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Unblocking access to citizenship in the global South:
Should the process be decentralised?

Edited by Bronwen Manby and Rainer Bauböck

European University Institute

Robert Schuman Centre for Advanced Studies

Global Governance Programme

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EUI Working Paper **RSC** 2021/07

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ISSN 1028-3625

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Published in January 2021 by the European University Institute.
Badia Fiesolana, via dei Roccettini 9
I – 50014 San Domenico di Fiesole (FI)
Italy

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Abstract

Why is naturalisation so rare in countries of the global South, and how could access be made easier? More than one third of global migration is into low and middle income countries; three-quarters of the global refugee population is hosted by countries in Africa, Asia, or Latin America and the Caribbean. Yet few migrants and refugees in poor or middle-income countries ever get the opportunity to change their nationality and become citizens of the states where they settle. This working paper compiles contributions to a GLOBALCIT Forum debate launched by Bronwen Manby with a proposal that the problem of lack of access to naturalisation should be addressed by developing local responses rather than national ones. The Forum was co-edited by Bronwen Manby and Rainer Bauböck, and brought responses from fifteen authors considering the viability of the proposal in relation to countries in Africa, Latin America, and South and East Asia. It concludes with reflections from both editors on the critiques of the original proposal.

Keywords

Naturalisation, Africa, Asia, Latin America, Decentralisation

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Kick-off contribution

Unblocking access to citizenship in the global South: Should the process be decentralised?

[Bronwen Manby](#)*

More than one third of global migration¹ has low and middle income countries as the destination; three-quarters of the global refugee population² is hosted countries in Africa, Asia or Latin America and the Caribbean. Yet few migrants and refugees hosted by poor or middle-income countries ever get the opportunity to change their nationality and become citizens of the states where they settle. I propose that the problem of lack of access to citizenship should be addressed by developing local responses rather than national ones.

The right to change nationality

Article 15 of the Universal Declaration of Human Rights establishes three elements of the right to a nationality in international law: the right to a nationality itself; the right not to be arbitrarily deprived of nationality; and the right to change nationality. The first element gets attention from those interested in the conundrum of statelessness, in membership and belonging; the second from those concerned about discrimination, due process, and the rule of law; but the third element is comparatively neglected by the policy and scholarly communities.

What does the right to change nationality mean? At the minimum legalistic level it requires that a person should have the right to renounce a birth nationality (provided that they can show that they have or will immediately acquire another nationality). But for the right to be real a person must also have the right to acquire nationality in another country than their country of birth, based on their strong connections there. In practice this is often not available.

The percentage of settled immigrants with host country citizenship reaches 90 percent in Canada, 81 percent in Australia, 62 percent in the US, and an average of 59 percent across the European Union³ (though with much variation⁴). In Africa and Asia we have no such statistics: but it is clear that naturalisation is often almost completely inaccessible, especially to those who most need it. Among African states⁵, Nigeria – population estimated at 200 million – grants no more than a couple of hundred people citizenship each year (among them a substantial number who are the wives of Nigerians; gender discrimination applies in acquisition by spouses). South Africa, which until around 2010 naturalised ten thousand or more each year, has decided that naturalisation should be ‘exceptional’⁶ and reduced the

* London School of Economics and Political Science; regional GLOBALCIT coordinator for Africa.

¹ ‘International migrant stock 2019’ United Nations Population Division, Department of Economic and Social Affairs.’ <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates19.asp>.

² ‘Global Trends - Forced Displacement in 2018.’ UNHCR, 20 June 2019, <https://www.unhcr.org/globaltrends2018/>.

³ ‘Settling in 2018 – Main Indicators of Immigration Integration.’ OECD and European Commission, 2018, <http://www.oecd.org/els/mig/Main-Indicators-of-Immigrant-Integration.pdf>.

⁴ Huddleston, T. (2020), ‘Naturalisation in context: how nationality laws and procedures shape immigrants’ interest and ability to acquire nationality in six European countries’, *Comparative Migration Studies* 8(28): 1-20.

⁵ Manby, B. (2016), ‘Citizenship Law in Africa: A Comparative Study’, Open Society Foundations.

⁶ ‘White Paper on International Migration for South Africa’, (2017), Department of Home Affairs, p. 26. <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>.

numbers to a few hundred. The statistics that can be gleaned from other African countries indicate that the numbers are everywhere low, sometimes in single figures each year, or zero.

The naturalisation provisions in the laws of post-colonial states largely mirror those of the colonisers, with minor variations adopted since independence⁷ – usually to make citizenship harder to acquire, by lengthening the residence period or creating stronger requirements of cultural assimilation. The list of conditions for naturalisation is, however, largely irrelevant. The key point about these rules is that they are based on assumptions that all those migrating from one country to another have identity documents confirming the nationality of their country of origin, a currently valid travel document, official permission to be in the country, proof of legal residence over the necessary period, and a fee of at least several hundred dollars (US\$ 5,000 in the case of Tanzania⁸). This is obviously moonshine for most migrants in poorer countries. Moreover, naturalisation is everywhere completely discretionary in law, and often perceived as being a personal favour given by the president. Scandals over corruption in naturalisation have convulsed the media in South Africa (the Gupta brothers naturalised by President Jacob Zuma) and Comoros (the scheme to sell ‘economic citizenship’ to be imposed on more than 40,000 stateless *bidoon* from the United Arab Emirates⁹); and disquiet at abuse of naturalisation powers arises from time to time in many states.¹⁰

The increased importance of naturalisation if birth in the territory gives no rights

Access to naturalisation is less important in states where the law provides for automatic attribution of nationality based on birth in the territory – whether for the first or second generation born in the country – and the procedural arrangements ensure that this right is respected in practice (which is far from given). In francophone West Africa¹¹ for example, all states – apart from Côte d’Ivoire – provide that the second generation born in the country are automatically attributed nationality at birth; tribunals have the power to issue a certificate of nationality confirming this status, including late registration of birth as a prior step to recognition of nationality. Unlike the countries of the Americas that provide *ius soli* attribution of citizenship at birth, the interim generation may still face problems in claiming nationality either of the country of the parents or of birth, but a family can change its affiliation over time; and this right is guaranteed by the courts, not dependent on executive goodwill.

In those states where there are no rights based on birth in the territory – or the right in law is not respected in practice – access to naturalisation is critical to enable change of nationality. It is also critical to avoid statelessness, as the second and third generations born in a territory lose any connection to a notional state ‘of origin’, and above all any hope of proving that connection in practice. Yet so long as existing procedures remain in place it is hard to see how naturalisation would ever be scaled to the level at which it would address the needs of the very large numbers of Africans who have no documents confirming citizenship of any state, and no possibility of satisfying the legal requirements, because they lack the necessary documents and money.

⁷ Manby, B. (2018). *Citizenship in Africa: The Law of Belonging*. Hart Publishing, www.bloomsburyprofessional.com/uk/citizenship-in-africa-9781509920778/.

⁸ Manby, B. (2018), ‘Statelessness and Citizenship in the East African Community’, UNHCR. <https://data2.unhcr.org/en/documents/details/66807>

⁹ ‘Comores: Rapport de la Commission d’enquête parlementaire sur la Loi relative à la citoyenneté économique.’ Parlement des Comores, December 2017, available at <http://citizenshiprightsafrika.org/comores-rapport-de-la-commission-denquete-parlementaire-sur-la-loi-relative-a-la-citoyennete-economique/>.

¹⁰ ‘Angolans Indignados Com Proposta De Mudanças Na Lei Da Nacionalidade.’ Deutsche Welle, 7 October 2014, available at <http://citizenshiprightsafrika.org/angolans-indignados-com-proposta-de-mudancas-na-lei-da-nacionalidade/>.

¹¹ Manby, B. (2015), ‘Nationality Migration and Statelessness in West Africa’, UNHCR and IOM.

Some states have recognised this reality. The best known case is that of Tanzania, which, in a stop-start process from 2007 to 2016, facilitated naturalisation of more than 160,000 Burundian refugees resident in the country since the 1970s.¹² Guinea Bissau, Liberia and Mali have also naturalised long-term refugees; while Côte d'Ivoire, Kenya and Namibia have undertaken outreach to groups of long-term migrants to facilitate acquisition of citizenship. But these programmes are rare and incomplete, and generally depend on agitation and assistance from civil society groups or facilitation by UNHCR.

Decentralisation: a radical solution – or a legal framework for existing practice?

What would unblock the naturalisation route for normal purposes? I propose a radical solution: decentralisation. The right to grant nationality to those who have not acquired it at birth should be given to a sub-national unit of government, whether local or regional according to the constitution of each state.

This proposal is less radical than it sounds: in practice, it is often what already happens. In countries where civil registration systems are weak – birth registration is on average less than 50 percent of under-fives across the African continent, and registration of other civil status events much lower – states have put in place other systems to decide if a person is entitled to an identity document recognising citizenship as an adult. These vary from country to country, but generally involve the screening of applicants on the basis of witness testimony, including support from traditional or community leaders. In Nigeria and Ethiopia, these systems are deeply embedded in the identity management systems, in the form of a 'certificate of indigeneity' or '*Kebele* ID' issued by local government authorities. In Kenya, applications for national identity cards made in border regions, or certain parts of Nairobi known to have large populations of foreign origin, are reviewed by 'vetting committees', made up of civil servants and security officials and selected community representatives. The procedure for late registration of birth by a court (*jugement supplétif*) and issue of nationality certificate in the francophone states also depends on witness testimony that the relevant facts that a person asserts are correct. In the end, all identity systems go back to this affirmation by others that a person is who they say they are, even if this is disguised in countries where civil registration has been close to 100 percent over several generations.

The problem with these procedures is that they can often be arbitrary. There are no laws adopted by parliaments establishing the rules for these local authority or vetting committee procedures; they are set up by ministerial regulation, departmental directive, or according to independent local understandings. Accordingly, the basis on which the decisions are made can vary greatly across one country, and have little rationality understood by informed observers. In Nigeria, for example, the question of 'indigeneity' has been a controversial and much debated one¹³, ever since the concept of 'indigenous community' as the basis of citizenship was introduced in the 1979 constitution. Despite numerous efforts, no progress has been made towards adopting a law to provide a set of rules to govern its interpretation. On the other hand, where procedures for nationality verification have a stronger legal foundation, as in the francophone tribunal-based procedure to issue a certificate of nationality, they are difficult to access. There are heavy costs in time and money to bring to a regional court perhaps half a dozen people needed as witnesses, who must spend hours or days queuing for a slot with the judge – only to be told that another witness or supporting document is also needed and they must all come back again.

The current procedures to verify identity are aimed at establishing who is already a citizen, rather than at granting citizenship. Yet the various committees or local government authorities may have little or no training in the law. Although this is, or should be, much less true of a procedure before a tribunal,

¹² Markus, F. 'Tanzania Grants Citizenship to 162,000 Burundian Refugees in Historic Decision.' UNHCR, 17 Oct. 2014 <https://www.unhcr.org/5441246f6.html>. .

¹³ Gyang Mang, H. and D. Ehrhardt (2018), 'The politics of paper: negotiating over and around indigeneship certification in Plateau State, Nigeria', *Canadian Journal of African Studies* 52 (3): 331-347. (DOI: <https://doi.org/10.1080/00083968.2018.1546602>)

those giving supporting testimony almost certainly have no such training. What is therefore going on in these individual application procedures is a decision about whether a person is sufficiently accepted by the relevant community to be accorded the right to belong *as if* they were born a citizen (even if that was not in fact the case, because of the restrictive nature of the law). They are often in effect also decentralised systems of naturalisation.

Switzerland is the country with the currently most decentralised naturalisation system in law. Federal law specifies only general minimum requirements, and applicants for citizenship are naturalised at municipal level under cantonal laws: municipalities are thus the most important level for ordinary naturalisations. This system has been heavily criticised, on the grounds that it permits high levels of discrimination¹⁴ on the basis of race and religion, and that there is a lack of clearly established local regulations.¹⁵ At the more ludicrous end of such obstacles, a Dutch woman was twice denied naturalisation by her local village council because she complained about cow bells (she eventually won the argument).¹⁶ Until 2003 municipalities could decide on individual naturalisations through votes in a referendum, a procedure that was stopped by the Federal Supreme Court. There are clearly risks in going this route, and a well-articulated vision of what it means to be a citizen is needed. Yet even in theoretically centralised systems, such as France, a degree of local discretion is observed.¹⁷

Embracing multilevel citizenship

My proposal rests on the understanding that in states where central institutions have weak legitimacy and capacity, a form of multilevel citizenship¹⁸ is already in place, even where there is no distinct sub-polity recognised in law to have co-existent sovereignty with the national state. The procedures by which citizenship is *already* established thus need legal regulation to make the conditions transparent, their implementation more predictable, and their appeal possible. And they should include the explicit possibility of local naturalisation for those who are not currently citizens but whose credentials as community members are attested according to legally established rules. The proposal is not to add a local layer of approval to an application process that is finally authorised by the minister or president, a system that already exists in some countries; but that local decisions – overseen by courts – would be determinative of the national body of citizens.

My assumption is that distrust of naturalisation would reduce, and the numbers naturalised by such procedures would greatly increase. GLOBALCIT's recent forum on urban citizenship¹⁹ highlighted the

¹⁴ Hainmueller, J. and D. Hangartner (2013), 'Who Gets a Swiss Passport? A Natural Experiment in Immigrant Discrimination', *American Political Science Review* 107 (1): 159-187. (DOI:10.1017/S0003055412000494)

¹⁵ Helbling, Marc (2010), 'Switzerland: Contentious Citizenship Attribution in a Federal State', *Journal of Ethnic and Migration Studies* 36 (5): 793-809. (DOI: 10.1080/13691831003764334)

¹⁶ 'Dutch anti-cowbell campaigner finally handed Swiss citizenship' *TheLocal.ch*, 28 Mar. 2018 <https://www.thelocal.ch/20180328/dutch-anti-cowbell-campaigner-finally-handed-swiss-citizenship-nancy-holten>.

¹⁷ Weil, P. (2002), *Qu'est-ce qu'un Français? Histoire de la Nationalité Française depuis la Révolution*, (Grasset).

¹⁸ Maas, W. (ed.) (2013), *Multilevel Citizenship*. University of Pennsylvania Press.

¹⁹ 'Cities vs States: Should urban citizenship be emancipated from nationality?' *Globalcit*, 18 Feb. 2020, <https://globalcit.eu/cities-vs-states-should-urban-citizenship-be-emancipated-from-nationality/>.

possibilities for local citizenship to open up participation and membership in ways that national citizenship could not. According to data collected by Afrobarometer (Round 5 of their surveys), based on opinion polling in 29 African states, an average of 62 percent of Africans think a person should have the right to become a citizen based on a contribution through living and working in the country. In no state was there a majority against (though in several the split for and against was quite even).²⁰

Of course, my assumption is also that the rules will be manipulated (just as the existing ones are), and that in places where conflict over land and resources are particularly acute there is a high level of risk that naturalisation procedures would be captured by only one side of such disputes. Protections against such abuses are needed; above all, transparent rules and low-cost access to independent adjudication mechanisms, including appeal to the normal courts. These protections are *already* needed but, in the absence of clear legal frameworks for the lowest level of citizenship administration, cannot effectively be provided.

Historically, the boundaries of membership in African states have been blurred by the many borders that cut through pre-colonial polities, and the reality that official identity documents have often not been necessary to operate as a member of society. But identification systems are in the process of radical change and reinforcement across the continent. The division between citizen and non-citizen is being made both more visible and more binary. Without a system to ease the path to naturalisation, to make the right to change nationality a reality, many Africans will find themselves newly stateless: excluded from citizenship where they live on the grounds that they are foreigners; but at the same unable to prove any connection to a country ‘of origin’.

I have focused on African states, where I have done most research. But my guess is that many of the problems will be similar in other regions of the global South. I hope for contributions that will tell us whether decentralising naturalisation might be a solution that allows post-colonial states to re-imagine their nationhood.

²⁰ ‘The Online Data Analysis Tool.’ Afrobarometer, afrobarometer.org/online-data-analysis/analyse-online.

Unblocking access to citizenship in South America: policy-makers, courts and other actors

[Diego Acosta](#)*

In her kick-off, Bronwen Manby describes a problematic reality – the difficulty to naturalise in certain countries in the global South and the consequently low number of naturalisations – and advocates, bearing in mind the African context, a decentralisation through which local or regional authorities would have the right to grant nationality. Whilst I agree with the diagnosis, I beg to differ on the solution taking into account a different regional context, that of South America. The role of other actors such as courts, the Inter-American Commission and Court on Human Rights, UN Committees, academia and ombuds offices (*Defensores del Pueblo*) emerge as more important.

Ius soli in South America

In South America,¹ *ius soli* has been the preferred route of access to nationality in all ten countries since independence in the early 19th century.² Unconditional *ius soli*, whilst far from perfect in its implementation in some cases,³ continues to be the norm in all of them, with two exceptions. In both of these cases, courts and other actors have played a major role in mitigating the limits established in the law.

First, Chile does not apply *ius soli* if the parents are ‘in transit’ (*transeúnte*). The previous administrative practice also denied nationality to those born to parents in irregular situation. However, in numerous cases the Supreme Court has confirmed⁴ that parents residing in the country without a regular permit could not be considered as being ‘in transit’, thus their offspring were entitled to Chilean nationality.⁵ This cases were the result of pressure by UN Committees on the elimination of racial discrimination, on the rights of children and on migrant workers, as well as academia⁶. Second, Colombia removed unconditional *ius soli* already in 1886 and requires parents to be domiciled, thus excluding children of undocumented migrants. The arrival of 1.8 million Venezuelans since 2015, more than a half of whom were undocumented, led to approximately 25,000 children becoming stateless, their parents not being able to avail themselves of the right documents to register them as Venezuelans

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¹ This response includes as South America the following countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela. Guyana and Suriname are excluded due to their different colonial and legal tradition when it comes to nationality and citizenship. For more information see: Diego Acosta, *The National versus the Foreigner in South America. 200 Years of Migration and Citizenship Law* (CUP, 2018), notably chapters 2, 3, 5 and 6.

² Acosta, D. (2017), ‘Open borders in the nineteenth century: constructing the national, the citizen and the foreigner in South America’, *Working Paper, EUI RSCAS, 2017/46, Global Governance Programme-282, GLOBALCIT*. <https://cadmus.eui.eu/handle/1814/48009>.

³ ‘Born in the Americas: The Promise and Practice of Nationality Laws in Brazil, Chile, and Colombia’ Open Society Justice Initiative, Mar. 2017 <https://www.justiceinitiative.org/uploads/8c4136e4-c25d-4255-9afd-d66d20e71da1/born-in-the-americas-20170323.pdf>

⁴ ‘*Revista Colecciones Jurídicas de la Corte Suprema: Migrantes*’. Dirección de Estudios de la Corte Suprema, July 2019, available at <https://www.slideshare.net/DireccindeEstudiosde/migrantes-revista-colecciones-juridicas-de-la-corte-suprema>.

⁵ Bertin, X. ‘Más de 2.500 hijos de migrantes en tránsito considerados apátridas tienen derecho a ser chilenos’. *La Tercera*, 25 Nov. 2016, <https://www.latercera.com/noticia/mas-2-500-hijos-migrantes-transito-considerados-apatridas-tienen-derecho-chilenos/>.

