup> The regulations (but not the principal act) require a person registering a birth to provide, amongst other details, the nationality of the mother and (where relevant) the father of the child.<sup>42</sup> The regulations do not state whether any particular evidence must be provided as proof of nationality of the parents.

As of 2018, an average of only 43 percent of children under five were found to have had their births registered; this reduced to 32 percent in rural areas, and 16 percent among the poorest quintile; only one in five of those registered held a birth certificate.<sup>43</sup> Birth registration

<sup>38</sup> See <https://www.nimc.gov.ng/how-to-enrol-adults/>

<sup>39</sup> Premium Times Newspaper, *National ID card is free, but only 19% Nigerians are registered – Official*. 20 October 2019. Accessed 14/05/2020 via <https://www.premiumtimesng.com/news/headlines/358580-national-id-card-is-free-but-only-19-nigerians-are-registered-official.html>. Estimate for 16+ population of Nigeria from spreadsheet 'Population by Broad Age Groups - Both Sexes', *World Population Prospects 2019*, UN Department of Economic and Social Affairs, <https://population.un.org/wpp/Download/Standard/Population/>, accessed 15 May 2020.

<sup>40</sup> Electoral Act No.6 of 2010, as amended, section 10(2).

<sup>41</sup> Births, Deaths, etc. (Compulsory Registration) Act No. 69 of 1992, section 7.

<sup>42</sup> Births, Deaths, Marriages, etc., Regulations, S.I. 9 of 1996, regulations 9 – 14. Under section 12 of the Act, the father's name and other details are only recorded if the child is born in wedlock, or with his consent. The regulations provide in different places for the nationality of both parents to be recorded, or only of the father (compare regulations 11 and 12)

<sup>43</sup> *Nigeria Demographic and Health Survey 2018*, National Population Commission, Nigeria and DHS Program, Maryland USA, October 2019, section 2.8, available at <https://dhsprogram.com/pubs/pdf/FR359/FR359.pdf>.



is nonetheless the most authoritative evidence of place of birth and identity of parents, the most important factors in determining the entitlement of a person to citizenship. Birth certificates are named as potential supporting documents for passports and national identity cards; a birth certificate is required for a passport application for those born since 1992.

#### **4.6 Local authorities and certificates of indigeneity**

The rules established by the 1979 and 1999 constitutions mean that for most Nigerians citizenship will be determined in practice by tracing descent to a person who was resident in Nigeria at independence and was a member of an ‘indigenous community’ of Nigeria.

The issuance both of passports and of national identity cards in Nigeria depends on ‘certificates of indigeneity’, which are issued by local government authorities. As noted above, the instructions to apply for a standard Nigerian passport include the provision of a ‘Local Government letter of identification’, a reference to such a certificate. Similarly, ‘certificate of origin’ is listed as a supporting document for an application to enrol for a national ID card. Although the respective websites do not list the relative importance of the different supporting documents listed, a certificate of indigeneity is often the most critical, especially for those whose citizenship might be seen as doubtful. There is, however, no legislation that governs the conditions under which a certificate can be issued by a local government. The question of ‘indigeneity’ is discussed further below (section 5.1).

### **5. Current Controversies and Proposals for Law Reform**

#### **5.1 Indigeneity and citizenship**

British colonial laws had distinguished between different categories of ‘native’ and ‘stranger’, according to place of origin, including distinctions among ‘natives of Nigeria’ (defined as members of a tribe ‘indigenous to Nigeria’), ‘native foreigners’, and ‘non-natives’.<sup>44</sup> These laws did not provide a definition of ‘indigenous’, and the determination of who was a member of a ‘tribe’ or ‘native community’ was left to interpretations of customary law. These legal frameworks were in part an attempt to recognise the great diversity of cultures and political traditions among the different pre-existing communities of what had become the Colony and Protectorate of Nigeria. Understandings of belonging were also strongly influenced by the colonial categories, and they still have resonance today.

However, no reference to ‘community indigenous to Nigeria’ was made in relation to citizenship in the 1960 constitution, which relied rather on place of birth over two generations

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<sup>44</sup> The Interpretation Ordinance 27 of 1939 defined a ‘native of Nigeria’ as ‘any person whose parents were members of any tribe or tribes indigenous to Nigeria’. The Native Authority Law of 1954, providing for the regionalisation of the Nigerian civil service, defined a ‘stranger’ as ‘any Native who is not a member of the native community living in the area of its authority’. See discussions in Arthur V.J. Nylander, *The Nationality and Citizenship Laws of Nigeria* (Lagos: University of Lagos, 1973), pp.2-5; Daniel C. Bach, ‘Federalism, Indigeneity and Ethnicity in Nigeria’, in Larry Diamond, Tom Bierstecker, A.H.M. Kirk-Greene and Oye Oyediran, eds., *Transition without End : Nigerian Politics and Civil Society under Babangida* (Boulder CO: L. Rienner, 1997), pp.333-350.

to determine who became a Nigerian at independence, and thereafter initially provided for citizenship based on birth in Nigeria.

