Nationality, Migration and Statelessness in West Africa

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Gaps in the law

• State succession at independence & transfers of territory by ICJ
• Weak rights attached to birth in the country
• Gender discrimination
• Racial and ethnic discrimination
• Dual nationality rules easily misinterpreted
• Naturalisation very difficult to access
• Constitution & laws conflict (eg Liberia, Togo)
• No process to identify stateless persons
Trends

1960s/70s:
• Reduction in rights based on birth in the territory (Côte d’Ivoire, Gambia, Ghana, Niger, Nigeria, Sierra Leone)

Since 1990s:
• Increased tolerance of dual nationality
• Reduced gender discrimination

2015→
• Increased protections against statelessness?
Nationality based on birth in the territory

• Child is a national if born in territory:
  – C. Verde (if parents res. 5 yrs), Liberia (if “Negro”)*
    * under the law but not under the constitution

• If one parent also born in territory:
  – Benin, Burkina Faso, Guinea, Mali (if parent of “African origin”), Niger, Senegal, Sierra Leone (if “Negro-African”), Togo (both parents)

• If born + resident until majority:
  – Benin, Burkina, Guinea, Mali, Togo

• If parents unknown/abandoned baby:
  – Benin, Burkina Faso, Cape Verde, Ghana, Guinea, Guinea Bissau, Mali, Niger, Senegal
Birth in the territory (2)

• If parents stateless:
  – Benin, Cape Verde, Guinea Bissau

• If cannot acquire nationality of parent:
  – Burkina Faso, Cape Verde, Guinea Bissau, Togo

• No rights based on birth in territory:
  – Côte d’Ivoire, Gambia, Nigeria, (& Liberia*, Sierra Leone if not “negro”)

* In Liberia no rights if only the constitution is applied & not the law
Gender & racial discrimination

• Equal rights for men and women
  – Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea Bissau, Niger, Senegal

• Racial discrimination
  – Liberia, Sierra Leone, (Mali)

• Ethnic discrimination
  – Nigeria (“indigenous community”)
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<thead>
<tr>
<th>Country</th>
<th>Always</th>
<th>Sometimes</th>
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<td>Benin</td>
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<td>Burkina Faso</td>
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<td>Cape Verde</td>
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Naturalisation

- 3 yrs residence (Benin) → 15 yrs (Nigeria)
- Good conduct & morals / bonne vie & moeurs
- Good health, sufficient income
- Proof of existing nationality
- Administrative burden & costs
- Highly discretionary
- Very few obtain in practice
The importance of administrative systems

- Civil law vs common law heritage
- Civil registration & other forms of evidence
- Identity cards & conditions to obtain
- Proof of nationality
- Official and unofficial costs
- Due process, possibility of appeal
Taxonomy of statelessness

- **Migrants**
  - Historical migrants and their descendants
  - Contemporary migrants
  - “Returnees” to a country of origin (e.g., from CAR)
  - Asylum seekers, refugees and former refugees

- **Cross border populations**
  - Ethnic groups divided by international borders
  - Nomads (Tuareg, Fulani)
  - Zones where borders have been changed (Bakassi)

- **Vulnerable children (who become adults)**
  - Born out of wedlock, abandoned, orphans
  - Child workers, trafficked, forced marriage
Regional cooperation

• is badly needed…

• Integration with freedom of movement
• Harmonisation of laws
• Bi- & multi-lateral commissions to determine nationality
• Regional standard-setting