⁶ Lawson, D. and M. Rodríguez. (2017), ‘Addressing the risk of statelessness in Chile: From strategic litigation to #chilereconoce’, *Statelessness Working Paper Series No. 2017/03*, Institute on Statelessness and Inclusion.

through *ius sanguinis*. Faced with pressure from academia⁷ and a draft bill presented by the Ombudsman,⁸ the government adopted a provision in 2019 granting Colombian nationality to such children, a provision that was later expanded through a ruling by the Constitutional Tribunal.⁹

Naturalisation in South America

In South America, most nationality laws can be characterised as moderately open to naturalisation in comparative perspective. Residence periods for those willing to naturalise are relatively short, ranging from two years in Argentina and Peru, three in Bolivia, Ecuador and Paraguay, four in Brazil and five in Chile, Colombia and Uruguay (in this last case to access a status of legal citizenship that is not equivalent to nationality, since naturalisation *stricto sensu* does not exist in Uruguay); the only exception is Venezuela, which requires ten years. The historical origins of this trend can be traced back to the years following independence, when waiting periods before naturalisation were considerably shortened as a way to attract settlers. In Argentina, the 1869 law continues to regulate naturalisation. Its Supreme Court had clearly established in 2009 that the residence period required did not refer to any particular legal category, thus migrants in irregular situations could also apply for nationality after proving two years of dwelling in the territory. However, the government amended that interpretation in 2017 through a controversial decree so that legal residence is required now. Dual citizenship is accepted everywhere except in Paraguay. Countries also demand requirements which are also common in other jurisdictions, such as a lack of criminal convictions (e.g. in Argentina, Bolivia, Brazil, Chile, Ecuador, Peru), an oath of loyalty (e.g. in Argentina, Colombia), civic knowledge including history, geography or constitutional law (e.g. in Bolivia, Colombia, Ecuador, Paraguay); language proficiency (e.g. in Brazil, Colombia, Ecuador, Paraguay), good behaviour or morals (e.g. in Brazil, Chile, Ecuador, Paraguay, Peru, Uruguay), not posing a danger to public interests or security (e.g. in Chile, Ecuador), as well as good health (e.g. in Brazil and Ecuador).

Despite what can be considered as conditions that are easy to fulfil on paper, the number of naturalisations – in countries where data is available – is extremely low. For example, in Uruguay, only 3770 obtained legal citizenship between 2006 and 2018. The number was 7800 in Chile (2006-14).¹⁰ Data for Peru show 13,254 naturalisations (2001-2017).¹¹ Numbers are not higher in Colombia or Paraguay,¹² with less than 220 (2010-11) in the former and 777 (1996-2013) in the latter. In Argentina, which has the largest number of non-nationals in the region with 2.2 million,¹³ an average of 5000 naturalised between 2015-18, amounting to only 0.2% of the total number.

⁷ Casetro Franco, A (ed.) (2019), 'Venezuela migra: aspectos sensibles del exodo hacia Colombia', Universidad Externado de Colombia, (Temas de derecho internacional público, no. 2).

⁸ 'Defensoría radica proyecto de ley para nacionalizar a niños de padres venezolanos'. *El Espectador*, 8 Apr. 2019 <https://www.elespectador.com/noticias/politica/defensoria-radica-proyecto-de-ley-para-nacionalizar-a-ninos-de-padres-venezolanos/>.

⁹ Castro, A. 'Three important lessons from the recent decision of the Colombian Constitutional Court.' Globalcit, 19 Feb. 2020, <https://globalcit.eu/three-important-lessons-from-the-recent-decision-of-the-colombian-constitutional-court/>.

¹⁰ Fiscella, J.M. and P.I. Baeza, (2017), 'The nationalization of foreign migrants: A social capitalization from associative participation and civic engagement', *Si Somos Americanos: Revista de Estudios Transfronterizos* 17(2), 127-155.

¹¹ 'Peru: Estadísticas de la Emigración Internacional de Peruanos e Inmigración de Extranjeros, 1990 – 2017', Instituto Nacional de Estadísticas e Informática – INEI; Superintendencia Nacional de Migraciones – MIGRACIONES; Organización Internacional para las Migraciones – OIM; Ministerio de Relaciones Exteriores – RREE, 2018 https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1549/libro.pdf.

¹² Acosta, D. (2017).

¹³ 'Argentina - Inmigración 2019.' Datosmacro.com, Siguenos En, 6 Feb. 2020, <https://datosmacro.expansion.com/demografia/migracion/inmigracion/argentina>

Discussion

What explains such strikingly low numbers? As diagnosed by [Manby](#) in the African case, discretion is an important factor. In contrast to the examples raised by [Manby](#), however, corruption scandals are rare. The 2004 Venezuelan process can be considered an exception. Ahead of a revocation referendum against the then President Hugo Chavez, Venezuela regularised and naturalised between 350,000 and 450,000 non-nationals¹⁴ (although the number is highly contested) in a process of dubious legality. Naturalisation even constitutes an entitlement in two countries: Argentina and Chile. In Uruguay it is also an entitlement, but there foreigners cannot naturalise and can only obtain legal citizenship as opposed to full nationality. In all the rest, it represents a discretionary power exercised by different authorities, including the executive (e.g. Bolivia, Ecuador, Peru) or the Ministry of Foreign Affairs (e.g. Colombia). In some cases, this discretion is used by a variety of actors (e.g. the police in Brazil) involved in the application process, thus leading to possible discrimination in practice.

Secondly, most immigration in South America is regional and in some cases, such as in Paraguay, this reaches 90% of the total.¹⁵ Regional integration processes, such as MERCOSUR and the Andean Community, have facilitated mobility, residence and access to rights for regional migrants thus possibly reducing incentives to naturalise. It is, however, striking to see the enormous appetite for naturalisation Latin Americans show in other parts of the world. Between 2010-2019, more than 654,000 South Americans naturalised in Spain¹⁶ through residence in the country. This does not include South Americans who might have naturalised in Spain through non-residency routes. For example, the largest number of the more than 150,000 applications that Spain has received from descendants of Sephardic Jews expelled in the late 15th century, for whom the country created a privileged restoration of citizenship, come from Latin America.¹⁷ Similarly, Italy has granted most naturalisations by ancestry in countries like Argentina and Brazil. This might have to do with what Yossi Harpaz has presented as the search for a compensatory citizenship.¹⁸

Third, the question arises whether the emigration of around 4.5 million Venezuelans in the last five years, mostly to other countries in South America,¹⁹ would lead to an increase in the number of naturalisations. Unfortunately, the temporary residence permits granted to Venezuelans in the two countries with the largest numbers, Colombia and Peru, do not provide paths to citizenship.²⁰ This clear lack of political will is problematic. Paradoxically, access to citizenship for Venezuelans would offer a strong incentive for their return to Venezuela once the situation improves. In Argentina, out of the circa 200,000 Venezuelans regularly residing there, only 561 had naturalised between 2015 and 2019, despite the short residence period needed of 2 years and the toleration of dual citizenship.

¹⁴ Schwarz, T. (2014), 'Regímenes de pertenencia nacional en Venezuela y la República Dominicana contemporáneas', *Tabula Rasa* 20.

¹⁵ 'International Migration in the Americas: Fourth Report of the Continuous Reporting System on International Migration in the Americas (SICREMI)', OAS and OECD, 2017.

¹⁶ 'Portal de Inmigración: Concesiones de nacionalidad española por residencia. Resultados.' Ministerio De Inclusión, Seguridad Social y Migraciones, Spain. <http://extranjeros.inclusion.gob.es/es/Estadisticas/operaciones/concesiones/index.html>.

¹⁷ Cueto, J.C. 'España y Los Judíos Sefardíes: Quién Se Beneficia De La Decisión De Ofrecer La Nacionalidad a Esta Comunidad.' BBC News Mundo, 8 Oct. 2019, www.bbc.com/mundo/noticias-internacional-49904014.

¹⁸ Harpaz, Y. (2019), 'Compensatory citizenship: dual nationality as a strategy of global upward mobility', *Journal of Ethnic and Migration Studies* 45(6): 897-916.

¹⁹ 'Coordination Platform.' Situation Response for Venezuelans, data2.unhcr.org/en/situations/platform.

²⁰ Acosta, D. et al. (2019), 'La emigración venezolana: respuestas latinoamericanas', *Documentos de Trabajo* 3.

Would decentralisation improve the situation? Whilst the former mayor of Bogotá advocated for the automatic granting of citizenship to Venezuelans in 2018,²¹ I cannot really see how decentralisation would offer a solution. Rather, the combination of mobilisation by some actors, such as the Ombudsman, together with further academic interest can lead to changes, as in the Colombian case mentioned earlier. For example, the ombudsman in Ecuador expressed its concerns with the government's decision to deprive Julian Assange of its Ecuadorian citizenship,²² and the Peruvian Ombudsman participated before the Inter-American Court of Human Rights in the famous case affecting the deprivation of citizenship of business tycoon Baruch Ivcher.²³ The Inter-American system of human rights protection is also crucial in this task.²⁴ Academics need to lead that process and look deeper to unveil the mechanisms through which foreigners remain foreigners in South America and the reasons behind strikingly low naturalisation numbers in the region in comparative perspective. Unfortunately, with very few exceptions²⁵, we lack research on this crucial issue. It could be argued that in countries with absolute *ius soli*, naturalisation remains less important. However, academics need to learn how naturalisation works in practice, how many years the individuals need to wait in reality before they access citizenship, as opposed to on paper, how many applications are rejected and why, what practices of discrimination occur in practice and on what grounds, and what sources of information are provided on the possibility to apply for nationality and the process. This could open a fascinating and collective line of research for the years to come.

²¹ 'Ciudadanía colombiana automática para los venezolanos, propone Peñalosa'. *Semana.com*, 25 Sept. 2018, <https://www.semana.com/contenidos-editoriales/inclusion-los-otros-somos-todos/articulo/ciudadania-colombiana-automatica-para-los-venezolanos-propone-penalosa/584606/>.

²² 'Defensoría del Pueblo expresa preocupación por la decisión del Estado ecuatoriano en el tema Assange'. *El Comercio*, 11 Apr. 2019 <https://www.elcomercio.com/actualidad/defensoria-pueblo-ecuador-asilo-assange.html>.

²³ 'Ivcher-Bronstein Case (*Baruch Ivcher Bronstein vs. Peru*).', Inter-American Court of Human Rights, 6 Feb. 2001 available at Refworld, <https://www.refworld.org/cases,IACRTHR,44e496434.html>.

²⁴ 'CIDH saluda medidas adoptadas para garantizar el derecho a la nacionalidad y prevenir la apatridia en los países de la región', Organisation of American States, 25 Feb. 2019, <http://www.oas.org/es/cidh/prensa/comunicados/2019/042.asp>.

²⁵ Courtis, C. and A.O. Penchaszadeh (2015), 'El (im)posible ciudadano extranjero. Ciudadanía y nacionalidad en Argentina', *Revista SAAP* 9(2): 375-394; Blanchette, T.G. (2015), "'Almost a Brazilian" Gringos, Immigration, and Irregularity in Brazil', in D. Acosta & A. Wiesbrock (eds.), *Global Migration: Old Assumptions, New Dynamics*, 167-194. Santa Barbara: Praeger.

More citizenship, more inequities? Lessons from localised U.S. naturalisation

[Irene Bloemraad](#)*

In her call to localise naturalisation in the global South, [Bronwen Manby](#) embeds two contentions: first, that acquiring citizenship is an important goal, and second, that decentralising the process will increase naturalisation. She acknowledges a potential problem, namely the uneven application of the law across jurisdictions and, perhaps, also across groups of noncitizens. Such variability should worry anyone concerned about discrimination and the fair, neutral application of law. However, [Manby](#) concludes that current practice in Africa is already largely arbitrary. Further, current practice only provides a path to citizenship for, at best, a few hundred immigrants per year or, in some countries, to virtually no one. Faced with no real access to citizenship, [Manby](#) advocates a decentralised system.

Others can speak to the wisdom or practicality of her proposal on the African continent or to other regions of the global South, such as South America. I instead turn to the history of U.S. naturalisation and immigrants' experiences in the nineteenth and early twentieth century. In this period, immigrants' acquisition of citizenship occurred in precisely the localised fashion that [Manby](#) envisions. What lessons can we draw?

I use this history to evaluate whether decentralisation increased naturalisation (it did, for some), whether it led to significant local variation (it did, for many¹), and who benefited (some Europeans, very few Mexicans²). Using decentralised naturalisation to increase citizenship comes at the possible price of generating real or perceived inequities.

Such variability must be weighed against the benefits of citizenship. These are modest but real in the global North, including protection from deportation, slight gains in jobs or income, and somewhat more political participation.³ But it is unclear how much they apply in the global South. The gains of naturalisation in advanced liberal democracies also accrue largely to migrants from the global South, not to those from politically and economically similar countries.

The dangers of decentralisation are likely most acute if localised variation in naturalisation comes to overlap with social group boundaries, be it by tribe, religion, caste, economic marginalization or other distinctions that then exacerbate and reify problematic group-based distinctions. If this happens, the effects on politics, economic incorporation, and the well-being of later generations could magnify harms to those excluded from citizenship. This trade-off must be faced head-on, requiring that any decentralisation plan is accompanied, at a minimum, with transparency in decision-making and monitoring of naturalisation trends.

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¹ Bloemraad, I., (2006), 'Citizenship Lessons from the Past: The Contours of Immigrant Naturalization in the Early 20th Century', *Social Science Quarterly* 87(5): 927-953.

² Fox, C. and I. Bloemraad, (2015), 'Beyond "White by Law": Explaining the Gulf in Citizenship Acquisition between Mexican and European Immigrants, 1930', *Social Forces* 94(1): 181-207.

³ Bloemraad, I., (2017), 'Does Citizenship Matter?', In *The Oxford Handbook of Citizenship* edited by A. Shachar, R. Baubock, I. Bloemraad, M. Vink (Oxford: Oxford University Press).

The little-known history of local naturalisation in the United States

The right to control naturalisation was one of the reasons given by those who signed the U.S. Declaration of Independence for renouncing their ties to Britain. Continuing the colonies' practice of granting local citizenship, the early Articles of Confederation left citizenship to the individual states of the new union. This arrangement quickly proved unworkable, however, since it was not clear whether someone naturalised in one colony possessed reciprocal rights in another. The U.S. Constitution of 1787 thus empowered the federal government to "establish a uniform Rule of Naturalisation."

One of the first acts of the federal U.S. Congress was passage of the Naturalisation Act of 1790. It infamously reserved naturalisation for "free white persons." Only after the bloodbath of the Civil War was the law extended to "aliens of African nativity and to persons of African descent" with passage of the Naturalisation Act of 1870. Mexican immigrants were also eligible for naturalisation since they were considered white by law. Unlike Europeans, however, Mexicans' eligibility was a product of foreign relations and international treaties rather than a common acceptance of their whiteness. Asian immigrants were definitively deemed non-white and racially ineligible for citizenship by legislation and the courts. Racial restrictions on naturalisation were only excised from U.S. law in 1952.

The racist history of U.S. citizenship is relatively well-known; yet only few know about the localised and decentralised system of naturalisation that existed for over a century after passage of the 1790 Act.⁴ The act was a federal law, and thus applicable across the nation. However, its implementation and the process of granting citizenship was a local affair.⁵ Unlike today, there was no federal naturalisation bureaucracy, and applicants did not need to go to a federal court to petition for naturalisation. Rather, applications could be filed with any common law court of record in any state. Local officials were tasked with verifying length of residence, determining an applicant's "good moral character," collecting fees, and otherwise determining eligibility.

The dangers of decentralisation: inconsistent naturalisation

In reality, regardless of federal mandates, the ease of naturalisation depended on local judges, who enjoyed great latitude. Federal law dating from 1802 specified five years of residence, but verification procedures were often poor or non-existent. No formal language or civic knowledge requirements existed, yet some judges required them. One early twentieth-century analyst, John Palmer Gavit, concluded after reviewing thousands of naturalisation petitions and surveying over 400 judges that the process was "subject to the whims, theories, prejudices, and intellectual limitations of the individuals upon whom its enforcement devolves," which meant that "there is hardly any other legal process in our governmental system in which [judges'] ...prejudices [and] idiosyncrasies play so large a part."⁶

Statistical modelling using individual-level data from the U.S. census shows that in 1900, an immigrant's place of residence influenced naturalisation more than their birthplace, ability to speak English, or literacy.⁷ In some cases, judges' antagonism toward immigrants – or particular groups of immigrants – made naturalisation difficult. In other cases, judges facilitated citizenship acquisition, especially when they had a close relationship to local political party machines that sought to convert new citizens into partisan voters.

⁴ Bloemraad, I. and R. Ueda, (2006), 'Naturalisation and Nationality,' In *A Companion to American Immigration*, edited by R. Ueda, (Blackwell Publishing).

⁵ Smith, M. "Overview of INS History to 1998." USCIS, 6 Jan. 2020, www.uscis.gov/history-and-genealogy/our-history/overview-ins-history/overview-ins-history-1998.

⁶ Gavit J.P. (1922), *Americans by Choice*, New York and London: Harper & Brothers Publishers, available at Project Gutenberg <https://www.gutenberg.org/files/60576/60576-h/60576-h.htm>

⁷ Bloemraad, I. (2006), 'Citizenship Lessons from the Past: The Contours of Immigrant Naturalization in the Early 20th Century', *Social Science Quarterly* 87(5): 927-953.

But perhaps more naturalisation, for some

Decentralisation thus produced significant variation, but did it increase naturalisation among immigrants? The answer is a qualified ‘yes’, but mostly for European and Canadian immigrants, and likely only for certain immigrant groups in specific political contexts.

We find some evidence of greater access to citizenship in the trajectory of naturalisation following passage of the 1906 Naturalization Act. With this law, the federal U.S. Congress sought to centralise administrative oversight of naturalisation in a Bureau of Immigration and Naturalization and to standardise the procedures for acquiring citizenship, including the creation of a uniform application form and adjudication procedure. Institutionalisation took years, but already by 1920, inter-state differences in naturalisation had narrowed significantly.

With national standardisation came reduced naturalisation. Drawing on micro-data from the 1900 and 1920 Census, the probability of naturalisation for an immigrant with ten years of residence fell from 49% to 20%. There are hints that those who were not literate were particularly hard hit, becoming less likely to acquire citizenship in 1920 as compared to 1900. Today, an immigrant’s place of residence is not a strong predictor of naturalisation in the United States, especially when compared to the impact of educational attainment, English ability, and length of residence.

Decentralised naturalisation did not, however, help Mexican immigrants to acquire citizenship.⁸ One analysis of naturalisation applications in South Texas⁹ between 1848 and 1906 found that only 1.4 percent of Mexican immigrants were successful in acquiring citizenship, compared to 44 percent of Europeans.

The implication of these historical U.S. experiences is that naturalisation might rise under Manby’s plan, but certain immigrant groups – defined by ethnic origin, language, religion, human capital or other attributes – will likely benefit more than others. Access to citizenship might increase, but so might inequities. Transparency and monitoring of naturalisation decisions by third-party groups might help mitigate some inequities. But because immigrant groups settle in different parts of a country, variation in decentralised decision-making could still create inter-group inequalities over time, even with limited discrimination in any particular locality.

Why did localities vary? The lure and dangers of political competition

[Manby](#) acknowledges that decentralisation will probably produce variation in local rates of naturalisation. This was the case in nineteenth century America. If variability is random, then differences might not produce resentment. But in reality, of course, there are patterns to why some places invite immigrants into citizenship while other places seek to exclude them, as well as who is welcomed into citizenship and who is excluded.

During the period of localised naturalisation in the United States, one determinant of civic welcome was the extent to which political parties were competitive in local elections and consequently sought to make voters out of immigrants.¹⁰ Political outreach could be benign – an invitation to participate in the American democratic process – but it could also be rife with corruption and graft as politicians hustled for supporters. Political agents would pay immigrants’ naturalisation fee, produce witnesses to attest to residency and moral character, or even offer bribes to immigrants or judges to swell the number of people who would cast a ballot for a particular candidate or party.

⁸ Fox, C. and I. Bloemraad, (2015), ‘Beyond “White by Law”: Explaining the Gulf in Citizenship Acquisition between Mexican and European Immigrants, 1930’, *Social Forces* 94(1): 181-207.

⁹ Menchaca, M. (2011), *Naturalizing Mexican Immigrants: A Texas History*, (University of Texas Press).

¹⁰ Schneider, D. (2011), *Crossing Borders: Migration and Citizenship in the Twentieth-Century United States*, (Harvard University Press).

Any proposal to decentralise naturalisation in the contemporary period must think carefully through the possible consequences for fair and free elections.

The local warmth of welcome

We can also imagine that local patterns of naturalisation varied based on the costs and benefits of citizenship in a particular place. Indeed, just as the process of naturalisation was decentralised, the advantages and drawbacks of citizenship varied across U.S. states in the nineteenth and early part of the twentieth century. In some places, (White, male) immigrants could vote even if they were not U.S. citizens.¹¹ States also had diverse “alienage” laws, using citizenship or the intention to naturalise as grounds to give or deny professional licenses (for being a notary public, teacher or saloon owner, for example) or to own real estate or a business.