The concept of ‘community indigenous to Nigeria’ as a foundation for Nigerian citizenship was introduced for the first time in the 1979 Constitution. The original intent was to take account of the fact that many communities in Nigeria are separated from their ethnic kin by colonial borders, leaving flexibility in determining the connection to Nigeria of persons belonging to cross-border communities.<sup>45</sup> Just as during the colonial era, however, the concept of ‘indigenous community’ was not defined. The 1999 Constitution also provided no definition for the term. It is argued that there has been ‘a steady rise in communal tensions and conflicts since the introduction of the indigeneity clause into Nigerian public law through the 1979 Constitution’.<sup>46</sup>

The interpretation of ‘community indigenous to Nigeria’ has come to be determined largely within the context of debates over the concept of ‘federal character’, also introduced by the 1979 Constitution and repeated in 1999. The federal character principle requires that government positions at national level should be shared equitably among those who are ‘indigenes’ of the different units that make up Nigeria’s federal system, and similarly at state and local government level.<sup>47</sup>

In 1996 the military government established by decree the Federal Character Commission, giving it the responsibility to elaborate, monitor and enforce the provisions on federal character. In 1997, the Commission adopted Guiding Principles and Formulae for the Distribution of all Cadres of Posts, which effectively leave it up to each local government to determine who qualifies as an ‘indigene’, though they clearly prohibit claims of ‘dual indigeneship’, and state that women cannot change their status on marriage.<sup>48</sup>

In accordance with this scheme, a system has grown up by which all 774 local government areas in Nigeria, and the Federal Capital Territory, issue ‘certificates of indigeneity’ as evidence that a person is an ‘indigene’ of that area. In the absence of legislative authority, there are no established criteria on the basis of which a refusal to issue a certificate could be challenged, which are thus variable in different local government authorities. In

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<sup>45</sup> O. Adigun, ‘Nationality and Citizenship: The Legal Problematic of Transborder Ethnic Communities in Nigeria’, in *Borderlands in Africa: A Multidisciplinary and Comparative Focus on Nigeria and West Africa*, ed. A. I. Asiwaju and P. O. Adeniyi (Lagos: University of Lagos Press, 1989).

<sup>46</sup> Jibrin Ibrahim, *Democratic Governance and the Citizenship Question: All Nigerians Are Settlers*. No date. Accessed 02/04/2019 via DAWODU.COM an online platform dedicated to Nigeria's history, socio-economic and political issues. <https://www.dawodu.com/jibo1.htm>

<sup>47</sup> Constitution, 1979, article 14; repeated verbatim in the Constitution, 1999, article 14: ‘(3) 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. (4) The composition of the Government of a State, a local government council, or any of the agencies of such government or council, and the conduct of its affairs shall be carried out in such manner as to recognise the diversity of the peoples within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation.’

<sup>48</sup> Guiding Principles and Formulae for the Distribution of all Cadres of Posts, SI 23 of 1997, Part II, section 10(1): ‘An indigene of a local Government means a person: i. either of whose parents or any of whose grandparents was or is an indigene of the local Government concerned; or ii. who is accepted as an indigene by the Local Government: Provided that no person shall lay claim on more than one Local Government.’ Section 10(2) sets out similar provisions for states and the Federal Capital Territory; and section 11 relates to married women, stating that ‘A married woman shall continue to lay claim to her state of origin for the purpose of implementation of the Federal Character formulae at the national level.’

practice, the usual requirement is that the person has ancestral roots in the community, often through the father only.<sup>49</sup>

As a result of this system, Human Rights Watch has argued:

*The population of every state and local government in Nigeria is officially divided into two categories of citizens: those who are indigenes and those who are not. The indigenes of a place are those who can trace their ethnic and genealogical roots back to the community of people who originally settled there. Everyone else, no matter how long they or their families have lived in the place they call home, is and always will be a non-indigene.*<sup>50</sup>

Or, in the words of a briefing from the Nigeria Research Network, a collaboration between the University of Oxford and the Development Research and Projects Centre in Kano, northern Nigeria:

*Indigeneship effectively introduces a two-tier citizenship in Nigerian's 36 states and 774 Local Government Areas. Some can lay claim to ancestral connections to the soil and consequently enjoy 'indigeneship' rights, while others have no such ancestral claims, and must therefore suffer different degrees of political and social exclusion.*<sup>51</sup>

There have been various efforts to try to reduce discrimination against 'non-indigenes' who are internal migrants within Nigeria, including by the Citizens Forum for Constitutional Reform, a civil society coalition established immediately after the return to civilian rule in 1999, led by the Centre for Democracy and Development (CDD).<sup>52</sup> The National Assembly has conducted several constitutional review processes, the most consultative being during the 2011-2015 mandate. During the same period, President Goodluck Jonathan also convened a 'National Conference' made up of 500 delegates drawn from different interest groups and different parts of the country. The report of the National Conference regretted the lack of definition of indigene and the discrimination related to internal migrants that resulted from the constitutional provisions.<sup>53</sup>

<sup>49</sup> For discussion of the rules applied see, for example: 'Indigeneity, Belonging, & Religious Freedom in Nigeria: Citizens' Views from the Street', Policy Brief, Nigeria Research Network (University of Oxford and Development Research and Project Centre Kano, 2014); V. Adefemi Isumonah, 'The Ethnic Language of Rights and the Nigerian Political Community', in *Citizenship, Belonging, and Political Community in Africa: Dialogues between Past and Present*, ed. Emma Hunter (Athens: Ohio University Press, 2016); David Ehrhardt, 'Indigeneship, Bureaucratic Discretion, and Institutional Change in Northern Nigeria', *African Affairs* 116, no. 464 (July 2017): 462–83; Laurent Fourchard, 'Bureaucrats and Indigenes: Producing and Bypassing Certificates of Origin in Nigeria' *Africa: The Journal of the International African Institute* 85, no. 1 (2015): 37–58; Henry Gyang Mang and David Ehrhardt, 'The Politics of Paper: Negotiating over and around Indigeneship Certification in Plateau State, Nigeria', *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines* 52, no. 3 (2018): 331–47.

<sup>50</sup> Human Rights Watch, *'They do not own this place': Government Discrimination against 'Non-Indigenes' in Nigeria*. Volume 18, No. 3(A), April 2006. Summary p. 1.

<sup>51</sup> Nigeria Research Network (NRN), *Indigeneity, Belonging, & Religious Freedom in Nigeria: Citizens' Views from the Street*. NRN Policy Brief No 5. p.1 Accessed 30/03/2020 via <https://www.qeh.ox.ac.uk/sites/www.odid.ox.ac.uk/files/nrn-pb05.pdf>.

<sup>52</sup> See Human Rights Watch, 'They Do Not Own This Place: Government Discrimination against Non-Indigenes in Nigeria' (2006) 63; Adimbola O Adesoji and Akin Alao, 'Indigeneship and Citizenship in Nigeria: Myth and Reality' (2009) 2 *Journal of Pan African Studies* 151; Otive Igbuzor, 'Constitutional Reform In Nigeria's Fourth Republic: Challenges To Civil Society Organisations', Paper presented at a general meeting of Citizens Forum for Constitutional Reform, Abuja 24 September 2005,

<http://www.gamji.com/article5000/NEWS5168.htm>; Idayat Hassan, 'Nigeria's constitutional reform process: The quest for a people-driven constitution', blog post, ConstitutionNet, International IDEA, 18 October 2017 <http://constitutionnet.org/news/nigerias-constitutional-reform-process-quest-people-driven-constitution>.

<sup>53</sup> 'The National Conference: Final Draft Conference Report' (Government of Nigeria 2014), section 5.2.2.

In August 2017, a year after he took office, President Muhammadu Buhari set up a 23-person committee, headed by the Governor of Kaduna State, Malam Nasir El-Rufai, to deliberate and submit a report on how to restructure Nigeria. In a presentation at Chatham House in London in 2017 on the work of the Committee, Governor el-Rufai stated *inter alia*:

*In many communities, people still use the notion of 'indigene-ship' to consign compatriots to a position of 'settler' and, by implication, perpetual exclusion from enjoying the full political, social and economic opportunities guaranteed by the Constitution to every citizen.*<sup>54</sup>

In its January 2018 report, the Committee recommended that local government or state of origin should be replaced with state of residence, finding the current system to be 'discriminatory'; as well as proposing 'an amendment to the Federal Character Commission Act to allow people domiciled in a place to be considered as indigenes'.<sup>55</sup>

An amendment to replace 'origin' with 'residence' in relation to the 'federal character' provisions would recognise the reality of internal migration and inter-ethnic marriage within Nigeria, and allow Nigerians to access their rights as citizens wherever their place of residence. However, any legal reform would also need to address the lack of clarity over entitlement to Nigerian citizenship based on membership of an 'indigenous community', currently evidenced by a 'certificate of indigeneity', and provide clear criteria by which this status would be decided.