Perhaps surprisingly, among the ten U.S. states with the biggest foreign-born population in 1920, European immigrants were mostly like to be citizens in the three states with the fewest “citizens-only” restrictions. This implies that the “carrot” of an immigrant-friendly environment drove naturalisation more than the “stick” of restrictive alienage laws, although the story is not so clear when we look at the right to own property. The effect of decentralisation on naturalisation will likely depend not only on whether and how local officials facilitate citizenship access, but also on the local warmth of the welcome or possible benefits of citizenship.

Does citizenship matter?

This conclusion raises the larger question of why it is worth promoting access to citizenship in the first place. If a possible – even likely – consequence of decentralisation is variation in naturalisation, some of which may be experienced as inequities across place and groups, is greater access to citizenship for some worth the potential cost to fairness and equal treatment? [Manby](#) does not take on this question in depth. At a minimum, she suggests, her proposal might help some immigrants and, especially, their children avoid statelessness.

But how much does citizenship matter to the daily lives of most global South residents?¹² In the contemporary United States, citizenship guarantees¹³ the right to territory and protection from deportation, the ability to travel with a highly regarded passport, broader rights in the judicial system, greater access to social benefits, eligibility for certain jobs or occupations barred to noncitizens, the ability to more easily sponsor immigrant parents or minor children to immigrate, greater access to educational loans and scholarships, and the ability to vote and run for office. There is also some evidence¹⁴ that, across Western democracies, holding citizenship status increases political and civic engagement (even in places that allow noncitizen voting), enhances national identification, and increases social integration.¹⁵ Acquiring citizenship also appears to provide an economic ‘premium’¹⁶ for

¹¹ Hayduk, R. (2015), ‘Political Rights in the Age of Migration: Lessons from the United States’, *Journal of International Migration and Integration* 16: 99-118.

¹² Manby, B. (2018), *Citizenship in Africa: The Law of Belonging*, Hart Publishing.

¹³ The National Academies of Sciences, Engineering, Medicine, ‘The Integration of Immigrants into American Society’, Washington, DC: The National Academies Press. <https://doi.org/10.17226/21746>.

¹⁴ Bloemraad, I. (2017), ‘Does Citizenship Matter?’ In *The Oxford Handbook of Citizenship* edited by A. Shachar, R. Baubock, I. Bloemraad, M. Vink (Oxford: Oxford University Press).

¹⁵ Hainmueller, J., D. Hangartner, and G. Pietrantuono, (2017), ‘Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?’ *American Political Science Review* 111(2): 256-276.

¹⁶ ‘Naturalisation: A Passport for the Better Integration of Immigrants?’ OECD, www.oecd-ilibrary.org/social-issues-migration-health/naturalisation-a-passport-for-the-better-integration-of-immigrants_9789264099104-en.

naturalised immigrants, improving income, employment,¹⁷ and occupational prestige, although the wage premium seems to be modest, holding other personal attributes constant.

Turning again to the historical record in the United States, we also see hints that European immigrants' naturalisation early in the twentieth century provided benefits to their children,¹⁸ even if the children's own status was secure due to automatic birthright citizenship. When immigrant parents' naturalised, this raised their occupational attainment, which in turn allowed their children to secure greater educational attainment and labour market success compared to the children of immigrants who did not acquire U.S. citizenship.

It is not clear whether such citizenship benefits – to the first or second generations – would also flow to those living in the global South, but knowing the range of possible benefits as weighed against the likely inequities should be a critical part of judging the trade-offs of any localised naturalisation scheme.

¹⁷ Peters, F., Maarten Vink, and Hans Schmeets, (2017), 'Anticipating the citizenship premium: before and after effects of immigrant naturalisation on employment', *Journal of Ethnic and Migration Studies* 44(7): 1051-1080.

¹⁸ Catron, P. (2019) 'The citizenship advantage: immigrant socioeconomic attainment in the age of mass migration', *American Journal of Sociology* 124(4).

Decentralise the procedure but not the law? Cautionary lessons from Switzerland's multilevel citizenship

[Barbara von Ruette](#)*

Switzerland is the textbook example of a decentralised nationality regime. Swiss citizenship has three levels – every citizen is a citizen not only of the national, federal state, but also of a canton and a municipality.¹ The three levels are inherently tied, and citizenship can be acquired and lost only on all levels together. The three-level citizenship structure is reflected in the naturalisation system: both the substantive criteria for naturalisation as well as the procedures are decentralised.

Switzerland's multilevel citizenship, hence, provides an excellent example to discuss possible implications and pitfalls of [Bronwen Manby's](#) proposal to decentralise naturalisation. While I agree that effective access to citizenship is critical, I argue on the basis of the Swiss case that decentralisation of naturalisation procedures does not improve access to citizenship but remains highly discretionary and exclusionary, even in combination with transparent and universal naturalisation conditions.

As described by Irene Bloemraad for the United States, the Swiss model of citizenship too has historical reasons.² The first constitution of the modern federal state of 1848³ did not foresee an independent federal citizenship. Swiss citizenship was granted simply by virtue of being a citizen of one of the cantons. Only in 1874 was the federal state granted the competence to regulate automatic acquisition at birth and loss of citizenship as well as through facilitated naturalisation based on marriage or descent. Ordinary naturalisation, by contrast, remains a shared competence of cantons and the federal state.⁴

Today, the Federal Act on Swiss Citizenship⁵ establishes minimum requirements for acquisition of citizenship by way of ordinary naturalisation. A revision of the Citizenship Act in 2014 aimed at facilitating the complex three-level naturalisation procedure and at harmonising the naturalisation criteria.⁶ This aim was only partially achieved.⁷ The cantons still have extensive competences to set their own criteria for naturalisation, especially with regard to the substantive requirements, and go both beyond as well as below the requirements set at federal level when fleshing these out.⁸ The cantons can even grant further competencies to the municipalities to set their own requirements for acquisition of municipal citizenship. With 26 cantons and 2,255 municipalities this results in an extremely complex puzzle of naturalisation requirements and procedures.

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¹ Federal Constitution of the Swiss Confederation, 18 Apr. 1999, article 37, <https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a37>

² Studer, B. et al. (2008), *Das Schweizer Bürgerrecht: Erwerb, Verlust, Entzug von 1848 bis zur Gegenwart*, Schulthess.

³ Bundesverfassung der Schweizerischen Eidgenossenschaft, 12 Sept. 1848 (no longer in force), <https://www.parlament.ch/centers/documents/de/verfassung-bundesblatt-1849.pdf>

⁴ Federal Constitution of the Swiss Confederation, art. 38, <https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a38>

⁵ Federal Act of 20 June 2014 on Swiss Citizenship (Swiss Citizenship Act), <https://www.admin.ch/opc/en/classified-compilation/20092990/index.html>

⁶ Message of the Federal Council on the Revision of the Swiss Citizenship Act, Federal Gazette 2011 2825, 4 March 2011, <https://www.admin.ch/opc/de/federal-gazette/2011/2825.pdf>

⁷ von Rütte, B. (2017), 'Das Neue Bürgerrechtsgesetz', *Anwaltsrevue* 2017/5.

⁸ Federal Supreme Court, Judgment of 1 Oct. 2014, 1D_1/2014 (in German), https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza%3A%2F%2F01-10-2014-1D_1-2014&lang=de&type=show_document&zoom=YES&.

A patchwork of naturalisation criteria and procedure

The patchwork of naturalisation criteria in the federal state⁹ creates a situation where the criteria¹⁰ and the possibilities for naturalisations¹¹ vary significantly from one canton, or even from one municipality to the other.¹² In some cantons applicants must have resided five years in the canton, in parallel to the residency requirement of ten years required at federal level, while in other cantons the cantonal residency requirement is only two years. In most cantons applicants must not only speak one of the national languages, but the local official language, and sometimes at a higher level than required by federal law. And a number of cantons require that applicants have not been dependent on social welfare for a period of ten years, whereas the same requirement at federal level is limited to three years. The requirement of local integration can result in ridiculous cases, such as the one cited by [Manby](#), where a woman was denied citizenship because her activism against cowbells was found to be in contradiction to the local heritage and hence a sign of insufficient integration.¹³

But not only the criteria for naturalisation are decentralised. So is the procedure. Every canton, every municipality, has a different system for naturalisation. Sometimes, an application first has to be lodged with the municipality, sometimes the canton is responsible for the first examination of an application. In some places, namely in bigger cities, a specialised commission or office within the administration is responsible for processing an application. In smaller villages the local executive organ, mostly the municipal council consisting of citizen-politicians and layperson, decides. In yet other places naturalisation applications are still decided by popular vote in the municipal assembly. Even ballot box votes on naturalisations were possible until the Federal Supreme Court prohibited it in 2003 due to the inherent risk of discrimination.¹⁴

Even in the procedure for facilitated naturalisation, in case of marriage¹⁵ or for children of naturalised persons,¹⁶ stateless children,¹⁷ and third-generation-residents,¹⁸ where the requirements are determined exclusively by federal law, the cantonal authorities retain an important role and wide discretion in establishing the facts and in assessing the requirements. As a result, arbitrary decisions and discrimination remain a problem also in facilitated naturalisations.¹⁹

For migrants wanting to naturalise in Switzerland this patchwork of regulations and procedures results in an extremely complex and frustrating situation. It is difficult for non-lawyers to figure out the

⁹ Probst, J. et al. (2019), 'Kantonale Spielräume im Wandel: Migrationspolitik in der Schweiz,' *Swiss Forum for Migration and Population Studies* #73.

¹⁰ 'What are the conditions for access to citizenship in the Swiss cantons?' NCCR – On the Move Migration Mobility Indicators, 10 Jan. 2019 <https://indicators.nccr-onthemove.ch/what-are-the-conditions-for-access-to-citizenship-in-the-swiss-cantons/>.

¹¹ 'How inclusive are citizenship laws in the 26 Swiss cantons?' NCCR – On the Move Migration Mobility Indicators, 10 Jan. 2019 <https://indicators.nccr-onthemove.ch/how-inclusive-are-citizenship-laws-in-the-26-swiss-cantons/>.

¹² Helbling, M. (2010), 'Switzerland: Contentious Citizenship Attribution in a Federal State', *Journal of Ethnic and Migration Studies* 36(5): 793-809.

¹³ 'Dutch anti-cowbell campaigner finally handed Swiss citizenship' *TheLocal.ch*, 28 Mar. 2018 <https://www.thelocal.ch/20180328/dutch-anti-cowbell-campaigner-finally-handed-swiss-citizenship-nancy-holten>.

¹⁴ Federal Supreme Court, Judgment of 9 July 2003, BGE 129 I 232 (in German), http://relevancy.bger.ch/php/clir/http/index.php?lang=de&type=show_document&highlight_docid=atf://129-I-232:de.

¹⁵ Swiss Citizenship Act, art.21, <https://www.admin.ch/opc/en/classified-compilation/20092990/index.html#a21>.

¹⁶ Swiss Citizenship Act, art.24, <https://www.admin.ch/opc/en/classified-compilation/20092990/index.html#a24>.

¹⁷ Swiss Citizenship Act, art.23, <https://www.admin.ch/opc/en/classified-compilation/20092990/index.html#a23>.

¹⁸ Swiss Citizenship Act, art.24a, www.admin.ch/opc/en/classified-compilation/20092990/index.html#a24a.

¹⁹ Kristol, A. and J. Dahinden, (2020), 'Becoming a citizen through marriage: how gender, ethnicity and class shape the nation,' *Citizenship Studies* 24(1): 40-56.

respective criteria applicable in one place; the chances of naturalisation²⁰ are very different from one place to the other, resulting in inequities which are difficult to justify; and moving from one place to the other, even only five kilometres across the cantonal or municipal border, can mean that new criteria and a new residence period have to be fulfilled before naturalisation becomes again possible.

As a result, the naturalisation rates vary significantly from one canton to the other.²¹ At the same time, the cantonal and communal authorities have an enormous amount of discretion when deciding on naturalisation applications. Especially in smaller villages citizenship is granted based on perceptions of deservingness²² rather than objective criteria and is prone to discrimination.²³ The vagueness of the naturalisation requirements aggravates this risk of excessive discretion. As observed by Bloemraad for the US, the groups affected most by the local disparities are those who are already most at risk of exclusion based on ethnic origin, race, religion, or social status.

Progressive advocacy for centralisation

Similar to the South American context described by Diego Acosta, liberal and progressive forces in Swiss politics and academia have long tried to unblock access to citizenship by advocating centralisation. The facilitated naturalisation of third-generation-residents,²⁴ initiated by a parliamentarian and adopted by popular vote in 2017, for example, aimed at easing acquisition of citizenship primarily by shifting the competence for this facilitated naturalisation to the federal state and thereby creating a single procedure with unified requirements.²⁵ In parallel, the Federal Supreme Court has always played a crucial role²⁶ in preventing discriminatory naturalisation decisions,²⁷ in limiting the competences of cantonal and municipal authorities,²⁸ and in mitigating the consequences of discretionary naturalisation procedures.²⁹ By contrast, in the absence of an effective right to nationality in international treaties ratified by Switzerland, international courts and tribunals have so far not set any limits to the restrictive nationality regime in Switzerland. The Committee on the Elimination of All Forms of Racial Discrimination, for example, found that the argument of insufficient integration was

²⁰ Helbling, M. (2010), 'Switzerland: Contentious Citizenship Attribution in a Federal State', *Journal of Ethnic and Migration Studies* 36(5): 793-809.

²¹ 'Where in Switzerland are migrants naturalized most often?' NCCR – On the Move Migration Mobility Indicators, 10 Jan. 2019 <https://indicators.nccr-onthemove.ch/where-in-switzerland-are-migrants-naturalized-most-often/>.

²² Kristol, A. and J. Dahinden, (2020), 'Becoming a citizen through marriage: how gender, ethnicity and class shape the nation,' *Citizenship Studies* 24(1): 40-56.

²³ Hainmueller, J. and D. Hangartner, (2013), 'Who gets a Swiss Passport? A Natural Experiment in Immigrant Discrimination', *American Political Science Review*.

²⁴ Leyvraz, Didier. 'Die Geschichte der erleichterten Einbürgerung: die Suche nach dem kleinsten gemeinsamen Nenner'. Blog NCCR – On The Move, 27 Jan. 2017, <https://blog.nccr-onthemove.ch/die-geschichte-der-erleichterten-einbuengerung-die-suche-nach-dem-kleinsten-gemeinsamen-nenner/?lang=de>.

²⁵ von Rütte, B. 'Die erleichterte Einbürgerung für Jugendliche der dritten Generation'. *Jusletter* 20 Mar. 2017, https://jusletter.weblaw.ch/juslissues/2017/885/die-erleichterte-ein_44b3d331bc.htm.

²⁶ von Rütte, B., and S. Schlegel. 'Auf dem falschen Fuss entlastet'. *Jusletter* 14 Mar. 2016, https://jusletter.weblaw.ch/fr/juslissues/2016/839/auf-dem-falschen-fus_7c54c8bc37.html.

²⁷ Federal Supreme Court, Judgment of 9 July 2003, BGE 129 I 217 (in German), http://relevancy.bger.ch/php/clir/http/index.php?lang=de&type=show_document&highlight_docid=atf://129-I-217:de.

²⁸ Federal Supreme Court, Judgment of 13 April 2011, BGE 137 I 235 (in German), http://relevancy.bger.ch/php/clir/http/index.php?lang=de&type=show_document&highlight_docid=atf://137-I-235:de.

²⁹ Federal Supreme Court, Judgment of 12 June 2012, BGE 138 I 305 (in German), http://relevancy.bger.ch/php/clir/http/index.php?lang=de&type=show_document&highlight_docid=atf://138-I-305:de.

enough to justify a local decision not to naturalise a young migrant with a disability who has spent most of his life in Switzerland (*Benon Pjetri v. Switzerland*).³⁰

[Manby](#) argues that decentralised naturalisation procedures could also contribute to preventing and reducing statelessness. There is no evidence that would support such an effect in the case of Switzerland. The possibility of facilitated naturalisation exists only for minor children recognised as stateless. Adults, in principle, have to apply for ordinary naturalisation and, hence, have to go through the threefold naturalisation procedure. The statelessness determination procedure (SDP) in Switzerland is governed by the general administrative procedure and not formalised in law.³¹ Other than the naturalisation procedure, the SDP is highly centralised. Institutionally, it is located with the asylum sections of the Federal State Secretariat for Migration and not the sections in charge for nationality matters. The clear distinction between the decentralised naturalisation and the centralised statelessness determination procedures ultimately has the effect that naturalisation authorities, especially those at the municipal and cantonal level, have no knowledge about statelessness and the protection required for stateless persons. It results in a complete separation of the question of recognition of statelessness from access to citizenship.

By and large, the Swiss system of decentralised naturalisations does not render access to citizenship more effective and naturalisation procedures more fair. Quite to the contrary. Overall, Switzerland has a naturalisation rate of roughly 2% of the foreign resident population.³² Combined with a strict *ius sanguinis*-system, where not even third-generation-residents have automatic access to nationality, this results in a very restrictive citizenship regime for populations of immigrant origin. The disparate naturalisation requirements in law are only partly responsible for this situation. It is just as much the decentralised naturalisation procedures and the discretion of local authorities which make naturalisations in Switzerland complex and arbitrary. Hence, at least in the Swiss context, decentralising naturalisation has not lead to a well-protected right to nationality.

What can the example of Switzerland offer to the global South? The Swiss case shows that decentralising naturalisation procedures has the advantage of increasing awareness of the possibility of naturalisation and creating a feeling of ownership for citizenship at the local level. This effect could be particularly important in highly centralised states. In order to raise trust in naturalisation procedures and to actually make access to citizenship more effective and equitable, however, the naturalisation requirements, the procedures and the competencies of local authorities would have to be narrowly circumscribed in order to prevent arbitrary or abusive decisions, especially when administrative capacities are already weak. Otherwise, decentralising naturalisation risks reinforcing citizenship as a privilege rather than making the right to change nationality a reality.

³⁰ United Nations Committee on the Elimination of Racial Discrimination (2017). Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 53/2013, CERD/C/91/D/53/201, 23 Jan. 2017 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2F91%2FD%2F53%2F2013&Lang=en.

³¹ 'Switzerland'. Statelessness Index, European Network on Statelessness, March 2020, <https://index.statelessness.eu/country/switzerland>.

³² 'How does Switzerland perform in terms of citizenship acquisition?' NCCR – On the Move Migration Mobility Indicators, <https://indicators.nccr-onthemove.ch/how-does-switzerland-perform-in-terms-of-citizenship-acquisition/>.

Unblocking access to citizenship in China: Is decentralisation even possible?

[Sanzhuan Guo*](#)

A very interesting argument was put forward by Bronwen Manby in her kick-off post that ‘the problem of lack of access to citizenship should be addressed by developing local responses rather than national ones’. My first impression is that this would not work in China as it is unheard of that a Chinese local authority could pass such laws and policies. Citizenship/nationality (used interchangeably here) is a national issue and China is a unitary country. However, a second thought comes to mind that such an idea may not be that radical even for China given that each of Hong Kong, Macau and Taiwan has its own nationality or immigration laws and policies.

Ius sanguinis and naturalisation in China

Before the People’s Republic of China (the PRC) passed its *Nationality Law* in 1980, the current law on nationality, China had three other nationality laws: adopted in 1909 in the late Qing Dynasty, in 1912 by the Republic of China (RoC), and in 1929 after the Kuomintang reunited South and North China.

As historians have observed, China was not a nation-state but a ‘Tianxia’ state until it was facing challenges from the West during and after the Opium Wars in the late Qing Dynasty.¹ The long governing idea of membership in China under ‘Tianxia’ was that ‘all territories and all people under heaven should be governed by the son of heaven’ (普天之下，莫非王土；率土之滨，莫非王臣) (Confucius ed., *Book of Songs*,² date unknown but between B.C. 1000 and B.C. 700). This Tianxia idea means that a leader who is not necessarily an ethnic Chinese but a ‘son of heaven’ should govern all Chinese under the earth. The Yuan Dynasty (Mongolian) and Qing Dynasty (Manchu) are two examples of non-ethnic-Chinese coming from outside China but adopting Chinese culture and then ruling in China.