## 5.2 The citizenship of those affected by the ICJ Judgment on the Nigeria-Cameroon border

During the colonial period, it was not important to establish a precise boundary between the British Colony and Protectorate of Nigeria on the one hand, and the Northern and Southern Cameroons mandated to Britain in 1919 by the League of Nations on the other, since the mandated territories were administered from Nigeria.<sup>56</sup>

The oil-rich Bakassi peninsula, on the southern edge of the border between Nigeria and Cameroon, projecting into the Gulf of Guinea, continued to be administered from Nigeria after independence (and is listed as one of 774 local government areas in the 1999 Constitution). Cameroon contested this ownership, and the dispute escalated into confrontations between the military forces of the two states. Cameroon also asserted that Nigerians had settled on Cameroonian territory along the northern part of the border.

In 1994, Cameroon referred the disputes over the border to the International Court of Justice (ICJ). The ICJ issued its final judgment in the case in 2002, and granted sovereignty over the Bakassi peninsula to Cameroon, as well as transferring other territory near Lake Chad.<sup>57</sup> The court did not comment on the nationality of those living in the transferred territory,

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<sup>54</sup> Mallam Nasir Ahmad el-Rufai, *Next Generation Nigeria: What is restructuring and does Nigeria need it?* Africa Programme Meeting Transcript. Chatham House 21 September 2017. p.6. Accessed 14/05/2020 via <https://www.chathamhouse.org/sites/default/files/publications/research/2017-09-21-What-is-restructuring-and-does-Nigeria-need%20it.pdf>

<sup>55</sup> See Ripples Nigeria, *Restructuring: 12 unforgettable points of the El-Rufai report rotting away in APC's cupboard*. 22 July 2019. Accessed 14/05/2020 via <https://www.ripplesnigeria.com/restructuring-12-unforgettable-points-of-the-el-rufai-report-rotting-away-in-apcs-cupboard/>.

<sup>56</sup> This section draws on Manby, *Citizenship in Africa*, chapter 8.3.

<sup>57</sup> *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, ICJ Judgement of 10 October 2002, available with other documents related to the case at

although the presumption in international law is that nationality would follow habitual residence, unless otherwise agreed.<sup>58</sup>

Nigeria initially rejected the judgement, but in 2006, a UN-brokered bilateral agreement was reached on its implementation. As regards the nationality of those resident in the areas awarded to Cameroon, who are largely Efik people of the old Calabar kingdom, the agreement was that Cameroon guaranteed fundamental rights and freedoms to Nigerian nationals, and promised not to force Nigerian nationals living in the transferred territories to leave their homes nor to change their nationality.<sup>59</sup> The territory was formally handed over to Cameroon on 14 August 2008, though a Nigerian presence remained during a five-year transitional period. The understanding seems to have been that at the end of the transitional period, residents in the transferred territories could become Cameroonian with the right to Cameroonian identity documents; but could also remain Nigerian with resident alien status in Cameroon, or leave what was now Cameroon and resettle in Nigeria.<sup>60</sup> But the legal authority to enable these outcomes on either side of the border was left unclear. On the Nigerian side, no constitutional amendments were proposed similar to those for the Northern Cameroons following the post-independence referendums, in order to provide for the nationality status of those who relocated to the Nigerian side of the new border from zones in the former Northern and Southern Cameroons that had now been decided were part of Cameroon. Nor was any action taken to provide ongoing access to recognition of Nigerian citizenship for those whose homes were now in Cameroon.

The government of Cross Rivers State in Nigeria purported to carve out a new local government area for the Bakassi displaced—though it had no constitutional authority to do so—and granted or facilitated some humanitarian assistance.<sup>61</sup> The former Bakassi residents were denied the right to vote in various elections, since the locations where they were registered no longer exist; there was litigation by the Independent National Electoral Commission on this point.<sup>62</sup> In February 2014, the Nigerian Attorney General of the Federation and Minister of Justice, Mr. Mohammed Adoke, speaking at the opening of the 32nd Session of the Mixed Commission, was reported as stating that those affected by the judgment who wished to be Nigerian should ‘apply for Nigerian citizenship’ implying that they needed to naturalise, rather than obtain recognition of ongoing nationality from birth.<sup>63</sup> Since then, there has been no

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<http://www.icj-cij.org/en/case/94>. For a detailed history of the dispute, the court case and its aftermath, see Hilary V Lukong, *The Cameroon-Nigeria Border Dispute: Management and Resolution, 1981-2011* (Langaa Research & Publishing Common Initiative Group 2011).

<sup>58</sup> ILC, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States*, article 5.

<sup>59</sup> Greentree Agreement, Article 3(2): ‘Cameroon shall : a) Not force Nigerian nationals living in the Bakassi Peninsula to leave the zone or to change their nationality ...’.