In the Qing Dynasty, the principles of ‘indissoluble natural allegiance’ and ‘disability of emigration’ were applied until the forced opening under the *1842 Treaty of Nanjing* after the first Opium War.³ The *1909 Nationality Law* was passed directly due to the pressure of the Dutch East Indies (currently Indonesia) that were preparing to pass a nationality law adopting the *ius soli* principle for those born in their territory, including those of Chinese ethnicity. China’s *1909 Nationality Law* adopted the *ius sanguinis* approach and such an approach has ever since been the key, if not the only approach, in Chinese nationality law. Under *ius sanguinis*, a person born either in or outside China to a Chinese national is a Chinese national.

The *1929 Nationality Law* (with some amendments) is still applicable in Taiwan. Under the current *1980 Nationality Law* of the PRC, there is no right to nationality based on birth in China except that ‘any person born in China whose parents are stateless or of uncertain nationality but have settled in China has Chinese nationality’ (Article 6). As Ginsburgs has commented, the *1929 Nationality Law* was

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¹ Levenson, J. (1952), ‘Tien-hsia and Kuo, and the “Transvaluation of values”’, *The Far Eastern Quarterly* 11(4): 447-451; Fairbank, J.K. (ed), (1968), *The Chinese World Order*, Harvard University Press.

² Waley, A. (1996), *The Book of Songs: The Ancient Chinese Classic of Poetry*, Grove Atlantic.

³ Chiu, H. (1990), ‘Nationality and International Law in Chinese Perspective’, *Maryland Series in Contemporary Asian Studies* 3.

more generous than the *1980 Nationality Law* in terms of the *ius soli* approach for stateless children as it did not require that ‘parents have settled in China’.⁴

As Manby argues, the other element of ‘the right to a nationality’ – the right to change nationality – is ‘comparatively neglected by the policy and scholarly communities’. Under Article 7 of the PRC’s *1980 Nationality Law*, foreign nationals or stateless persons can apply for naturalisation in China if they fall within one of three scenarios: being a close relative of a Chinese national, settled in China, or in other reasonable situations. It is fair to infer that the right to change nationality is respected in Chinese law as it is theoretically possible to be naturalised in China. Meanwhile, the discretionary application of the law is emphasised by the lack of clarity on what constitutes ‘other reasonable situations’. In practice, naturalisation in China is very difficult. According to the 6th census data in 2010, among 1.33 billion Chinese, there were only 1448 naturalised Chinese nationals.⁵ Such low number of naturalisations is directly connected with the low number of permanent residencies granted in China.

According to a report from Lantai Partners, a law firm in Beijing, from 1985 to 2004, a total of about 3000 foreign nationals were granted a right to settle in China but only 50 people got a permanent residency.⁶ In 2004, the PRC’s Ministry of Public Security and Ministry of Foreign Affairs jointly passed the *Measures on Permanent Residence of Foreign Nationals in China*, which laid down the rules for foreign nationals to obtain permanent residence in China. Among the total number of 848,500 aliens in China from the period of 2004-2013, 7,356 people have been granted permanent residency, roughly 700 per year.⁷

To attract more foreign talent to China, on 27 February 2020 the PRC’s Ministry of Justice published draft *Regulations on Permanent Residence of Foreign Nationals*⁸ to solicit public opinion; the draft Regulations lower the threshold to apply for a permanent residence in China.⁹ For example, in the category of employment-related permanent residency, the draft Regulations extended the existing practice for overseas Chinese working in China to foreign nationals without Chinese descent. Any person who has a PhD degree, and has worked in China for three years and lived in China for no less than one year accumulatively (no salary requirement), can apply for a permanent residency in China. In addition, income threshold, taxation records and the number of years of residence requirements are less onerous compared with the previous measures. In the category of ‘Significant Contribution’, ‘Outstanding Achievements’ and ‘Special Demand’, the application procedures are much clearer compared with previous laws. For example, applicants under the category of Outstanding Achievements can apply for permanent residency directly without holding a resident permit for a period of time, which is required under the employment-related permanent residency.

However, the draft Regulations have attracted hot debates and criticisms from the general public through online forums about lowering the threshold. For example, in Weibo the draft Regulations

⁴ Ginsburgs, G. (1982), ‘The 1980 Nationality Law of the People’s Republic of China,’ *The American Journal of Comparative Law* 30(20): 459-498.

⁵ ‘Tabulation on the 2010 Population Census of the People’s Republic of China’ (China Statistic Press), I-6, <http://www.stats.gov.cn/tjsj/pcsj/rkpc/6rp/indexch.htm>.

⁶ Zhou, H. (2020), ‘Comment on “Regulations on Permanent Residence of Foreign Nationals (Draft for Comment)” (Part 1): Legislative Changes of the System,’ <https://lvdao.sina.com.cn/2020-04-09/doc-iirczymi5297307.shtml>.

⁷ Huiyao, W.(ed), (2015), ‘Annual Report on Chinese International Migration’, *Social Science Academic Press*, Beijing, China.

⁸ ‘Regulations on Permanent Residence of Foreign Nationals,’ http://www.moj.gov.cn/news/content/2020-02/27/zlk_3242559.html.

⁹ Mallesons, K. & W. (2020), “中国绿卡”风向标已竖起——《外国人永久居留管理条例（征求意见稿）》速览, Labour and Employment, *China Law Insight*.

attracts 5.42 billion readings and almost 4 million comments.¹⁰ Although it appears to me that the draft Regulations may simply standardise the practice which has already existed, the general public seems not to care about that, but worry instead that scarce resources in China might be taken by foreigners and that foreigners might enjoy special treatment such as being exempted from limitations on the right to purchase property and from birth control.

How far the final law might go is yet to be seen. However, one thing is clear: unlike in many countries that have included such possibility in their immigration law, the draft Regulations did not expressly include the possibility for refugees to apply for permanent residence in China. As Lili Song has commented, China has experienced at last four mass influxes of displaced foreigners in the past 20 years, mainly consisting of North Korean escapees and Kokangs and Kachins from Myanmar.¹¹ Although Article 46 of the *PRC's Law on Exit and Entry Administration* provides that 'foreigners who are recognised as refugees may stay or reside in China', it is not clear on how to obtain a refugee status in China.¹² The number of refugees in China and their visa status (permanent or temporary) are also unknown. I note that Article 19 of the draft Regulations might be used for asylum seekers to apply for permanent residence as it could be argued that refugees fall within the category of 'other reasonable causes'. However, the implementation of law in China could be difficult if the meaning of the law is implicit or requires discretionary interpretation as officials can easily refuse to apply the provision, and therefore Article 19 on 'other reasonable causes' might not be helpful at all.

Hong Kong and Macau

Hong Kong and Macau are two special administrative regions in China. Their governance returned to China in 1997 and 1999 respectively. On 15 May 1996 the Standing Committee of the National People's Congress (SCNPC), the legislative branch of the PRC, passed the *Interpretation on Some Questions concerning the Implementation of 'Nationality Law of the PRC' in Hong Kong Special Administrative Region* (1996 HKSAR Nationality Interpretation), under which the *1980 Nationality Law* applies to Hong Kong and all Hong Kong residents of Chinese descent who were born in China (including Hong Kong) are Chinese nationals.¹³ Similarly, in 1998, the SCNPC passed an interpretation on the nationality of people in Macau,¹⁴ which states that the PRC's *1980 Nationality Law* applies to Macau and all people in Macau of Chinese descent shall have Chinese nationality whether or not they also have Portuguese nationality; those who have both Chinese and Portuguese origin should choose one nationality and after the selection the person shall have only a single nationality. In contrast with the nationality selection approach in Macau, people from Hong Kong became Chinese nationals but (if born before the transfer of sovereignty) at the same time may be eligible for a British National (overseas) (BNO) passport, which is only a travel document and not the equivalent of full British citizenship (replacing the British

¹⁰ Yao, Y. (2020), 'Dialogue with Peking University's WANG Xixin: Super-National Treatment Would Exist No Matter Whether or Not There Is a Permanent Resident Ordinance,' *Caijing Magazine*, <https://mp.weixin.qq.com/s/bL0aXPVSIJvpLV3lSo-CjQ>.

¹¹ Song, L. (2018), 'China and the International Refugee Protection Regime: Past, Present, and Potentials,' *Refugee Survey Quarterly* 37(2): 139-161.

¹² 'PRC's Law on Exit and Entry Administration,' <http://cs.mfa.gov.cn/zlbq/flfg/crjxg/t1054650.shtml>.

¹³ 'Ministry Of Commerce People's Republic Of China.' Interpretation By The Standing Committee Of The National People's Congress On Some Questions Concerning Implementation Of The Nationality Law Of The People's Republic Of China In The Hong Kong Special Administrative Region, 19 May 1996 <http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200211/20021100050297.shtml>.

¹⁴ Law No. 8/1999 - Law about Permanent Resident and Right of Abode in the Macao Special Administrative Region Macau SAR Identification Department, http://www.dsi.gov.mo/legislativeLaw_e.jsp.

Dependent Territory Citizen passport).¹⁵ In addition, Hong Kong and Macau were authorised to deal with applications for nationality in their region.

As some commentators have stated, an alternative way to acquire Chinese nationality is through Hong Kong or Macau as these two regions/cities do accept and approve naturalisation regularly and people naturalised in Hong Kong/Macau are Chinese nationals.¹⁶ It seems common that working and living in Hong Kong or Macau for seven years may lead to permanent residency and naturalisation. The Immigration Department of the Hong Kong Government is responsible for issuing a Hong Kong Special Administrative Region Passport and the Identification Department of the Macau Government is in charge of issuing a Macau Special Administrative Region Passport. The 1996 HKSAR Nationality Interpretation and 1998 Macau SAR Nationality Interpretation are Chinese laws, but its interpretation and implementation lie in the enforcement agencies. It has been reported that, from 1997 to 2012, the Hong Kong Administration has approved more than 12,000 people to receive Hong Kong citizenship.¹⁷ Applicants are primarily from Pakistan, Indonesia, India, Vietnam and the Philippines. It is also reported that 73% of non-Chinese applicants in Hong Kong (4,201 passports in total granted from January 2012 to November 2015) received their Hong Kong passports since 2012.¹⁸ Although there is no statistical data on the number of the Macau SAR passports issued to non-Chinese, the sample of cases on the official website of the identification department of Macau demonstrates that the naturalisation process in Macau is more open and easier than in mainland China.¹⁹

In both regions, therefore, the Chinese government accepts as valid the grant of nationality by naturalisation at a much higher rate than is available in mainland China.

Decentralisation to some special provinces or cities in mainland China?

If we take the Chinese government's acceptance of higher rates of access to Chinese nationality through naturalisation in Hong Kong or Macau, does this legal recognition create a precedent that could be applied to other 'special regions' of China?

There are two separate questions. First, is it possible to expand the decentralisation approach to access to citizenship to other provinces in mainland China? Second, would it increase access to naturalisation if it were decentralised?

If Hong Kong and Macau demonstrate some decentralisation of nationality law from the viewpoint of Beijing, would it be possible to expand this approach to another province or city in the mainland? From the perspectives of history and constitutional law, no other province in mainland China has a legal status similar to Hong Kong and Macau (let us leave Taiwan out of discussion as it triggers other issues). However, it is easier to say 'no' than to think creatively and deeply. What about Shanghai or Hainan? Many new policies on treatment of foreigners anyway originated from Shanghai. Hainan was not even a province until 1988 and has then gained some special policy and treatment from the central government, including becoming one of five special economic zones. What about the other four special economic zones: Shenzhen, Zhuhai, Xiamen and Shantou? Special Economic Zones were a creative idea back 1978 in China and have proven to be a successful way to test new ideas and systems. Then why not special zones in terms of decentralised nationality management? Selecting a city or province to

¹⁵ Vassiliou, J. 'Briefing: Hong Kong and British National (Overseas) Status.' Free Movement, 7 July 2020, <https://www.freemovement.org.uk/briefing-hong-kong-and-british-national-overseas-status/>.

¹⁶ Hurun Beport (胡润百富), 'Why is Naturalization in China "the World's Most Difficult"?', https://www.sohu.com/a/195479686_247181.

¹⁷ Ibid.

¹⁸ '73% Of Non-Chinese Applicants in HK Granted Chinese Nationality'. Ejinsight, 12 Jan. 2016, www.ejinsight.com/eji/article/id/1220192/20160112-73pc-non-chinese-applicants-hk-granted-chinese-nationality.

¹⁹ 'Nationality Application'. Macau SAR Identification Department, http://www.dsi.gov.mo/example_e.jsp.

test or try a new policy or idea is a common practice in China, so it is possible to expand the decentralisation idea to mainland China if China's government decides to do so.

The answer to the question whether the decentralisation approach would increase access to naturalisation would depend on what policies we are talking about. If it means local management of the naturalisation application process, that is already the case in China. Under the current procedural requirements, an application for naturalisation in mainland China should be submitted to the local Bureau of Public Security and then the Ministry of Public Security will decide whether to approve the application (see official website of the China Government).²⁰ The issuing of passports and other matters in relation to exit or entry to China have always been part of the duties of the Bureau of Public Security. The newly established National Immigration Administration is also a bureau under the Ministry of Public Security.²¹ This may reflect the perception of naturalisation in China as a security-related issue. The practice in Switzerland discussed by Barbara von Rütte of delegating the approval power of naturalisation to municipal or even provincial level may not look like a good idea as it can increase discrimination. China is a rather homogenous society as regards the vast majority of its population, and therefore it seems to make sense to have a unified process to decide who can or cannot become a Chinese national in order to avoid different practices in different provinces. On the other hand, different practice in different regions, provinces or cities might reflect different needs. For example, it might be justifiable to require an investment of RMB10 million in Shanghai in order for an applicant to obtain a business permanent residency, but not so much in a regional or rural area of a western or central province such as my hometown in Shanxi Province. In Australia where I live and work, a permanent business Subclass 132 visa is subject to different investment requirements from different states (with some minimum threshold across all states) and state nomination is crucial.

In the end, the path to having wider access to Chinese nationality may not lie in a decentralisation process but in promoting first the idea that China should open its doors more widely to foreign or stateless people. The criticisms from the general public of the 2020 draft *Regulations on Permanent Residence of Foreign Nationals* to some extent demonstrate that Chinese society itself might not be ready to embrace the idea of becoming a more migration-friendly country like the USA and Australia. In my opinion, the biggest flaw of the new draft Regulations was that it did not clearly include the situation of refugees and stateless people (such as stateless children born to trafficked North Korean women), which means that these people are very unlikely to obtain permanent residency in China and so it leaves them with extremely limited pathways to Chinese nationality.²²

²⁰ PRC Central People's Government, 'Application for Nationalisation to Chinese Nationality,' http://www.gov.cn/fuwu/2015-11/17/content_5013456.htm.

²¹ National Immigration Administration, 'Basic Profile Information,' <https://www.nia.gov.cn/n741430/n741506/index.html>.

²² Batha, M. 'China urged to recognise stateless children of trafficked N Koreans.' Reuters, 9 Dec. 2015, <https://news.trust.org/item/20151209175130-j7qa1/>.

Is the devolution of naturalisation sufficient to address the persistent challenges of citizenship in the global South? Cautionary lessons from India and South Africa

[Sujata Ramachandran](#)*

In her introductory commentary, Bronwen Manby offers a radical solution to the persistent challenges of naturalisation and formal citizenship rights for migrants, refugees and others in the global South. She proposes that this process should be decentralised or devolved to lower-level governments, at the scale of the state/province or local-level administration. This suggestion emerges out of the findings of her compelling work on naturalisation and citizenship-based issues in various African settings.¹ This work, which began as a ‘citizenship audit’ for the African continent funded by the Open Society Foundations, examines ways in which discrimination based on citizenship status and rights adversely affects the lives of individuals and groups.²

Her proposal has some merit for my own research settings: India and South Africa. The localised contexts where migrants reside assume an important role in naturalisation in various ways. Positive social contact between citizens and non-citizens at such settings may help to soften rampant xenophobic attitudes, as has happened in some South African locations.³ In India, socio-economic integration of migrants at these locales have been preliminary stages of informal and formal naturalisation. Locally-acquired documents are commonly used by individuals and households to establish domicile status which later provides the route to other official documents, such as ration-cards and Aadhaar ID numbers issued to any resident of India based on biometric data.⁴ These pathways contributed to the informal naturalisation of some migrants through the easy acquisition of two official documents meant for citizens only – ration-cards and voter identity-cards. Migrants who arrived from Bangladesh at various times transformed into de facto citizens, blurring differences between legitimate residents and undesirable, illegitimate non-citizens. Later, it aroused enormous suspicion towards official documents produced by residents, especially those who share similar cultural-ethnic traits with Bangladeshis.

India: discriminatory effects of formal citizenship determination

The process of naturalisation may be affected, both positively and negatively, by ethnic and cultural continuities and discontinuities across national borders in several, perhaps many, postcolonial countries in the global South. These similarities and affinities may enable some migrants and refugees to integrate socially and economically while nurturing the inclusive approach to naturalisation at the local scales. This is what occurred well into the late 1990s with the so-called irregular Bangladeshi migrants in some parts of India. Certain areas, such as West Bengal state, maintain deep historical ties, strong cultural and ethnic commonalities with Bangladesh, in addition to sharing the largest segment of a common border. Bengalis and Bangladeshis speak the same language and have mutual socio-cultural practices, irrespective of religion. In a formal submission during the late 1990s when India’s principal immigration law was being reviewed, the West Bengal government acknowledged that they had tolerated the

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¹ Manby, B. (2018), *Citizenship in Africa: The Law of Belonging*, Hart Publishing.

² Manby, B. (2016), ‘Citizenship Law in Africa: A Comparative Study’, Open Society Foundations.

³ Peberdy, S. (2016), ‘International Migrants in Johannesburg’s Informal Economy.’ SAMP Migration Policy Series No. 71. SAMP: Waterloo and Cape Town.

⁴ ‘Aadhaar.’ Wikipedia, Wikimedia Foundation, 28 Nov. 2020, <https://en.wikipedia.org/wiki/Aadhaar>.

informal entry and presence of migrants from Bangladesh.⁵ Mamata Banerjee, West Bengal Chief Minister, assured Bangladeshi migrants at a public meeting in early March of this year, after characterising them as ‘refugees’, that since they held voting privileges, her administration would treat them as citizens.⁶

These physical and cultural-ethnic commonalities may have eased the passage of some, such as Bangladeshi migrants, to integration and naturalisation in several areas. But, in the highly diverse, multi-ethnic, multicultural setting of India, differences with other cultural-linguistic and ethnic groups can easily become the source of unchecked and not easily resolved anxieties and hostility. In Assam and other parts of north-eastern India, rampant fears about localised ethnic, tribal and cultural-linguistic identities being besieged by the seemingly massive presence of undesirable ‘outsiders’ has greatly fuelled such opposition. The popular image of the latter as ‘illegal Bangladeshi migrants’ has given robust legitimacy to this unease. Crude migrant stereotypes have contributed to the disproportionate targeting of marginal, Muslim and /or Bengali residents in various parts of India, boosted by the rise of anti-Muslim xenophobia.

These discriminatory strains and general opposition to the presence of some or most migrants and refugees can adversely shape the processes of naturalisation through overzealous efforts to block and constrict established policy routes to citizenship. Take the case of the Chakmas in Arunachal Pradesh state in north-eastern India.⁷ These refugees arrived from East Pakistan (now Bangladesh) in the 1960s. Despite qualifying for citizenship through naturalisation (or long-term residence) and a Supreme Court judgment upholding this eligibility, their citizenship status remains in limbo. Successive state governments have opposed their settlement for an extended period and declined to execute their role in this process. National and local strategies such as the National Register of Citizens (NRC), Aadhaar and Foreigners’ Tribunals (in Assam) are being regularly deployed in India to segregate and denaturalise undesirable residents.⁸

The role of central courts and devolved procedures in South Africa and India

We also see this pattern in South Africa. After receiving the largest number of asylum applications globally for several years, mostly from Zimbabweans fleeing the acute socio-economic-political crisis which peaked in 2008, South Africa regularised their presence through temporary immigration programmes.⁹ These measures allowed approved migrants to study and work in South Africa while, concomitantly, disqualifying them from naturalisation. The Green Paper on International Migration, released in 2016, proposed that access to South African citizenship should be treated as an “exceptional” practice involving ministerial discretion and not an automatic right for qualifying migrants after a certain number of years’ stay in South Africa.¹⁰ In its latest iteration, the White Paper on Migration has

⁵ Ramachandran, S., (2019), ‘The Contours of Crimmigration Control in India’, Global Detention Project Working Paper no. 25. <https://www.globaldetentionproject.org/wp-content/uploads/2019/08/GDP-Working-Paper-25-The-Contours-of-Crimmigration-Control-in-India.pdf>.