<sup>60</sup> ‘Bakassi - more than one place, more than one problem’, IRIN, 13 November 2007; *Le temps des réalisations: Bulletin mensuel bilingue d’informations N° 14*, Special Edition on Bakassi, Government of Cameroon, August/September 2013.

<sup>61</sup> The National Commission for Refugees, Migrants and Internally Displaced Persons was reported by the Cross River State government to have distributed relief supplies to more than 1,500 households in two local government areas in the state. ‘Bakassi, Akpabuyo Refugees Get Relief from Refugees Commission’ Cross Rivers State government, 29 July 2013.

<sup>62</sup> Chidi Anselm Odinkalu, ‘Stateless in Bakassi: How a Changed Border Left Inhabitants Adrift’ Open Society Foundations, 2 April 2012, available at <https://www.opensocietyfoundations.org/voices/stateless-bakassi-how-changed-border-left-inhabitants-adrift>; Jude Okwe, ‘INEC - Bakassi May Not Participate in 2015 Elections’, *This Day* (Abuja), 4 April 2014.

<sup>63</sup> Dele Ogbodo, ‘Greentree Agreement: FG Advises Bakassi Indigenes to Apply for Nigerian Citizenship’, *This Day*, 3 February 2014

resolution of the status of the Bakassi people, who have been left in a state of ‘near statelessness’.<sup>64</sup>

Bakassi residents who are now on the Cameroonian side of the border are reportedly taxed and otherwise treated as foreigners by the Cameroonian authorities; and without Cameroonian national identity documents, face difficulties with freedom of movement.<sup>65</sup>

### 5.3 Access to naturalisation, and status of the children of naturalised citizens

Naturalisation is very hard to access in Nigeria: official statistics are not systematically published, but, for example, 335 people acquired Nigerian citizenship in 2017 (of whom 90 were registered, the remainder naturalised), after a four-year gap since the last group; 165 applications were rejected (with no reasons published).<sup>66</sup> The ‘National Conference’ convened by President Goodluck Jonathan noted the ‘overwhelming need to liberalise the path to naturalised citizenship’.<sup>67</sup> There is no provision for minor children to be included within the application for naturalisation of a parent, and they must apply independently on reaching majority.

Difficult as naturalisation is, Section 25 of the 1999 Constitution is clear that children of naturalised or registered citizens automatically acquire citizenship at birth. However, there have been some internal debates within the Ministry of Interior about whether or not naturalised citizens should automatically pass their Nigerian nationality to their children. In practice, offspring of naturalised Nigerians are granted Nigerian nationality by ‘confirmation’.<sup>68</sup> The website of the Citizenship and Business Department of the Ministry of Interior provides for the ‘Issuing of Citizenship by Confirmation’ for those who acquire citizenship under Section 25 (1)(b) and (c) of the 1999 Constitution, stating that ‘This service applies to individuals of Nigerian descent who wish to gain the Nigerian citizenship. The descendants could also have acquired their citizenship through naturalisation.’<sup>69</sup> No such ‘confirmation’ procedure exists under the Constitution, which makes no distinction between those who are citizens based on descent from a person belonging to a ‘community indigenous to Nigeria’, and those who are children of a parent or grandparent who is a citizen.

However, since 2016, the Ministry of Interior has suspended even the procedure of issuing Nigerian ‘citizenship by confirmation’ to offspring of naturalised Nigerians. According to an official of the Ministry of Interior, the Ministry set up a committee to identify the

<sup>64</sup> Hindatu Maigari Yerima, Ranjit Singh, ‘The Bakassi Dispute: People’s Dynamics and the rise of Militancy’ *Journal of Humanities and Social Science (IOSR-JHSS)* Vol. 22, Issue 1, Ver. 6 (Jan. 2017) pp 67-70 at p.69. Accessed 14/05/2020 via

[https://www.researchgate.net/profile/Hindatu\\_Yerima/publication/313214716\\_The\\_Bakassi\\_Dispute\\_People's\\_Dynamics\\_and\\_the\\_rise\\_of\\_Militancy/links/5892b016aca272f9a55855b0/The-Bakassi-Dispute-Peoples-Dynamics-and-the-rise-of-Militancy.pdf](https://www.researchgate.net/profile/Hindatu_Yerima/publication/313214716_The_Bakassi_Dispute_People's_Dynamics_and_the_rise_of_Militancy/links/5892b016aca272f9a55855b0/The-Bakassi-Dispute-Peoples-Dynamics-and-the-rise-of-Militancy.pdf)

<sup>65</sup> ‘We’re now stateless, Bakassi Indigenes cry out’, *Vanguard* (Abuja), 10 June 2017.