⁶ ‘All Bangladeshis living in Bengal are Indian Citizens, says Mamata Banerjee’. *The Hindu*, 8 June 2020, <https://www.thehindu.com/news/national/all-bangladeshis-living-in-bengal-are-indian-citizens-says-mamata-banerjee/article30972594.ece>.

⁷ Jayal, N.G. (2013), *Citizenship and its Discontents: An Indian History*, (Harvard University Press).

⁸ Baruah, S. ‘India’s National Register of Citizens: Fine Intentions, Ominous Portents.’ *Globalcit*, 7 Oct. 2019, <https://globalcit.eu/indias-national-register-of-citizens-fine-intentions-ominous-portents/>.

⁹ Carciotto, S. ‘The Regularization of Zimbabwean Migrants: A Case of Permanent Temporariness.’ *The Center for Migration Studies of New York (CMS)*, 6 Feb. 2019, <https://cmsny.org/publications/2018smc-sihma-zimbabwe-regularization/>.

¹⁰ ‘Green Paper on the International Migration’, Department of Home Affairs Republic of South Africa, (2016), Department of Home Affairs, http://www.dha.gov.za/GreenPaperonInternationalMigration_GAZETTE_NO_7382_1.pdf.

unequivocally declared that South African “citizenship shall be highly valued and naturalisation...granted where [it] advances national interests and values”.¹¹ The obvious, intended goal is to strictly limit naturalisation, both permanent residence and full citizenship, except in rare cases.

Supported by the Constitution and Bill of Rights which emphasizes equality of treatment for all, South Africa’s judiciary has often restrained such exclusionary practices of state authorities. In a recent legal petition reviewed by the Western Cape High Court, Cape Town, the eligible applicants (born in South Africa to refugee parents) were not permitted to apply for citizenship as provided in the Citizenship Act. The Home Affairs’ Department had contended that they could seek instead ‘refugee status’ or, alternatively, permanent residence. The court ruled that by failing to adopt regulations to implement their right to apply for citizenship, the department was “ring-fencing” or segregating them “in the country that they have lived in since birth” and “only country they were familiar with”.¹²

Unfortunately, Indian courts have played a decisive role in strengthening xenophobic tendencies, while ignoring the persistent, unresolved hurdles faced by many marginal residents and legitimate citizens to corroborate their citizenship status. In India, passports were meant largely for the small privileged cohort with the means and opportunity to travel abroad, and are often demanded as definitive proof of citizenship from those suspected of being illegitimate residents. This document is widely accepted as the conclusive symbol and evidence of an individual’s citizenship, membership and belonging. The process of acquiring passports has been simplified and related institutional capacity expanded considerably in the last few years. Yet, less than 6 percent of India’s population currently holds passports. Poorer segments of the citizenry have weak access to this right and possess a very limited set of official documents to confirm their lineage and longstanding ties with India.

South Africa is somewhat of an exception to this problematic reality of weak institutional mechanisms of citizenship confirmation. There too though, naturalisation ensures a greater measure of security to migrants and refugees. The apartheid state crafted a robust system of identification and classification, tied to ‘passes’ to strictly govern the internal mobility of racialised groups, especially its black residents.¹³ This inherited, unabandoned system has become the foundation for the contemporary regime of identity documents, separating citizens from non-citizens and resulting in unequal treatment, in particular access to various basic services, such as health care.¹⁴ However, black South Africans who were treated as non-citizens by the apartheid regime may be less able to present birth certificates and other documents to confirm their background.

In a new ruling, South Africa’s Constitutional Court has affirmed the importance of naturalisation and citizenship rights for residents by referring to the country’s difficult past and present circumstances.¹⁵ Before 1994, a majority of residents, black South Africans, were stripped of their citizenship by unjust and inequitable colonial and apartheid-era laws. In the post-apartheid period, refugees, asylum-seekers and migrants have been routinely exposed to various forms of xenophobia, including institutionalised discrimination and public violence.¹⁶ The Court observed that “citizenship

¹¹ ‘White Paper on International Migration for South Africa’, (2017), Department of Home Affairs, p. 26. <http://www.dha.gov.za/WhitePaperonInternationalMigration-20170602.pdf>.

¹² Miriam Ali and others v. The Minister of Home Affairs and others (2017), High Court of South Africa, https://www.refworld.org/cases,ZAF_HC,59b12bd64.html.

¹³ Breckenridge, K. (2014). *Biometric State: The Global Politics of Identification and Surveillance in South Africa, 1850 to the Present*. Cambridge: Cambridge University Press.

¹⁴ Crush, J. and G. Tawodzera (2011). ‘Medical Xenophobia: Zimbabwean Access to Health Services in South Africa.’ *SAMP Migration Policy Series No. 54* Southern African Migration Programme..

¹⁵ *Chisuse and Others v Director-General, Department of Home Affairs and Another* [2020] ZACC 20, Case CCT 155/19, Constitutional Court of South Africa, <http://www.saflii.org/za/cases/ZACC/2020/20.pdf>.

¹⁶ Bornman, J. (2020) “Xenophobic South African Mobs: ‘We Are Sanitising’.” *New Frame*, 31 Jul. 2020, <http://www.newframe.com/xenophobic-south-african-mobs-we-are-sanitising/>.

and equality of citizenship is therefore a matter of considerable importance in South Africa, particularly bearing in mind the abhorrent history of citizenship deprivation...Citizenship is not just a legal status. It goes to the core of a person's identity, their sense of belonging in a community and, where xenophobia is a lived reality, to their security of person".¹⁷

The formal process of naturalisation has already been devolved to some extent in India. In Assam, several thousand state government employees were involved in the creation of the new Register of Citizens. Local police personnel conduct background checks all over India for persons who apply for passports. As per the Citizenship Rules (2009), applications for citizenship through naturalisation and registration are to be assessed and finalised by the District Collector, the state-level Administrative Service officer in charge of the district level-subdivision.¹⁸ These decentralised powers have enabled the fast-tracked naturalisation of six religious minority communities (including all groups except Muslims) from Afghanistan, Bangladesh and Pakistan using state and district-level authorities in seven Indian states. The general requirement of twelve years' residence in the country has been reduced by half. Devolution has been deployed to selectively incorporate desirable groups requiring shorter tenure for naturalisation, while rejecting others who may have lived there for many decades.

Contexts of naturalisation in the global South

As Irene Bloemraad has noted in her commentary, the obvious limitation with decentralisation is that it may end up benefitting only some migrant groups, exclude many others and thus serve to deepen existing social inequalities. Even in the highly decentralised regime of Switzerland, where citizenship is formally articulated at multiple geographical-jurisdictional scales, a convoluted set of procedures and requirements have rendered this process discretionary and ultimately selective. Barbara von Rütte's analysis highlights this uneven outcome. This provision has advanced the majoritarian political agenda in India by integrating Hindu migrants from neighbouring countries and rejecting Muslims, rendered less overtly discriminatory by accepting other religious groups. Responding to widespread public protests opposing these latest changes to India's citizenship law¹⁹ and the proposed creation of the National Register of Citizens (NRC) for other areas, several state-level governments (led by non-Bharatiya Janata Party/BJP political parties) have declared that they will not permit this exercise to be conducted in their own jurisdictions.²⁰ But this may only offer a temporary reprieve unless the strong xenophobic strains and dangerous politics which victimise legitimate citizens and destabilise the inclusion of established residents are addressed. The long-term effects of such divisive social dynamics of naturalisation can be brutal and devastating, as witnessed in Côte d'Ivoire.²¹

In the global South, these xenophobic tendencies can undermine government willingness to broaden existing channels of naturalisation. Sanzhuan Guo's post on China notes the clear lack of public acceptance for immigration and proposed easing of restrictions for permanent residence. These anti-immigrant and anti-naturalisation attitudes are deeply paradoxical for countries like India and China. With the largest diasporas globally, both have received enormous benefits from the immigration and naturalisation of large numbers of their own citizens and their descendants in a number of destination countries.

¹⁷ Ibid, p. 13.

¹⁸ Citizenship Rules, 2009, Ministry of Home Affairs, India https://www.mha.gov.in/PDF_Other/Citi_Rule-2009.pdf.

¹⁹ 'The Citizenship (Amendment) Act, 2019', Ministry of Law and Justice, https://indiancitizenshiponline.nic.in/UserGuide/E-gazette_2019_20122019.pdf.

²⁰ Kuchay, Bilal. 'Many Indian states "will not implement" Modi's citizenship law.' *Al Jazeera*, 4 Jan. 2020, <https://www.aljazeera.com/news/2020/1/4/many-indian-states-will-not-implement-modis-citizenship-law>.

²¹ Marshall-Fratani, R. (2006), 'The War of "Who Is Who": Autochthony, Nationalism, and Citizenship in the Ivoirian Crisis', *African Studies Review* 49(2): 9-43.

As a second point, we need to examine the manner in which formal and informal processes of naturalisation evolve in different national contexts. As Diego Acosta Arcarazo has argued in his piece, nuanced understandings are needed of the complex workings of naturalisation in the global South. This assessment must move beyond detailed reviews of existing citizenship laws to document the myriad formal and informal ways in which naturalisation operates in practice. We need to highlight unresolved formidable barriers to recognition of citizenship, even for legitimate citizens, and the drastic consequences it produces for those who are unable to overcome such hurdles. Take the unsettling, latest cases of Mohd Azmal Haque²² and Mohammed Sanaullah²³ of Assam. They were declared as ‘illegal Bangladeshis’ after having served in the Indian army for many years, three decades in Haque’s case. Such cases are becoming increasingly common in Assam. Recent news reports reveal that marginal residents have depleted their meagre resources to fund legal challenges to this onerous classification. These longstanding dilemmas and underdeveloped procedural safeguards to effectively rectify such weaknesses have not yet received adequate attention in India. On a much more positive note, judicial intervention in South Africa has helped to mitigate common challenges of naturalisation for certain categories of individuals (born to South African parents outside the country and born in South Africa to non-citizens).

Third, the temporal aspect of residence for naturalisation must be weighed for those who migrated from Bangladesh and have lived in India for extended periods. The right to naturalisation has been eliminated for those categorised as irregular migrants, along with their successive generations – the latter no longer qualifying for birthright citizenship. Political theorists such as Joseph Carens have persuasively argued that eliminating or blocking naturalisation is incompatible with the central normative principles of equality, rights and inclusion in liberal democracies.²⁴ Long duration spent in a country, socio-economic integration, and good social conduct are significant indicators of positive engagement as members in the receiving country. Haque and Sanaullah’s long history of military service alone should have been treated as unquestioned evidence of their ‘Indianness’. This consideration is also long overdue, especially as India is unable to deport *en masse* those it has declared as illegitimate outsiders, even with the expansion of detention institutions. Bangladesh has repeatedly claimed that India is expelling its own unwanted citizens. Those classified as ‘irregular Bangladeshis’ will become stateless, caught in the detention trap or exist in a highly insecure position in India.²⁵ It is the making of such an underclass, with few rights and weakest status, through naturalisation processes in India and South Africa, which urgently demands the greatest critical scrutiny. The devolution of naturalisation may not be a sufficient condition by itself to address these various challenges outlined above.

²² ‘Retired Army Officer Asked to Prove Indian Citizenship’. *The Times of India*, 1 Oct. 2017, <https://timesofindia.indiatimes.com/india/retired-army-officer-asked-to-prove-indian-citizenship/articleshow/60899717.cms>.

²³ ‘Gauhati HC Orders Interim Bail of Ex-Army Subedar Sanaullah’. *The Wire*, 7 June 2019 <https://thewire.in/law/gauhati-high-court-interim-bail-sanaullah-nrc>.

²⁴ Carens, J. (2013). *The Ethics of Immigration*. Oxford: Oxford University Press.

²⁵ Ramachandra, S., (2019), ‘The Contours of Crimmigration Control in India’, *Working Paper no. 25*, Global Detention Project. <https://www.globaldetentionproject.org/wp-content/uploads/2019/08/GDP-Working-Paper-25-The-Contours-of-Crimmigration-Control-in-India.pdf>.

How meso-level institutions and civil society mediate access to citizenship in East Asia

[Erin Aeran Chung](#)*

In her kick-off essay, [Bronwen Manby](#) draws our attention to a critical problem in the global South and beyond: native populations who lack citizenship due to low birth registration rates and the absence of official documentation, on the one hand, and low rates of naturalisation among long-term, often native-born noncitizen residents, on the other. Rather than focus on individual immigrant resources, such as education and income, or immigrant-related variables such as generational status or homeland ties, Manby highlights the contingencies of citizenship acquisition, shifting the level of analysis from individual immigrant choices to contextual factors, political institutions, and historical legacies. She proposes that devolution of the naturalisation process would ‘unblock’ access to citizenship.

Based on my research on East Asian democracies, I am sympathetic to Manby’s call for strengthening the local level in naturalisation procedures. Like the cases that Manby discusses, East Asian democracies—specifically Japan, South Korea, and Taiwan—have very low naturalisation rates. And their citizenship policies are similarly built on local institutions and practices. But devolution could potentially exacerbate and further institutionalise social hierarchies. Rather than focus solely on *where* naturalisation procedures are adjudicated, I argue that we need to examine the meso-level institutions and actors that *mediate* access to citizenship.

Is devolution the answer?

Manby makes clear that her proposal for devolution applies primarily to countries where central institutions have low capacity, where civil registration systems are weak, and where a form of multilevel citizenship is already in place. Central to her proposal for strengthening the local level is the call for a more transparent, predictable, and better regulated system of naturalisation.

But as others in this debate have argued, the devolution of naturalisation procedures can lead to further corruption and exacerbate social inequalities. While institutionalising already established procedures of ‘local naturalisation’ through legal regulation is a welcome first step in making the process more transparent, shifting the power to grant nationality to a subnational unit of government could create perverse incentives for local officials and political parties to use citizenship as a tool to distort local political outcomes, as Irene Bloemraad discusses for the U.S. case in the nineteenth and early twentieth century, and open opportunities for narrowing membership rules based on ascriptive criteria, as Sanzhuan Guo and Sujata Ramachandran bring up in their discussions of China and India respectively, or local customs and/or personal disputes as Barbara von Ruetten identifies in her contribution on Switzerland. Although the judiciary can play an important role in restraining the exclusionary practices of state authorities, as Ramachandran describes for the South African case, legally established rules overseen by the courts do not necessarily make naturalisation policies and procedures more just.¹ Nor would devolution remedy local informal practices that undermine or constrict citizenship in practice. The household registration system in East Asia demonstrates how formalising local membership rules may further institutionalise social hierarchies.

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¹ For example, see the 1922 *Takao Ozawa v. United States* and 1923 *United States v. Bhagat Singh Thind* cases, in which the Supreme Court deemed immigrants of Asian origin ineligible for naturalisation on the basis of their non-white status.

Meso-level membership and citizenship

As Guo points out, decentralisation is not a radical idea in East Asia because mainland China, Hong Kong, Macau, Taiwan, Japan, and South Korea already have local systems of membership management. In East Asia, the local household registry is the basis for determining legal juridical citizenship at the national level.² The Japanese *koseki* system was established by the modernising Meiji state to determine imperial subjecthood first within Japan and later in Japan's colonies.³ This system re-emerged in postcolonial South Korea's *hoju/hojeok* system⁴ and Taiwan's *huji/hukou* system⁵; mainland China's *huji/hukou* system has its origins in early Republican China.⁶

Similar to civil registration records elsewhere, the household registry can serve as a form of identification or material verification of kinship ties and descent (up to three generations of households registered under the single patrilineal surname of the household). But unlike *ius sanguinis*-based citizenship policies, individuals must be registered as members of a household located within the given country in order to automatically gain access to citizenship. While a household registry is not a prerequisite for naturalisation (which is linked to residency requirements as elsewhere), it cannot be substituted by evidence of common ethnic ancestry through language, cultural practices and DNA evidence. For native populations, the household registration system can serve as the institutional basis for differential citizenship rights based on gender, local (subnational) origin, and/or socioeconomic status.⁷ Unregistered native populations are not eligible for numerous public services, including passports, and some are legally stateless; those with household registries outside of a given country or, in China's case, local district have limited access to citizenship rights.

Much like India's ration cards,⁸ the household registry is linked to basic services provided by the state and the private sector, including access to health care, property rights, and bank accounts. But a key difference is that the household registration system is a strictly formal institution created by the state that not only informs citizenship attribution but has historically provided states with a flexible tool to regulate membership and movement.⁹ Post-imperial Japan denationalised all individuals whose *koseki* was located outside of the Japanese archipelago, effectively excluding all former colonial subjects;¹⁰ post-authoritarian Taiwan¹¹ amended its citizenship policies in 1992 to extend full citizenship rights only to those with *hukou* in Taiwan *regardless of nationality*, effectively excluding mainland and overseas Chinese from the expanded substantive rights extended to Taiwanese residents; and post-

² Chung, E., D. Draudt, and Y. Tian, (2020), 'Regulating membership and movement at the meso-level: citizen-making and the household registration system in East Asia.' *Citizenship Studies* 24(1): 76-92.

³ Chapman, D. and K. J. Krogness, (eds) (2014), *Japan's Household Registration System and Citizenship*. London: Routledge.

⁴ Kim, J., (2016), *Contested Embrace: Transborder Membership Politics in Twentieth-Century Korea*. Stanford University Press.

⁵ Friedman, Sara, (2015), *Exceptional States: Chinese Immigrants and Taiwanese Sovereignty*. University of California Press.

⁶ Chan, K.W. and L. Zhang, (1999), 'The Hukou System and Rural-Urban Migration in China: Processes and Changes.' *The China Quarterly* 160: 818-855.

⁷ Chung, E.A., (2017), 'Citizenship in Non-Western Contexts.' In *The Oxford Handbook of Citizenship* edited by A. Shachar, R. Baubock, I. Bloemraad, M. Vink (Oxford: Oxford University Press).

⁸ Abbas, R., (2016), 'Internal migration and citizenship in India.' *Journal of Ethnic and Migration Studies* 42(1): 150-168.

⁹ Chung, E., D. Draudt, and Y. Tian, (2020), 'Regulating membership and movement at the meso-level: citizen-making and the household registration system in East Asia.' *Citizenship Studies* 24(1): 76-92.

¹⁰ Chung, E., (2010), *Immigration and Citizenship in Japan*. Cambridge University Press.

¹¹ Rigger, S. (2002), 'Nationalism versus citizenship in the Republic of China on Taiwan.' In *Changing Meanings of Citizenship in Modern China* edited by M. Goldman and E. Perry, Harvard University Press.

authoritarian South Korea¹² revised its co-ethnic immigration policies in 2003 to define ‘overseas Koreans’ eligible for quasi dual-citizenship rights as those with *hojeok* in the Korean peninsula. In mainland China, the *hukou* is, according to some, the most important determinant of differential citizenship rights as it has historically classified citizens into rural or urban based on their geographical location and agricultural or non-agricultural family units based on their socioeconomic status, which, in turn, regulated their access to education, employment, health care, housing, and geographic mobility. In sum, although the local household registration system in East Asia has made citizenship attribution predictable and transparent, it has also institutionalised social hierarchies, socioeconomic inequalities, and patriarchal social orders.

How civil society and local communities shape political incorporation

Until the early to mid-2000s, Japan’s, South Korea’s and Taiwan’s naturalisation rates were among the lowest of all OECD countries. Despite the growth of their foreign populations, the annual naturalisation rate had not surpassed two percent of the total foreign population until 2005 in Taiwan¹³ and 2009 in South Korea;¹⁴ Japan’s annual rate has not exceeded one percent since the government began to keep records on naturalisations in 1952.¹⁵ Like many states in the global South that Manby and Ramachandran discuss, citizenship policies in East Asia do not include *ius soli* and naturalisation was, until recently in South Korea and Taiwan, an exceptional process, rather than a ‘normal’ step in immigrant political incorporation.