<sup>66</sup> ‘Nigeria grants 335 foreigners citizenship’ Premium Times/News Agency of Nigeria, 11 January 2017, <https://www.premiumtimesng.com/news/top-news/220217-nigeria-grants-335-foreigners-citizenship.html>; ‘FG presents certificates to 335 naturalised, registered citizens’ <https://fmic.gov.ng/fg-presents-certificates-335-naturalized-registered-citizens/>, 17 May 2017

<sup>67</sup> ‘The National Conference: Final Draft Conference Report’ (Government of Nigeria 2014), section 5.2.2.

<sup>68</sup> Informal discussion with a senior member of the Ministry of Interior, Citizenship and Business (C&B) on the plight of offspring of naturalised Nigerians. May 2020 (Unpublished).

<sup>69</sup> Ministry of Interior Citizenship and Business Department website <https://ecitbiz.interior.gov.ng/citizenship/overview>, accessed 12 May 2020.



appropriate method to grant or recognise Nigerian nationality in such situation.<sup>70</sup> As at the time of writing this report, the committee is yet to submit its recommendation, and the implication is that the procedure of acquiring citizenship by confirmation by offspring of naturalised Nigerians remains suspended.

#### 5.4 Gender discrimination

Another call for citizenship law reform in Nigeria relates to the inability of Nigerian women to pass their citizenship to their foreign spouses on the same footing as their male counterparts. As noted above, by virtue of Section 26(b) of the Constitution, only women can register as Nigerian citizen on grounds of marriage; while foreign men married to Nigerian women will have to wait for at least 15 years and satisfy other conditions before they qualify to apply for naturalisation.<sup>71</sup>

Nigeria is a party to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which prohibits discrimination in transmission of nationality to spouses and children.<sup>72</sup> In a report to the CEDAW Committee in 2008, the Nigeria CEDAW NGO Coalition emphasised the need for the review of Nigerian citizenship law to give women citizens the same rights as Nigerian men:

*The Nigerian Constitution in Section 26 allows a foreign woman who is married to a Nigerian man to automatically become a Nigerian whereas; this automatic citizenship does not apply in the case of a Nigerian woman married to a non-Nigerian man. This is a serious denial of the rights of Nigerian women who marry foreigners to have their spouses become Nigerian by the virtue of marriage: A right which every Nigerian man enjoys. It is really disheartening that the Constitution of Nigeria harbours and promotes discrimination against women in nationality issues. This provision needs to be reviewed for gender balance and equality.<sup>73</sup>*

UNHCR and other national statelessness prevention advocates have in many occasions advocated with the government for law reforms in this regard to enable Nigeria to comply with its obligations under CEDAW.<sup>74</sup> Women's groups participated actively in the Citizens' Forum for Constitutional Reform, advocating for gender equality in citizenship rights as in other matters.<sup>75</sup> The National Conference of 2014 also recommended the removal of gender discrimination in transmission of citizenship by marriage.<sup>76</sup>

<sup>70</sup> Informal discussion with a senior member of the Ministry of Interior, Citizenship and Business (C&B) on the plight of offspring of naturalised Nigerians

<sup>71</sup> See 1999 Constitution, Section 27

<sup>72</sup> CEDAW, Articles 1, 2, and 9.

<sup>73</sup> Nigeria CEDAW NGO Coalition Report Submitted to the 41st Session of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women June 30 – July 18, 2008. Accessed 14/05/2020 via <https://www.fidh.org/IMG/pdf/Nigeria-report.pdf>.

<sup>74</sup> See submission by the UNHCR for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: NIGERIA. 2013, Accessed 01/04/2020 via <https://www.refworld.org/pdfid/5142f5912.pdf>. See also

<sup>75</sup> Charmaine Pereira, 'Understanding Women's Experiences of Citizenship In Nigeria: From Advocacy To Research', in *Gender, Economics and Entitlements in Africa* (Dakar: CODESRIA, 2004), pp. 87-110. Accessed 14/05/2020 via <https://www.codesria.org/IMG/pdf/PEREIRA-1.pdf>. See also Position of the CFCR on the Review of the 1999 Constitution of the Federal Republic of Nigeria. Citizens' Forum for Constitutional Reform 2001

<sup>76</sup> 'The National Conference: Final Draft Conference Report' (Government of Nigeria 2014), section 5.2.2.

## 5.5 Risk of arbitrary denial of citizenship

The absence of legislation or regulations to elaborate on the citizenship provisions of the 1999 Constitution means that there is no legal guidance on procedures to determine who is a citizen. There is also no document established by law that provides proof that a person is a citizen, whether issued by a court or other authority.<sup>77</sup> While a decision to refuse recognition of citizenship could be subject to judicial review in the Federal High Court or a state high court, founding an application on the Fundamental Rights (Enforcement Procedure) Rules of 2009, this is expensive and out of reach for most people.<sup>78</sup>

Most of those without documentation of citizenship, or who face challenges in acquiring such documentation in Nigeria, are likely to be Nigerian citizens under the law, but without the means to prove it under current systems. Procedures are needed to confirm citizenship in these cases.