The diverging naturalisation rates in Japan and South Korea are especially noteworthy. Although Japan has a larger and longer established foreign resident population—numbering approximately 2.9 million in 2019, including native-born foreign residents that span six generations in Japan, compared to 2.4 million in South Korea, the vast majority of whom arrived from the late 1990s—the number of annual naturalisations in Japan has continually fallen behind that in Korea since 2008. At Korea’s peak in 2009, over three percent (approximately 27,000 people) of the total foreign resident population had naturalized, compared to 0.7 percent (approximately 15,000 people) in Japan. (While the annual naturalisation rate in Taiwan closely resembled that in Korea between 2005 and 2010, it has declined precipitously to under one percent since 2013.)

These differences are not the consequences of formal naturalisation requirements. Japan’s naturalisation requirements are not any more stringent than those of South Korea (or Taiwan). They both have a five-year continuous residency requirement and applicants must demonstrate that they can support themselves financially. Naturalisation applicants in South Korea must additionally pass a citizenship exam.

But one key area that has shaped divergent naturalisation patterns in the two countries is the role of local governments and civil society organisations, such as neighbourhood associations, NPOs/NGOs, labour unions and co-ethnic organisations.¹⁶ Local governments and NGOs in Korea actively encourage long-term foreign residents, especially spouses of native citizens, to naturalise through public campaigns, state-subsidised support centres, and grassroots outreach programmes. Most local immigrant advocacy organizations, for example, offer assistance with the naturalisation application process and the

¹² Park, J-S. and P. Chang, (2005), ‘Contention in the Construction of a Global Korean Community: The Case of the Overseas Korean Act’, *The Journal of Korean Studies* 10(1): 1-27.

¹³ National Statistics, Ministry of the Interior, Republic of China (Taiwan), <https://www.stat.gov.tw/ct.asp?xItem=15409&CtNode=3622&mp=4>.

¹⁴ Korea Immigration Service Statistics, Ministry of Justice, Republic of Korea, <http://www.immigration.go.kr/immigration/1570/subview.do>.

¹⁵ Ministry of Justice Statistics, Japan, http://www.moj.go.jp/housei/toukei/toukei_index2.html.

¹⁶ Chung, E., (2020), *Immigration Incorporation in East Asian Democracies*. Cambridge: Cambridge University Press.

more than 200 government-sponsored ‘multicultural family centres’ throughout South Korea provide preparatory citizenship exam courses and integration programmes that eligible applicants can take in lieu of the written exam.¹⁷

In contrast, immigrant advocacy organisations and local governments in Japan rarely encourage foreign residents to naturalise. Among a wide spectrum of immigrants and local officials alike, *permanent residency* is treated as the final step of immigrant political incorporation. Instead of providing information on and assistance in the naturalisation process, local governments and advocacy organisations have promoted immigrant rights as non-national local citizens, or ‘foreign resident citizens’ (*gaikokujin shimin*), not as *potential* Japanese citizens.¹⁸ For example, the ‘Multicultural Coexistence Promotion in Local Communities’ plan from the Ministry of Internal Affairs and Communication, which is based on ‘best practices’ by local governments with high concentrations of foreign residents, encourages foreign resident participation through support of key foreign resident leaders, the formation of foreign resident advisory bodies, and the promotion of foreign resident participation in local civic associations.¹⁹ And permanent residency in Japan comes with generous social welfare provisions, further lowering the incentive to naturalise.²⁰ In contrast to Japan’s low naturalisation rates, the number of permanent residents has grown rapidly from approximately 63,500 in 1995 to more than one million in 2018, despite the ten-year continuous residency requirement (which is double that for naturalization applicants).²¹

Mediating citizenship

As Diego Acosta points out for South American cases, multiple state and non-state actors can alter the incentives for naturalisation. While state policies set the structural boundaries of political incorporation, civil society and local communities establish the political learning environment for noncitizens. Some community organisations may supply valuable information and resources for immigrants who are considering naturalisation, ranging from referrals to lawyers to translations of citizenship exams and materials to financial support. Others may bring attention to the disincentives for naturalisation through stories of difficult procedures, negative experiences, and high social and financial costs. And when immigrants reside in communities where very few of their family, friends, and neighbours have naturalised, naturalisation may be seen as exceptional and anomalous, especially when citizenship is closely tied to ethnocultural identity.

Rather than view political incorporation as a unilinear process by which states integrate individual noncitizens into the polity, the East Asian cases remind us that it is a relational process.²² By shaping how noncitizens negotiate citizenship policies and practices, civil society actors in particular play a critical role in determining whether naturalisation is a normal or exceptional step in political incorporation. Unblocking access to citizenship thus requires more than reforms to naturalisation procedures. We need to critically analyse how meso-level institutions and actors mediate the opportunities and hurdles for citizenship acquisition.

¹⁷ Chung, E. and D. Kim, (2012), ‘Citizenship and Marriage in a Globalizing World: Multicultural Families and Monocultural Nationality Laws in Korea and Japan’, *Indiana Journal of Global Legal Studies* 19(1): 195-219.

¹⁸ Chung, E., (2010), *Immigration and Citizenship in Japan*. Cambridge University Press.

¹⁹ Chung, E., (2010), ‘Workers or Residents? Diverging Patterns of Immigrant Incorporation in Korea and Japan,’ *Pacific Affairs* 83(4): 675-696.

²⁰ Chung, E., (2010), *Immigration and Citizenship in Japan*. Cambridge University Press.

²¹ Report on Current Foreign Resident Statistics at the End of 2018, Ministry of Justice, Japan, http://www.moj.go.jp/isa/publications/press/nyuukokukanri04_00081.html.

²² Chung, E. (2020), *Immigration Incorporation in East Asian Democracies*. Cambridge: Cambridge University Press.

Re-centring political equality as a good of citizenship: a response to proposals to decentralise the naturalisation process

[Christine Hobden](#)*

Statelessness and a lack of documentation are a significant barrier to naturalisation in Africa. [Bronwen Manby](#)'s kickoff contribution to this forum highlights this fact, and its likely existence in many other parts of the global South. Despite significant migration within Africa, naturalisation figures remain startlingly low; a feature found too in South America, as pointed out by Diego Acosta. [Manby](#) suggests that decentralisation of the naturalisation process provides us with a bold response to this intractable problem. She points us to models of local procedures that verify identity through witness statements, and thus, she alludes, provide a good way to get around sole reliance on paperwork that so many do not have in their possession.

The risks of decentralisation

Others in the forum have highlighted the risk that a decentralised process will result in arbitrary, discriminatory, and unequal access to citizenship. Focusing on the empirical evidence from contemporary and historical examples, they have highlighted that decentralisation does not necessarily increase naturalisation (as Barbara von Ruetten shows is the case in Switzerland) and where it does, it is normally for a privileged grouping (as Irene Bloemraad argues was the case in localised US naturalisation).

Throughout the forum, the challenge of xenophobia has been considered in light of the decentralisation proposal. One might think that placing the naturalisation process at the local level can induce better relationships between migrants and locals. It may be a fairer process if those who have actually interacted with each other participate in it, rather than relying on a face-less national level procedure. Yet, in South Africa for example, it is precisely at this day-to-day level that xenophobia has been most dangerous: think here of the extreme hostility to foreign-owned spaza shops serving local communities with basic daily essentials.¹ It is not clear that the local level will provide welcome in deeply xenophobic contexts, whether in providing local witnesses in support of applications or a less hostile procedure. As Bloemraad notes, local warmth of welcome matters.

It has been suggested, drawing on the case of Switzerland, that local procedures can at least help to make migrants aware of the possibility of naturalisation and that it is a possibility that belongs to them. Naturalisation processes, even at a national level, are often technically complex, precluding applicants through tactics of benign or intentional obfuscation. In South Africa, such tactics have been called 'a paper wall' in the case of refugee law,² while [Manby](#) herself has argued that the "apparently dry details of the rules for obtaining papers can hide an ocean of discrimination and denial of rights."³ One particularly egregious example of this use of procedural warfare is South Africa's Department of Home

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¹ 'Africa: foreign-owned shops and traders targeted in violent, xenophobic attacks', Business and Human Rights Resource Centre <https://www.business-humanrights.org/en/latest-news/so-africa-foreign-owned-shops-and-traders-targeted-in-violent-xenophobic-attacks/>.

² de Wet, P. 'Foreign refugees in South Africa have just been banned from political activity as SA builds "a paper wall" against immigration,' *Business Insider SA*, 3 Jan 2020 <https://www.businessinsider.co.za/rules-update-bans-refugees-in-south-africa-from-politics-2020-1>.

³ Manby, B. (2009), *Struggles for Citizenship in Africa*. Zed Books.

Affairs' refusal to issue regulations to specify the procedure to acquire citizenship as a stateless child born in South Africa.⁴

The local level may have some potential to remedy the challenges of technically complex procedures, although even here, is it likely to become confusing if procedures differ between regions, as highlighted in the case of Switzerland. It is not clear, however, that it will ameliorate the strategic use of procedure as a barrier to access. In cases of chronic xenophobia, differentiated processes create more scope to purposefully muddy the waters as a way to deter applicants. As a result, the risk is that not only is the path to citizenship limited in undemocratic and opaque ways, but also in ways that *unequally* impact on migrants across the country.

Bloemraad invites us to consider the trade-off between the benefits of citizenship and the inequalities that acquiring citizenship through a decentralised process may create. At what cost (and what kinds of costs) are we willing to open access to citizenship?

Political equality as a central good of citizenship

Very little attention has been given in the contributions so far to the good of political voice contained within citizenship. Unequal access to citizenship is not just about (the very important) differing access to the material goods and stability of citizenship. It is also about unequal access to political voice in the political processes that govern the community. While local politics is of critical importance, especially in the global South, there is something significant about a democracy's national polity that we should not neglect.

It is at this collective level that the most central goods of citizenship are guaranteed: access to basic human rights, the upholding of the rule of law, and policies that further or hinder political equality (think here of national education policies, human rights protections for the LGBTQ community, or electoral reforms). While local governance often plays an important role in implementing reform on these issues, national level policies are central in setting the agenda and thus the scope of local action. Acquiring citizenship is an act of joining this national polity; joining the collective that determines the overarching policy and principles of the country.

South Africa's democracy is compromised, for example, by the fact mentioned by Sujata Ramachandran: there are millions of long-term resident Zimbabweans living in South Africa without recourse to apply for nationalisation given the temporary nature of the permits granted.⁵ These visas have now been renewed for a total of twelve years yet do not allow application for permanent residence, naturalisation, or special access to citizenship for children of these residents. It is not only the unjust withholding of the material goods of citizenship that mars South Africa's democracy; it is the fact that it is knowingly cultivating a class of demi-citizens. These individuals remain without access to full political voice despite long-term residence and a commitment to staying in place.

To be clear, [Manby](#) too, is attempting to open access to this national citizenship. She proposes that we can best do this through differentiated local procedures. Yet this differentiated model undermines political equality within the national collective. It is very difficult to maintain true relational equality between citizens if citizens from different regions or localities have joined the national polity in different numbers and under differing conditions. Given the central value of political equality in a democracy, we should prioritise having a fair and equal process in place for joining a national democratic polity. There will, of course, always be some difference in how citizens become citizens: some are born citizens and others acquire it through naturalisation. In many states, this naturalisation is accessible through

⁴ Hobden, Christine. 'How South Africa Has Squeezed Options for Migrants over 25 Years'. The Conversation, 15 Dec. 2019, <https://theconversation.com/how-south-africa-has-squeezed-options-for-migrants-over-25-years-128257>.

⁵ Ibid.

different routes according to one's employment, ethnic affiliation, or family ties. The point here is that democratic principles require us to keep this difference to a minimum in order to protect political equality and to foster relational equality between citizens.

[Manby](#) is correct that we need to pay more attention to the fact that colonialism and war have left large numbers of Africans stateless or without documentation to prove citizenship, even in places they have lived their whole lives. A focus on political equality reminds us, however, of the central importance of such documents: an equal process to access reliable documentation that is equally respected in all parts of a country is essential to the rule of law and an equal citizenship. As others have noted, it is highly likely that in a decentralised system, regions will end up with differing integration priorities (think here of India's West Bengal State's relationship with Bangladeshi migrants, as discussed by Ramachandran). Can we afford to risk exacerbating the potential for such immigrants to be deemed second-class members in the national polity? In already xenophobic societies, will documentation from some regions come to be worth more than others?

Bloemraad leaves a question mark over the precise value of citizenship in the global South in comparison to the valuable citizenships of the global North. But if we refocus on the democratic value of citizenship, perhaps such comparisons will seem less plausible. In fact, given the long history of colonialism and empire, the value of political equality and a meaningfully democratic polity is especially important in the global South; millions remain undocumented and disenfranchised as a result of colonialism and its lingering social, economic, political, and legal legacies. This is precisely the kind of concern that animates [Manby](#)'s suggestion of decentralisation as a route to open up access to citizenship. But if the foundational value of citizenship lies at least partly in its promise of political equality, can we afford a method of acquisition that risks such great inequality? Even if such a route allows for a higher rate of naturalisation, we should be careful to ensure that the route itself does not undermine the value of the destination.

The way forward?

If decentralisation is, in the end, too risky an endeavour, where to next? [Manby](#) has highlighted a deeply important problem: the current citizenship laws in many African countries are creating generations of residents without meaningful access to citizenship by naturalisation. In many cases, such as South Africa, practitioners argue that the issue lies centrally in practical implementation.⁶ We need to hold the government accountable to implement policy efficiently, fairly and with transparency. But yet, as the South African case demonstrates, often inefficiency is a cover for hidden (or even explicit) agendas to prevent naturalisation.⁷ Erin Aeran Chung illustrates, in her discussion of Japan and South Korea, that it is local government and civil society actively encouraging naturalisation that makes a difference in naturalisation rates. As Ramachandran points out, xenophobic tendencies can undermine progress toward broader access to naturalisation. Our first focus ought then to be on facing up to xenophobia: highlighting the ways it is shaping citizenship policy and implementation, and working to change attitudes of citizens, the civil service, and government representatives.

While South Africa is not a very good example in practice, it still offers us an example of another important step forward. The South African Constitution grants almost all rights to those who live in South Africa, not only those who are citizens.⁸ As the newly democratic South Africa realised, fully naturalised citizenship ought not to be a gatekeeper for human rights. In practice, many struggle to

⁶ 'Refugees Amendment Bill [B12-2016]: Public Hearings: PMG.' Parliamentary Monitoring Group, 24 Jan. 2017, <https://pmg.org.za/committee-meeting/23871/>.

⁷ Hobden, C., (2019), 'Shrinking South Africa: Hidden Agendas in South African Citizenship Practice', *South African Journal of Political Studies* 47(2): 159-175.

⁸ 'The Constitution of the Republic of South Africa, 1996'.
<https://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>.

access certain rights, such as health care mentioned previously.⁹ But that should not deter us from pursuing the goal. When citizenship is no longer a requirement to access essential social services, naturalisation regains its important democratic feature: it is the ability and choice to join a democratic project as a fully participating, equal member. The cost to political equality when we decentralise that process is not something a democratic state should be willing to risk.

⁹ Crush, J. and G. Tawodzera (2011), 'Medical Xenophobia: Zimbabwean Access to Health Services in South Africa.' *SAMP Migration Policy Series No. 54*, Southern African Migration Programme.

Decentralisation of citizenship in Côte d'Ivoire requires first building trust

[Alfred Babo](#)*

In her opening piece for this forum, [Bronwen Manby](#) argues that decentralisation may increase the number of naturalisations by alleviating bureaucratic procedures and operating at the local level. The solution of localising naturalisation is not new, as fully described by Irene Bloemraad in the United States case. However, in the Ivorian case, beyond bureaucratic obstacles and financial deterrents, three significant factors might impair this approach: first, the dominance of practices of what Emile Durkheim called “social integration” over documented citizenship; second, reluctance to accept the rule of double *ius soli*; third, the permanent tensions over nationality that lately led to war in the country.

Practice of social integration

Western states' history shows that citizenship relied on and is ruled by what McKenzie named the ‘documents regime’.¹ In the African context, most documents regimes have been nationalised by the post-colonial states. After independence, in Côte d'Ivoire, legal citizenship evolved over the years to embody what seems to be a mixture of *ius soli* and *ius sanguinis*. Law 61- 415 of 1961, which first established the Ivorian nationality code, devised transitional provisions based on residency before 1960 and provided ongoing attribution that provided some rights based on birth in the territory, as well as by descent.² Through Articles 17 to 23, 27, and Article 105, the transitional provisions clearly aimed to include West Africans and their descendants resident in Côte d'Ivoire into the new Ivorian nation, requiring only a declaration of their will to be naturalised. For those born in Côte d'Ivoire after independence, Article 6 provided for citizenship to be acquired at birth on the Ivorian territory “unless both parents were foreigners” (and on condition that the birth had been registered). The third procedure was based on birth in Côte d'Ivoire and residence until the age of majority. The final way to access citizenship was ordinary residence-based naturalisation.

After independence in 1960, in spite of these legal provisions, immigrants became integrated as members of a local community through long-term settlement rather than by undertaking the paperwork required to demonstrate citizenship. Many West Africans got stuck in ‘social naturalisation’ as few of them actually applied for citizenship status. Diaha argues that lack of communication on the law and ignorance of the legal condition by immigrants is one reason for the low application numbers.³ Yet, I argue that foreigners’ wish to become Ivorians might also be overstated.⁴ Naturalisation is not only a legal procedure, but also the outcome of slow acculturation. In 1961, one of the representatives reminded the National Assembly's institutional committee members that naturalisation is not only an

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¹ McKenzie, B., (2017), ‘To know a citizen: birthright citizenship documents regimes in U.S. history,’ In *Citizenship in Question: Evidentiary Birthright and Statelessness*, by B. Lawrance and J. Stevens (eds), Duke University Press.

² Loi n° 61-415 du 14 décembre 1961 portant Code de la nationalité ivoirienne. available at, <https://citizenshiprightsafrika.org/loi-n-61-415-du-14-decembre-1961-portant-code-de-la-nationalite-ivoirienne/>.

³ Diaha, P.A.L. (2020). ‘La Loi n°2013-653 du 13 septembre 2013 portant dispositions particulieres en matiere d'acquisition de la nationalité par declaration : incidence sur la resolution des cas d'apatridie en Côte d'Ivoire.’ Memoire de master, Droit privé fondamental, soumis à l'Universite Catholique de l'Afrique de l'Ouest (UCAO) available at, <https://citizenshiprightsafrika.org/la-loi-n2013-653-du-13-septembre-2013-portant-dispositions-particulieres-en-matiere-dacquisition-de-la-nationalite-par-declaration-incidence-sur-la-resolution-des-cas-dapatridie/>.

⁴ Babo, A. (2013), *L'étranger en Cote d'Ivoire: Crises et controverses autour d'une categorie sociale*. L'Harmattan.

administrative act but also an aspiration involving individual commitments.⁵ Moreover, from 1960 to 1990 the lack of legal naturalisation for many West Africans did not exclude them from rights traditionally attached to citizenship. For instance, from 1960 to 1994, contrary to Article 5 of the Constitution, the Ivorian government granted them rights to vote (but not to run for office) in general elections (presidential, parliamentary, and local). The electoral codes of 1980 and 1985 were more specific and restricted those political rights to African immigrants only.⁶ The first president, Houphouët-Boigny also granted them land rights by proclaiming that “the land belongs to whoever uses it.”⁷ Against this backdrop, there was no necessity to apply for citizenship, even if the procedures were easy.

Restricted access to citizenship increases percentage of foreigners

In any case, in 2014, the proportion (24 percent) of foreigners in the population of Côte d’Ivoire remained artificially high.⁸ This number would decrease considerably if non-nationals residing in Côte d’Ivoire for ten years or more, or whose parents have lived there for more than ten years, were to obtain citizenship. It would also reduce dramatically if the rule of double *ius soli* – that a person born in the territory of one parent also born there is attributed nationality automatically at birth – had been applied (as it is in all the other former French territories in West Africa). Since the second generation born in the country made up 59% of those people identified as “foreigners” in 2014,⁹ the number of people born without Ivorian citizenship is far higher compared to other West African nations. Numerous ‘immigrants’ of foreign descent would have become Ivorian with such a legal provision.

Yet, already in 1961 the lawmakers were reluctant to use this option mainly because the country was the most attractive to immigrants in the region, a reluctance that increased after the so-called ‘economic miracle’ of rapid post-independence growth. Ten years later, the lawmakers restricted access to citizenship by adopting law no. 72-852 of 21 December 1972, which amended the 1961 code to end the declaration provision for those born in Côte d’Ivoire and resident until majority.¹⁰

Nationality, the bone of contention

At the advent of multiparty electoral democracy in the 1990s, the question of who made up the population of foreigners gained political significance, and the recognition or acquisition of nationality became problematic. Over the last thirty years, Ivorian society has been grasped by the divisive ideology of *ivoirité*, emphasising membership of an ‘indigenous’ (*autochtone*) ethnic group and casting doubt on the nationality of the current president Alassane Ouattara. During the year of any presidential elections, distrust about this political leader’s citizenship gripped the debate. The recurrent crisis of national identity eventually included the descendants of all West Africans, as well as those from the northern

⁵ ‘Procès-verbal de la séance de travail du 24 novembre 1961 de la Commission des Affaires Générales et Institutionnelles de l’Assemblée Nationale sur l’examen du projet loi portant code de la nationalité ivoirienne’ included in ‘Côte d’Ivoire : Recueil des textes législatifs et réglementaires relatifs au droit de la nationalité ivoirienne’. Ministère de la Justice, Côte d’Ivoire, 2016, available at Citizenship Rights in Africa Initiative, <https://citizenshiprightsafrika.org/cote-divoire-recueil-des-textes-legislatifs-et-reglementaires-relatifs-au-droit-de-la-nationalite-ivoirienne/>.

⁶ Kobo, P-C. ‘Côte d’Ivoire : Les étrangers votent’. *Plein droit* n° 9, décembre 1989, available at www.gisti.org/spip.php?article3818.

⁷ Otch-Akpa, B., (1995), “Theses: Le principe : "la Terre appartient à celui qui la met en valeur". L'envers socio-politique de la problématique foncière de l'Etat ivoirien: 1963-1993”. Thèse de doctorat, Paris, Université de Paris I-Sorbonne.

⁸ Ibrahima, BA. (2014), ‘Recensement General de la Population et de l’Habitat 2014: Rapport d’exécution et présentation des principaux résultats’, http://www.ins.ci/n/documents/RGPH2014_expo_dg.pdf

⁹ Ibid.

¹⁰ Loi n° 72-852 du 21 décembre 1972 portant modification du Code de la nationalité ivoirienne. available at <https://citizenshiprightsafrika.org/loi-n-72-852-du-21-decembre-1972-portant-modification-du-code-de-la-nationalite-ivoirienne/>.

regions of Côte d'Ivoire, including those born on the territory who did not take advantage of the nationality code between 1961 and 1972 to claim Ivorian citizenship. Violent clashes have broken out regularly,¹¹ such as those that took place in 2006 in two towns, which resulted in three deaths during public hearings to claim a national identity card. Ultimately, the political competition and denial of rights and citizenship to northerners led to the 2002 rebellion and low-level civil war for almost a decade. Controversies have also emerged over mass naturalisation efforts to resolve these issues.

How to reach modern legal recognition?

After the transitional provisions of the first code of nationality of 1961, other special measures have been taken by the authorities to grant nationality to immigrants. Decree 95-809 of September 1995 naturalised eight thousand Burkinabe (descendants of those originating in Burkina Faso) settled in four villages since the colonial time.¹² In 2003, following the rebellion, the Marcoussis Accord prescribed that those who could have been eligible to acquire nationality based on birth and residence until majority, before the 1972 law removed that right, must be given the right to apply again. Law 2004-663, modified and supplemented in 2005 by decisions 2005-04 / PR and 2005-10 / PR, and the implementing decree 2006- 76 of 31 May 2006, were adopted in line with these pledges – though scarcely accessed in practice.

In 2013, the new government of Alassane Ouattara acceded to two international conventions¹³ against statelessness¹⁴, and adopted a law providing temporary procedures to enable the grant of Ivorian nationality to individuals living in the country without citizenship. These decisions triggered intense debates. With this new law 2013-653 of 13 September 2013, stateless individuals originating from neighbouring countries would be able to acquire Ivorian nationality.¹⁵ While the UNHCR estimated the total number of stateless persons to be more than one million, opposition leaders argued that the government intended to turn approximately six million foreigners into Ivorians.¹⁶ Four years later, in 2017, only 123,810 applications had been submitted and 14,000 certificates of nationality delivered, while 32,450 applications had been rejected for various reasons, including suspicions over the trustworthiness of paperwork obtained by the applicants' local administrations.¹⁷ The questions raised about this collective naturalisation concerned the timing and the right to vote regarding the 2015 presidential election. The problem remains of what solution could facilitate legal access to citizenship in the current modern society where it becomes increasingly difficult to live without documents; but also in a country where nationality is the subject of controversy, even violence. Most recently, in line with this law and its pledge at UNHCR's High-Level Segment on Statelessness, on 2 September 2020

¹¹ 'Les «audiences foraines» embrasent la Côte d'Ivoire'. *Le Figaro*, 25 Jul. 2006 https://www.lefigaro.fr/international/2006/07/25/01003-20060725ARTWWW90242-les_audiences_foraines_embrasent_la_cote_divoire.php.

¹² 'Koupéla, Tenkodogo, Garango et Koudougou : La vérité sur les 8000 naturalisés' Abidjan.net, 18 Mar. 2013 <https://news.abidjan.net/h/454445.html>.

¹³ Convention on the Reduction of Statelessness 1961, https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

¹⁴ Convention Relating to the Status of Stateless Persons 1954. <https://www.unhcr.org/en-us/protection/statelessness/3bbb25729/convention-relating-status-stateless-persons.html>.

¹⁵ Loi n° 2013-653 du 13 septembre 2013 portant dispositions particulieres en matiere d'acquisition de la nationalite par declaration. available at <https://www.refworld.org/docid/524a86914.html>.

¹⁶ UNHCR 'Campaign Update January 2020 – March 2020.' April 2020 <https://www.refworld.org/docid/5e9578034.html>.

¹⁷ 'Côte d'Ivoire/Lutte contre l'apatridie: Vers l'élaboration d'un plan national d'action', RTI, 14 Jul. 2017, https://www.youtube.com/watch?time_continue=14&v=Q48im6rIxBI&feature=emb_logo.

the government formally established procedures that aim to regularise the status of stateless people in Côte d'Ivoire.¹⁸

Despite this legal framework, the challenge remains how to facilitate the legal acquisition of citizenship. I agree with [Manby](#) that a political decision for a double *ius soli* would reduce the rate of “foreigners”. However, in Côte d'Ivoire some citizenship reforms have either failed or turned out to be harmful for national cohesion. For example, in 1966 Houphouët-Boigny failed to implement a proposal to allow dual nationality because it lacked support, especially the agreement of the National Assembly.¹⁹ His personal political decision to grant land rights to immigrants resulted, in the long run, in deadly community conflicts. Therefore, I argue that in a country where citizenship is so hotly debated, any political decisions for *ius soli* will need solid institutional agreements (including the Government, Social and Economic Council, National Assembly, and Senate) and even public debate and adhesion at the national and local level.

Another way could be to remedy the flaws in the documents regime, which provides by law for the passport, the national identity card (CNI), and especially a certificate of nationality as proof of citizenship. Distributing birth certificates to individuals who lack them is a starting point. In June 2019, more than 600,000 school children received their birth certificates with the support of UNICEF.²⁰ Getting this document did not only make those children legally visible; it is also a documentary requirement necessary for obtaining the CNI (required to access public services or get a job) and a certificate of nationality, which is the documentary evidence of citizenship.

What could prevent the implementation of decentralised naturalisation?

Since nationality morphed into a powerful tool for the political vote, allegations of nationality fraud aiming at including non-nationals illegally in the electoral rolls are recurrent. Fraud on CNIs exploded in the 1990s after the adoption of the requirement to hold a residence card (*carte de séjour*) by law 90-437 of 29 May 1990, mainly because of its prohibitive cost.²¹ Besides, although foreigners' right to vote was suspended, many Burkinabe, who have genuinely believed themselves to be Ivorian and previously had been treated as such by regularly participating in the elections, were granted CNIs to constitute what was called ‘*bétail électoral*’ (electoral cattle) to vote during the first democratic presidential election of 1990.²² In the last couple of years, allegations of fraud increased at the local level, for example in 2015 in Soubré,²³ 2018 in Yopougon,²⁴ and 2019 in Daoukro.²⁵

¹⁸ “Côte d'Ivoire adopts Africa's first legal process to identify and protect stateless people.” UNHCR 4 Sept. 2020 <https://www.unhcr.org/news/press/2020/9/5f51f33b4/cote-divoire-adopts-africas-first-legal-process-identify-protect-stateless.html>.

¹⁹ Daouda, G-T. (2010). ‘Cinquante ans de politiques de la nationalité en Côte d'Ivoire’ *Outre-Mers. Revue d'histoire*, 98(368-369): 159-175, https://www.persee.fr/doc/outre_1631-0438_2010_num_97_368_4495.

²⁰ ‘Plus de 600,000 élèves obtiennent une identité légale.’ UNICEF, 14 Jun. 2019 <https://www.unicef.org/cotedivoire/communiqu%C3%A9s-de-presse/plus-de-600000-%C3%A9l%C3%A8ves-obtiennent-une-identit%C3%A9-l%C3%A9gale>.

²¹ Loi No 90-437 du 29 mai 1990 relative à l'entrée et au séjour des étrangers en Côte d'Ivoire <http://www.ilo.org/dyn/natlex/docs/SERIAL/37380/37227/F-314403553/CIV-37380.pdf>.

²² ‘Voter registration: Côte d'Ivoire’. Citizenship Rights in Africa Initiative, http://citizenshiprightsfrance.org/theme/voter-registration/?fwp_regions_and_countries=cote-divoire

²³ ‘Affaire “Fraude sur la carte nationale d'identité (CNI)” : Le FPI exige une enquête rigoureuse pour le démantèlement de ces réseaux de faussaires’. *L'Intelligent d'Abidjan*, 1 Jun. 2015 <https://news.abidjan.net/h/553067.html>.

²⁴ ‘Fraude Sur La Nationalite: Un très puissant réseau d'étudiants faussaires démantelé’ *L'Infodrome* 14 May 2018, <https://news.abidjan.net/h/637514.html>.

²⁵ ‘Scandale/ Côte d'Ivoire : Un vaste réseau de fausses cartes nationales d'identité découvert à 1 an de l'élection présidentielle.’ *Ivoirebusiness.net*, 21 Nov. 2019, www.ivoirebusiness.net/articles/scandale-cote-divoire-un-vaste-reseau-de-fausses-cartes-nationales-didentite-decouvert-1-de.

Another factor is the lack of reliability of the *état-civil* (registration of births, marriages and deaths), especially in the north. This public service remains poorly equipped and has insufficient human resources, both in quantity and quality. Besides, in 2002 the northern rebels destroyed and burned down some *état-civil* offices in the regions they occupied in the centre, north, and west.²⁶ As a result, for nearly ten years the birth registration service closed down, or operated in these areas independently of central government control. Regularly, debates surge about the reliability of the services delivered by this administration and the documents it issues.

Finally, in contrast to Acosta's argument about South American cases, corruption is a determinant factor that would hinder decentralised naturalisation in the Ivorian context. Local justice administration has already been accused of corruption in its functioning.²⁷ According to Afrobarometer data, the police and the judicial system are the two public institutions perceived as being most corrupted and, thus, less trusted by Ivorians.²⁸ My assumption is that the combination of nationality fraud and corruption is a recurrent plague in the Ivorian administration that does not play in favour of the decentralisation proposal.

Ways forward

With respect to the low statistics and slow process of naturalisation in Côte d'Ivoire, Manby's suggestion for decentralising the procedure could be relevant. However, since the procedure is centralised, one game-changer could be allocating actual power to local authorities and representatives through the decentralisation of governance. This move must go along with enhancing the local administration's reliability, especially that of courts and police. Another critical element could be the improvement of services that produce statistics locally. For example, decentralisation could build upon the World Bank's new project, Harmonizing and Improving Statistics in West Africa (HISWA), which aims to strengthen the statistical systems and enhance the use of core statistics, including regular censuses.²⁹ Finally, naturalisation policies must be separated from political issues. Otherwise, decentralisation of naturalisation in the still divided Côte d'Ivoire without the reforms that can build political trust and reliable local administration might not be a realistic prospect and could actually enhance political tensions.

²⁶ 'Rapport de mission en République de Côte d'Ivoire', (2012), *Mission organisée par l'Office français de protection des réfugiés et apatrides*, <https://www.refworld.org/pdfid/547478454.pdf>.

²⁷ 'La corruption, gangrène du système judiciaire ivoirien.' *The New Humanitarian*, 16 Jul. 2007, www.thenewhumanitarian.org/fr/actualite/C3%A9s/2007/07/16/la-corruption-gangre-C3%A8ne-du-syst-C3%A8me-judiciaire-ivoirien.

²⁸ "Côte d'Ivoire." Afrobarometer, <https://www.afrobarometer.org/countries/c/C3%B4te-divoire-0>.

²⁹ 'Harmonizing and Improving Statistics in West Africa.' World Bank, March 2020, www.worldbank.org/en/news/press-release/2020/03/26/harmonizing-and-improving-statistics-in-west-africa.

Access to legal identity and to nationality: Why inclusive procedures depend on political will

[Luicy Pedroza](#)*

Arendt's remarks on the right to have rights and the right to belong to an organised community in chapter IX of *The Origins of Totalitarianism* are famous and echo the spirit of [Bronwen Manby's](#) kick-off contribution to this forum. Moving from continent to continent amid a pandemic, it took me long to be able to finish a response, but finding another passage in that chapter brought me back to it: "We are not born equal, we come to be equals as a member of a group through our decision of conceding each other equal rights".¹ What is a legal identity without membership? What is membership without civic equality?

This GLOBALCIT forum shows why it is high time we begin to answer these questions collecting experiences from different world regions. [Bronwen Manby's](#) kick-off urges us to find an end to the plight of millions of stateless, undocumented people who find no entry into citizenship especially in regions where naturalisation is rare and *ius soli* is weak. Sujata Ramachandran's and Erin Aeran Chung's contributions report practices which compel us to carefully observe the formal and informal ways in which naturalisation operates in practice. The works of these scholars invite us to leave our comfort zone as academics and get ready to sharpen our analytical tools to understand the very institution of citizenship in its numerous varieties.

[Manby's](#) proposed solution of decentralised naturalisation combines a pragmatic legal solution with careful attention to procedures. She is aware of the risk that decentralisation might lead to arbitrariness. Some authors in this forum think that this risk is too high. Irene Bloemraad and Barbara von Ruetten present empirical evidence of decentralised naturalisation having led to more inequality among groups in the United States and Switzerland. Christine Hobden worries that decentralised naturalisation will violate the principle of political equality. More than the risk of unequal processes across localities, I worry that decentralised processes may produce unequal citizens and thus I want to warn that a broader debate on equal citizenship is unavoidable, just as is a more basic effort to strengthen civil registries. Considering that [Manby](#) herself gives as much importance to decentralising naturalisation as to making conditions of naturalisation transparent and their implementation predictable and subject to appeal, my contribution will try to delineate some political contours for her proposal.

[Manby](#) illustrates how the imposition of arbitrary state borders by empires affected peoples across different world regions and keeps having consequences to this day. Colonialism subjugated those not considered to 'belong' to the colonising power for many years under systems of legally unequal citizenship that cast a long shadow even after independence. Spanish colonial practice extended to Latin America the Iberian system of local social recognition of citizenship to residents: "The question was always whether the person was integrated and thus loyal".² So far so good. The problem is that while this system seemed to work out in Spanish practice so flexibly that "both natives and foreigners could acquire *nativeness*, lose it, and obtain it again" (ibid.), the colonial practice excluded some entire groups (above all, persons of African origin and other foreigners) from the chance of ever becoming citizens. Citizenship historians concur that after independence, weak state administrations allowed clientelist and corporatist structures which had been the basis for political life in colonial times to extend their control,

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¹ Arendt, H., (1967), *The Origins of Totalitarianism*. Second Enlarged Edition. Meridian Books, Cleveland and New York: 301.

² Herzog, T., (2007), 'Communities Becoming a Nation: Spain and Spanish America in the Wake of Modernity', *Citizenship Studies* 11(2): 151-172.

despite the early declaration of equal citizenship between males across the young independent republics.³ To this day, in Latin America the tension between the institution of a citizenship understood to be equal between autonomous, independent individuals and a mistrust in individuals' ability to overcome primordial group loyalties is very much alive.

The lack of legal identity as the first problem to solve

Erin Aeran Chung and Christine Hobden recognise that [Manby](#)'s exposition of motives to propose decentralised naturalisation outlines two closely intertwined problems: one is that (native or not) populations may lack citizenship due to lacking official documentation; the other is the low rates of naturalisation among long-term foreign residents.

I want to caution against conflating these procedures as a solution. When [Manby](#) proposes that a legal framework is created for the local authorities that attest legal identification and, on top of that, they have the power to make a foreign person a citizen (with the same status as any other citizen) these are still two different competencies. Admittedly, the lines are thin: getting papers that accredit one's personal identity usually implies linking us, as persons, to a larger community. For persons whose status as natives or foreigners is not clear, [Manby](#)'s pragmatic proposal would be immensely helpful. However, I think that devising systems of issuing identification documents that are universally accessible and fair is a first, fundamental step. Access to a legal identification implies a process of recognition of a person's existence. An equally important but different endeavour is to establish a legal path of access to naturalisation for foreign and stateless persons. This process involves asserting that a foreigner has ceased to be so and has undergone a change of his/her main ("original" or "natural") membership.

A recent example of implementing both solutions can be found in Costa Rica. For many years, the Costa Rican state – otherwise exemplary in terms of democratic government within Latin America – faced accusations that it denied nationality to Ngäbe-Buglé people,⁴ who historically (that is, before the imposition of a border in their homeland) lived in what today is a transborder area with Panama.⁵ Generations of Ngäbe-Buglé people born in their ancestral homeland were never registered by either of the two states that established a border there; thousands of them moved every year across the border in one or another direction to work in the harvest of crops, without documentation and, consequently, without access to social services and citizen rights. In 2018, after years of political agitation over this issue, the Costa Rican state started a civil registry campaign, with the collaboration of UNHCR, to give permanent residence to 'indigenous migrants' of the Ngäbe-Buglé community.⁶ At the same time, Costa Rica started in 2017 to regulate the access of stateless persons to nationality via naturalisation after two

³ Zarza Rondón, G. 'El largo camino hacia la ciudadanía: la población indígena en la Constitución de 1812'. Ponencia presentada en el XIV Encuentro de Latinoamericanistas Españoles (Congreso internacional), Septiembre 2010, Santiago de Compostela, España; Sabato, H. (coord.), (1999), *Ciudadanía política y formación de las naciones. Perspectivas históricas de América Latina*, México, El Colegio de México, Fideicomiso de Historia de las Américas y Fondo de Cultura Económica; Sabato, H., (2012), 'Political Citizenship, Equality, and Inequalities in the Formation of the Spanish American Republics', Working Paper Series, No. 16, Berlin: desiguALdades.net Research Network on Interdependent Inequalities in Latin America.

⁴ Vargas Sibaja, V. A. (2014), 'El control de convencionalidad en el riesgo de apatridia en el ordenamiento jurídico costarricense a la luz de la Declaración y Plan de Acción de Brasil de 2014: El caso de los indígenas Ngöbe-Buglé que habitan en la zona de Sixaola de Limón.' Universidad de Costa Rica.

⁵ Morales., Abelardo, D. Montoya, and J. Jiménez Herrera, (2014), 'La travesía laboral de la población Ngäbe y Buglé de Costa Rica a Panamá: características y desafíos' San José, Costa Rica: FLCASO; Vargas Sibaja, V. A. (2014), op cit.