In other cases, individuals or groups may not be citizens under the law, but nonetheless have stronger connections to Nigeria than to any other country, and no other country where they could obtain recognition of citizenship. This could apply for example, to some former Liberian or Sierra Leonean refugees, and especially to their descendants. In these cases, efforts should be made to provide facilitated naturalisation, by relaxing the usual procedures.

A notorious historical case in which a person previously recognised as a citizen was denied recognition of citizenship was the ‘Shugaba Affair’ of 1980, in which an opposition politician was accused of being a foreigner (see box). However, it is likely that less prominent individuals have been affected by similar actions, for example on applying and being rejected for a passport or national identity card, though they had previously considered themselves to be citizens.

### **The Shugaba Affair**

In 1980 the government of President Shehu Shagari arrested and expelled to Chad the majority leader of the opposition-controlled state legislature of the North Eastern state of Borno, Shugaba Abdulrahman Darman. The basis of the deportation was asserted to be that Shugaba was a Chadian national, because his father was born in Chad, and therefore he himself was not a Nigerian (Nigeria did not at that time permit dual citizenship). The Federal High Court, the Appeal Court and the Supreme Court all ruled in favour of Shugaba Darman and revoked the deportation order.<sup>79</sup>

<sup>77</sup> Generally, countries within the Commonwealth do provide for a certificate that is proof of citizenship, but issued by the executive. For example, the Ghana Citizenship Act 2000, provides in its Section 20 that: ‘The Minister may, on an application made by or on behalf of any person with respect to whose citizenship of Ghana a doubt exists under Part I of this Act, certify that the person is a citizen of Ghana and a certificate issued under this section shall be prima facie evidence that the person was such a citizen at the date indicated in the certificate, but without prejudice to any evidence that he was such a citizen at an earlier date.’ There is a similar provision in Section 14 of the Gambia Nationality and Citizenship Act, 1965, and in Section 24 of the Sierra Leone Citizenship Act 1973. Nigeria does not have such a provision.

<sup>78</sup> Anukenyi Ogbuabor, ‘Expanding the Frontiers of Judicial Review in Nigeria: The Gathering Storm’, *Nigerian Juridical Review*, Vol.10 (2011-12), pp.1-21.

<sup>79</sup> *Shugaba Abdulrahman Darman vs. Federal Minister of Internal Affairs and 3 Others* [1981] 2 Nigerian Constitutional Law Reports 459; Samuel Akanmode, *The Shugaba Affair* (Lagos: Nigerian Council for National Awareness 1980).



## 5.6 Action against statelessness

Nigeria is a party to all the relevant international and African instruments relating to the right to nationality; and in 2011 it acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.<sup>80</sup> Despite being the first State in the West Africa sub-region to accede to the 1954 and 61 Conventions,<sup>81</sup> Nigeria has yet to domesticate the Conventions to give them the force of law in Nigeria.<sup>82</sup>

At regional level, Nigeria has participated in the adoption by the Economic Community of West African States (ECOWAS) of the Abidjan Declaration on the Eradication of Statelessness, committing ‘to prevent and reduce statelessness by reforming constitutional, legislative and institutional regimes related to nationality.’<sup>83</sup> In 2017 ECOWAS ministers meeting in Banjul followed up this Declaration by adopting a Regional Plan of Action to Eradicate Statelessness in West Africa. Under this plan of action, ECOWAS has stated that:

*ECOWAS, in collaboration with UNHCR and the competent institutions of the African Union, will assist Member States by adopting common standards that will guide the reform of nationality legislation of West African States, including inter alia the removal of discriminatory provisions in the transmission of nationality and the inclusion of safeguards against statelessness to ensure that every child acquires a nationality at birth.*<sup>84</sup>

The Plan of Action also noted the ‘urgent need to obtain more concrete information about the sources of statelessness and the obstacles to acquisition of nationality as well as potential ‘at risk’ groups’.<sup>85</sup>

At national level, the Government of Nigeria, with support of UNHCR and other relevant stakeholders, worked to draft a National Plan of Action to end statelessness in Nigeria in 2016, updated in 2018. As the time of writing this report, the Plan of Action is yet to be approved by the Federal Executive Council to make it an official policy of the Government. At the UNHCR High-Level Segment on Statelessness held in Geneva in October 2019, Nigeria pledged to develop a determination procedure to identify stateless persons, grant protection status and facilitate appropriate solutions.<sup>86</sup>

<sup>80</sup> Ratification status for UN human rights treaties at <http://indicators.ohchr.org/>; for the statelessness conventions at <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>; and for the African Union at <https://au.int/en/treaties>.

<sup>81</sup> UNHCR, *Acceding to the UN Statelessness Conventions*. Ending Statelessness within 10 Years - Good Practices Paper Action 9, p.8.

<sup>82</sup> Nigeria is a dualist State, as such, foreign treaties or international laws must first be received through an Act of the National Assembly before they are binding in Nigeria.

<sup>83</sup> Abidjan Declaration of Ministers of ECOWAS Member States on the Eradication of Statelessness, 15 February 2015; endorsed by the Communique of the 47th Ordinary Session of the ECOWAS Heads of State, 19 May 2015.

<sup>84</sup> Banjul Plan of Action of the Economic Community of West African States (ECOWAS) on the Eradication of Statelessness 2017 – 2024, 9 May 2017, Preamble, and Strategic Objective 1.3.

<sup>85</sup> *Ibid.*, Strategic Objective 2.

<sup>86</sup> See UNHCR, *Results of the High-Level Segment on Statelessness*. Accessed 14/05/2020 via <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

## 6. Conclusion

Some reforms to citizenship law in Nigeria would require constitutional amendments, a challenging undertaking, as the long-standing efforts to reform the 1999 constitution have shown. This would apply in particular to the removal of gender discrimination in transmission of citizenship between spouses, which is explicitly provided for in the constitution, but may also be required to resolve the status of the Bakassi peninsula residents who have relocated to Nigeria. However, other reforms could be carried out through primary or secondary legislation: since the repeal of the Citizenship Act in 1974, Nigeria has not had specific citizenship legislation to give clarity to the grey areas in Chapter III of the 1999 Constitution and establish procedures for its implementation. Changes to the law and procedures could be effected by adopting a new Citizenship Act, or by using the powers given to the president by Section 32 of the 1999 Constitution to issue regulations in relation to citizenship, or the authority given to the Minister of the Interior to adopt directives for determination of nationality under section 28 of the Immigration Act.

The necessary reforms to bring national law into line with international standards would include: a presumption of Nigerian citizenship for children of unknown parents found in Nigeria; provision for acquisition of Nigerian citizenship for children born in Nigeria of stateless parents or who cannot obtain the nationality of their parents, as well as for acquisition of Nigerian citizenship by adopted children; removal of gender discrimination in transmission of citizenship between spouses; relaxation of the criteria for naturalisation and provision for the minor children of those who are naturalising to be included within the same application; and provision for facilitated naturalisation for certain categories of person at risk of statelessness. There is also need for confirmation of the status of those who acquired citizenship in accordance with the transitional provisions in place in 1960 and under the laws in force between 1960 and 1979, and their descendants, if they are not considered to belong to a ‘community indigenous to Nigeria’.

The unconstitutional suspension of recognition of the citizenship the children of naturalised citizens, coupled with the question of belonging to a ‘community indigenous to Nigeria’, raises complex questions of legal status and belonging. What is the status of persons who acquire Nigeria citizenship other than by membership of an ‘indigenous community’? Where do their offspring belong, against the backdrop of an actual or potential lack of recognition as acquiring Nigerian citizenship at birth? Over how many generations of ancestors born in Nigeria can a person still be regarded as not ‘indigenous’? These questions are relevant and necessary for policy makers, not only because of the internal discrimination in access to services and political rights by those who are ‘non-indigenes’ where they live, but also because they impact access to Nigerian citizenship itself – even if a person has no known ancestors born anywhere other than Nigeria.<sup>87</sup>

These questions are likely to become more urgent as the requirement to hold a national identity card becomes more widely implemented. Thus, in relation to identity documents and proof of citizenship, there is a need for legislation to establish with greater legal force and clarity the following: the documentary and other evidence of identity and citizenship to be produced to obtain a passport or national identity card; the criteria to obtain a certificate of indigeneity, including for children of unknown parents or others where a connection to a particular LGA is hard to establish; and the presumption that a national identity card or passport

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<sup>87</sup> Solomon Oseghale Momoh, *Statelessness and Right to Nationality: Avoiding the Uncertainties Under the Nigerian Constitution*. p.10

is proof of citizenship or other legal status in the country (as indicated on the face of the document), and that the burden of proof is on any person or institution contesting this status to show otherwise to the satisfaction of a court.

With regards to procedural reforms, perhaps the most important for the implementation of citizenship law in Nigeria is the creation of independent and transparent procedures to determine citizenship status where it is in doubt. At the more practical level, there is a need to redouble efforts to ensure universal birth registration for children born in Nigeria, as well as to improve the outreach of Nigerian consular authorities to Nigerian citizens resident abroad, in particular for the documentation of children born outside the country.

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