⁶ Muñoz, D. 'Una campaña de registro saca a las familias indígenas de las sombras.' 29 January 2018. UNHCR. <https://www.acnur.org/noticias/historia/2018/1/5af2e9d731/una-campana-de-registro-saca-a-las-familias-indigenas-de-las-sombras.html>.

years of residence.⁷ In this process the two variants proposed by [Manby](#) are visible: migrants were recognised as migrants with a right to permanent residence, and, on the other hand, authorities aimed to increase naturalisations by reducing the residence period required to apply for naturalisation. The reform of naturalisation was extended on a general basis, for the whole territory, and not only for the Ngäbe-Buglé.

Can other regions replicate this simultaneous undertaking? Simply waiting until strong civil registries have been established across entire world regions might take too long and I sympathise with [Manby](#)'s impatience to find a solution, but still think that providing a clear national direction with a reform that asserts the general principles and conditions for naturalisation is unavoidable, and also key, for political reasons. My caution about conflating procedures too quickly, despite our urge to solve both problems, stems from the larger political preoccupation that unless there is a general debate providing the frame for local practices, these will not only be disparate, but will not face upfront the challenge to combat xenophobia.

Nothing wrong with local adaptations, but political debates are needed

In contrast to the opinion of others in this forum debate that the principle of political equality could be violated by decentralised and very likely unequal naturalisation processes, I see less of a problem with variation and local discretion if their scope and direction are clearly limited by national guidelines. Decentralising the naturalisation process could help to increase naturalisations if national authorities allow for the adaptation of documentation requirements to, or substitution by other, locally ascertained conditions when it is in favour of the applicant. To reiterate my point: The condition is that a universal, accessible, transparent process is set to apply nationwide, and that discretion to meet specific requirements in the local processing of applications is allowed but limited in direction and degree. In Germany, for instance, discretion exists but it must work in favour of the applicant – i.e. by waiving conditions of providing documentation when it would be burdensome to present those documents, as long as there is another way to demonstrate that the condition is fulfilled. Interviews or the presentation of witnesses, for instance, are some possibilities.

But my point is that this is not merely a procedural matter (hopefully embedded in a general development of stronger local authorities and bureaucracies). For nation-states to allow such room for local adaptations in the hope of increasing naturalisations there must first be a political will to increase naturalisations. As a legal scholar, [Manby](#) seems to be wary of executives' use and abuse of naturalisation reforms. Her higher trust in courts is validated by the evidence from across South America in Acosta's response. Yet, if the issue is redefining nationhood, then debates on the general principles of access to nationality are unavoidable.

A debate on open access to naturalisation procedures ought to lead to accepting that foreigners can apply after a certain time of residence; that any person who meets this condition should have access to naturalisation regardless of gender, race, ethnicity or religion; and that the cost of the process be commensurate with administrative costs of a procedure of verification, registration and issuing of documents (and not the price of a commodity). Defending this baseline is going to prove difficult and controversial in some countries, but if we are looking for ideal proposals to reform migrants' access to nationality it is worth having a clear goal. I think there is no way around these discussions. For any society, getting there requires reflecting seriously on its own xenophobic baggage. In each country and region debates can start with matters of principle but can be enriched with many other arguments (local traditions, for instance). They can include comparative citizenship practice (for which GLOBALCIT provides a wealth of evidence to draw on). Once a political community has made it a goal to increase

⁷ EFE. 'Costa Rica nacionaliza a persona apátrida por primera vez en Latinoamérica.' 5 June 2018. Diario Digital Nuestro País (blog). <https://www.elpais.cr/2018/06/05/costa-rica-nacionaliza-a-persona-apatrida-por-primera-vez-en-latinoamerica/>.

naturalisations, incentives can be put into place to encourage subnational levels to adapt their local procedures of naturalisation so as to enable more people to overcome obstacles.

The reforms in Costa Rica (a relatively stable and orderly democracy in its region) mentioned above illustrate that these are never-ending debates. We better get armed with patience but ready to set them into motion. Another example are the current and very heated controversies about the rights of naturalised persons in Mexico. Even in this country with inclusive *ius soli*, relatively generous immigration policies and pride in its historical practice of refuge, there is a hierarchical citizenship that until today impedes naturalised citizens from ever having the same civic status as Mexicans by origin.⁸ This is common feature also in other Central American countries.⁹

Debates on fair access to naturalisation as a process leading to one and the same status for all members of a national community are worth having because they comprise both issues of principle and procedure. If the compass in those debates is equal citizenship they will give a solid base to decentralised naturalisation.

⁸ Hoyo, H., (2015), 'Apertura externa, exclusión interna: El Nacionalismo Revolucionario y los derechos de migrantes, mexicanos por naturalización, y dobles nacionales en México.' Working Paper No. 87. DesiguALdades.Net <https://refubium.fu-berlin.de/handle/fub188/20184>.

⁹ Pedroza, L., and P. Palop-García, (2017), 'The grey area between nationality and citizenship: an analysis of external citizenship policies in Latin America and the Caribbean.' *Citizenship Studies* 21(5): 587–605.

Two pathways to citizenship in Mexico

[Imke Harbers](#)*

At first glance, Bronwen Manby's proposal to decentralise naturalisation in order to unblock access to citizenship for migrants and refugees seems radical. Provisions related to citizenship and immigration are usually the exclusive authority of central governments, even in federal or decentralised countries. Switzerland – covered here by Barbara von Ruetten – stands out because it deviates from this pattern. In the US, where, as Bloemraad highlights, naturalisation was initially decentralised, the federal government acquired a monopoly over immigration and naturalisation during the process of state formation. In China – as explained by Sanzhuang Guo – differentiated rules for acquiring citizenship are the result of subnational units' distinct paths toward incorporation into the national polity. The emergence of centralised and uniform rules for the acquisition of citizenship therefore appears to be intertwined with the process of state formation. Across Latin America, even as the authority of subnational governments to set policy and spending priorities was strengthened by newly democratic regimes during the past three decades, control over citizenship and naturalisation remained highly centralised. The need for one uniform nationwide policy on these issues appeared to be so self-evident that it was not even debated.

This reluctance to decentralise control over access to the political community seems understandable. Equality is a fundamental principle of citizenship, as Christine Hobden emphasises in her response to [Manby](#). The purpose of decentralisation, by contrast, is to allow differentiation among subnational units and to acknowledge locally varying circumstances and preferences. Decentralisation, as several contributions to this symposium have pointed out, is therefore likely to undermine the equality inherent in citizenship.

At second glance, however, the idea of decentralising access to citizenship in Latin America is not radical at all, but basically in line with current practice. De facto access to citizenship already varies within countries, often as a result of unequal access to civil registration. When thinking about the ways in which individuals acquire citizenship and are formally recognised as members of the political community, it becomes clear that two paths exist – one via the process of naturalisation and one via civil registration. While the first has remained nationalised and has mostly remained the focal point of debates on naturalisation, the latter is already decentralised, but has remained somewhat obscure. These paths to inclusion in the political community are not alternatives among which migrants can choose, but structure access to citizenship for distinct subgroups of migrants. I examine these paths with a focus on Mexico, which is distinct from the African cases that inform and motivate [Manby's](#) argument because *ius soli* constitutes the main principle for the acquisition of citizenship in Mexico. In such contexts, problems of statelessness and exclusion from the political community are particularly pressing for the first generation of migrants.

The centralised route: citizenship via naturalisation

As Diego Acosta highlights, the number of naturalisations in Latin American countries is strikingly low. Mexico is no exception in this regard. In the decade from 2007 to 2017 the average number of naturalisations was only about 3,300 per year in a country of 120 million people. In 2018, the last full year for which data are available, just 3,872 naturalisations took place.¹ Applications for naturalisation

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¹ 'Estadísticas de Cartas de Naturalización expedidas de 2007 a 2019.' Gobierno de Mexico, Dirección General de Asuntos Jurídicos, <https://sre.gob.mx/estadisticas-de-documentos-art-30-constitucional>.

are processed under the auspices of the Ministry of Foreign Affairs (*Secretaría de Relaciones Exteriores*), where appropriate in cooperation with the Ministry of the Interior (*Secretaría de Gobernación*). Naturalisation is open to foreigners with at least five years of legal residence in Mexico, provided that they pass a test demonstrating their proficiency in Spanish as well as knowledge of Mexican history and culture. Naturalisation is also possible for foreign nationals married to Mexican citizens, parents of children who have acquired Mexican citizenship at birth, those coming from other Latin American countries under a provision that offers preferential treatment for residents from similar ethno-cultural backgrounds, and to foreigners who have made distinguished contributions to the Mexican nation.² In all of these cases, requests for naturalisation require a long list of certified documents that attest to the applicant's legal identity and parentage, good behaviour and absence of a criminal record, as well as the payment of fees for processing the application and requisite documents. Requests for naturalisation now also have to be accompanied by the applicant's government-issued Personal ID Number, known as the CURP (*Clave Única de Registro de Población*). The CURP is supposed to be assigned to everyone living in Mexico as well as to Mexicans living abroad, but rollout has been somewhat uneven.

Who is able to make use of this path towards citizenship? While comprehensive data on the socio-economic background of those who naturalise are hard to come by, the low overall number already suggests that the national-level route to citizenship is an option only for a very specific subgroup of foreign nationals: those with resources and documents. Foreign nationals able to take advantage of these provisions inhabit a world where legal identities and parentage are well documented, and where the distinction between citizens and non-citizens is clear. A closer look at the previous nationalities of naturalised citizens highlights this. For naturalisations between 2007 and 2019 the top five countries of origin are Colombia, Venezuela, Cuba, Argentina and Spain. The United States, which ranks sixth in terms of previous nationalities, appears above Guatemala, El Salvador and Honduras. During the whole period only five out of 40,641 naturalisations were granted to foreign nationals classified as stateless.³

Examining these numbers in light of what we know about those who migrate to Mexico reveals how limited and exclusionary the national-level path towards naturalisation is. Recent news coverage of so-called "caravans" – groups of migrants travelling together to request asylum in the United States – suggests that families and unaccompanied minors fleeing violence in Central America constitute the largest group. The Mexican state does not collect comprehensive data on migrants crossing into Mexico via the Southern border to reach the United States. They are not included in the census or population counts, so estimates of their numbers and background are necessarily imprecise. Yet, we know that in the first eight months of 2019, Mexican authorities apprehended almost 120,000 migrants from Central American countries at Mexico's southern border.⁴ In 2019, the US Department of Homeland Security reported 850,000 apprehensions at the border between the US and Mexico.⁵ In a conservative estimate, the UN Population Division put the number of migrants present in Mexico in 2017 at more than 1.2 million, though the actual number is probably far higher.⁶ Migrants who cross from Central America into Mexico have almost no possibility to regularise their legal status. They are thus forced to evade authorities to avoid deportation, and they certainly cannot obtain proof of legal residence. As the contribution by Luicy Pedroza highlights, they also often do not possess documents to prove their legal

² 'Ley De Nacionalidad' (last amended 2005). <https://sre.gob.mx/ley-de-nacionalidad>.

³ 'Estadísticas de Cartas de Naturalización expedidas de 2007 a 2019'.

⁴ IOM/UN Migration. November 2019. Migration Trends in Central America, North America and the Caribbean. Available at: <https://kmhub.iom.int/en/virtual-library>.

⁵ 'Southwest Border Migration FY 2019.U.S.' Customs and Border Protection, <http://www.cbp.gov/newsroom/stats/sw-border-migration/fy-2019>.

⁶ UN Population Migration Data, 2017. http://www.un.org/en/development/desa/population/migration/data/estimates2/data/UN_MigrantStockByOriginAndDestination_2017.xlsx.

identity. Their reality is thus very different from the well-documented lives of those who can make use of the national-level route towards naturalisation.

The decentralised route: citizenship via civil registration

In light of the limited number of naturalisations at the national level, it becomes clear that the predominant route towards citizenship is civil registration, or the acquisition of citizenship by obtaining a birth certificate. Of course, this path is formally available only to those who are legally entitled to citizenship and born on Mexican territory. Civil registration, including the issuance of birth certificates, is a function carried out by municipalities within parameters set out by state-level and federal legislation. In contrast to the procedures governing naturalisation, civil registration is therefore characterised by a substantial degree of decentralisation.

Given significant variation in the quality and coverage of civil registration across the country, the theoretically crisp line between citizens and non-citizens is often blurry, especially in rural and marginalised municipalities. Despite recent advances, late registration has long been the norm in these areas. The more time passes between birth and the application for a birth certificate, the more difficult it becomes to verify identities. Late registration is therefore associated with incomplete, incorrect, and unreliable identity information (AbouZahr et al., 2015). The map below shows the average delay by state for all births registered in Mexico between 1985-2014. It shows that in many states – especially those in the South along the border – the quality and coverage of the civil registry is such that legal identity, and thus the line between citizens and non-citizens, is often ambiguous.

Figure 1: Average Delay in Birth Registration by State in Months

Source: Dataset of all births registered between 1985 and 2014. For more information on the data see Harbers (2020).⁷

⁷ Harbers, I. (2020), 'Legal identity for all? Gender inequality in the timing of birth registration in Mexico', *World Development* 128.

Given uneven access to written records and legal documents, procedures for late registration, as Manby also points out, tend to allow comparatively more space for witness testimony to determine eligibility. While requirements for late registration exceed those for timely registration, and the formal procedure is cumbersome, local implementation and discretion can provide a flexibility that acknowledges circumstances where legal documents are not available. A study of birth registration in marginalised municipalities in the southernmost state of Chiapas found that guidelines for verifying identities and demanding birth records from medical officials are regularly ignored: “Here, nothing is obligatory” a local official at the civil registry explained in response to the researchers’ questions.⁸ Of course, not all officials who issue birth certificates without the full set of requisite documents do so to accommodate the needs of marginalised citizens. Discretion and power asymmetries provide opportunities for rent-seeking, and local officials may demand ‘fines’ in return for the exercise of ‘flexibility’. Discrimination can also play a role, as several contributions to the symposium have pointed out.

Are migrants able to gain access to citizenship through civil registration? The lack of legal protection makes migrants vulnerable to coercion at the hands of Mexican officials, and they consistently face the threat of deportation. While concerns about migrants from Central America obtaining birth certificates resurface periodically in public and policy debates, there is no clear evidence for large-scale efforts by migrants to obtain such certificates. Yet, for those who are unable to continue their perilous journey to the United States and who get stuck in Mexico, obtaining a birth certificate is a more realistic path to citizenship than the centralised procedure for naturalisation. Acosta indicates that corruption scandals with regard to naturalisation have been rare in Latin America. In principle, this should be good news, but the stringent application of formal criteria and the demand for an extensive list of requisite documents also means that this pathway is inaccessible for the overwhelming majority of migrants present in Mexico. To the extent that migrants and refugees are able to escape their precarious status, the acquisition of a late birth certificate constitutes a more realistic path than naturalisation through national-level procedures. As such, it seems plausible that at least some migrants from Central America enter the ranks of what Kamal Sadiq has called ‘paper citizens’, that is migrants who become de facto citizens because they are able to obtain relevant documents.⁹ In her contribution on India and South Africa, Sujata Ramachandran also points to migrants’ ability to obtain ration-cards and voter identity-cards, and thus to regularise their status without going through immigration or naturalisation procedures.

Returning to Manby’s proposal, would decentralisation of naturalisation procedures contribute to unblocking citizenship in Mexico? What Manby picks up on is that national-level policies for naturalisation and their implementation are set up to exclude large numbers of migrants, and that those unable to document their legal identities are particularly vulnerable. Decentralising the procedure, without rethinking who is left out and why, is unlikely to help. The spirit of Manby’s proposal is to promote the inclusion of vulnerable migrants in national communities. The problem with the centralised naturalisation procedure that currently exists in Mexico is that it imposes requirements that vulnerable migrants simply cannot meet, and that it then enforces these requirements stringently. The greater accessibility of the decentralised route via civil registration comes mostly from the lack of stringent enforcement, rather than a desire to include migrants. As such, it is suboptimal and vulnerable to rent-seeking and discrimination. Importantly, though, this decentralised system of registration has recently been subject to a series of reforms aimed at improving oversight. The Personal ID number (CURP) constitutes an example of this. Furthermore, there is a strong push to integrate and harmonise information across identification systems that have so far been separate. This integration of information is likely to further shrink the space available for migrants to escape their precarious circumstances, and

⁸ Freyermuth Enciso, G., M. del Pilar Ochoa Torres, and J. Alberto Muños Hernández, (2017), ‘El Subsistema de Información sobre Nacimientos. Estudio de caso en una región indígena de Chiapas, México.’ *Estudios demográficos y urbanos* 32(3): 451-486.

⁹ Sadiq, K. (2009). *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. Oxford, Oxford University Press.

therefore makes it even more important to think about ways to unblock citizenship for those excluded by the national-level path.

If (decentralised) naturalisation is the answer, what is the question?

[Amal de Chickera*](#)

I have been following with great interest the exchange on ‘Unblocking access to citizenship in the global South: Should the process be decentralised?’, kicked off by Bronwen Manby. The responses so far have covered an impressive range and depth of contexts and issues, critically responding to Manby’s proposition. Should these interventions now all be synthesised and re-packaged as one report, it would offer a nuanced critique of naturalisation practices with a range of valid proposals for reform.

In my contribution to this discourse, I will take a step back, to look at the institution of naturalisation itself. Is naturalisation the answer (decentralised or not)? And if so, to what question? My reflection below, doesn’t relate to all – or even most – situations to which naturalisation is applied. It doesn’t for example, apply to situations where people who were born in another country, and are themselves migrants or have been displaced, require a pathway to citizenship. But it does apply to a significant and often overlooked set of issues related to the deprivation of nationality and statelessness. In particular:

1. situations where individuals or communities have been arbitrarily deprived of their nationality;
2. situations where children are denied the right to acquire a nationality at birth.

In both of these contexts, as the individual’s right to nationality has been undermined and violated by the state (or states) involved, the solution should be to recognise and redress this violation, and not to subject the person to a discretionary naturalisation procedure. In most such situations, discrimination plays an underlying role behind the denial of the right to nationality, often leading to statelessness.¹ It is unrealistic to think that states – which have created or perpetuated statelessness through discriminatory actions – will create fair naturalisation procedures for these very same people to benefit from. It is also unreasonable to leave individuals who have been denied their right to nationality with no option but naturalisation as a way to restore or acquire the legal status they should be entitled to by law.

The starting point of Manby’s essay is the right one – looking at the right to nationality (which also includes the right to change nationality) under international human rights law. However, having thus framed the issue from a rights perspective, the main focus of her kick-off essay, as well as the responses to it, has been on naturalisation – which as we all know, is a discretionary process far removed from rights. In a naturalisation process, the state is all powerful – to set the rules, interpret them and act on them. An aggrieved applicant may have recourse to administrative law, but the basis of any challenge to a naturalisation decision would relate to whether the decision correctly applied the naturalisation law (within the extensive discretion afforded in such matters), and not whether the naturalisation law itself respects the individual’s right to a nationality. This is why we still have today many naturalisation laws in force which are clearly discriminatory on grounds of disability, religion, sex and race (to name but some characteristics that are frequent grounds of discrimination).

Despite advances in international law, which, as Peter Spiro argues, point to the emergence of norms that require the extension of territorial birthright citizenship in some cases and that limit discretion concerning naturalisation thresholds, it is still widely accepted that states legitimately wield extensive discretion when it comes to naturalisation.² This is partly due to a general view that individuals who naturalise already enjoy their right to a nationality in another country. This worldview is of course blind to the phenomenon of statelessness and the deprivation of nationality. Perhaps due to this same blind

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¹ Clifford, J. (2014), ‘Citizenship and Statelessness: (In)equality and (non)discrimination,’ *Institute on Statelessness and Inclusion*.

² Spiro, P. (2011), ‘A New International Law of Citizenship’, *American Journal of International Law*, 694.

spot, it is also widely accepted that naturalised citizens can somehow be treated unequally – that they can be barred from access to certain jobs, or that their citizenship can legitimately be made less secure, i.e. that unlike citizens by birth they can lose it if they act in a certain way. This second position is perhaps even more problematic than the first and has significant implications on fundamental norms such as equality before the law and legal personhood.

Situations where individuals or communities have been arbitrarily deprived of their nationality

*The power to deprive citizenship is as old as the power to grant citizenship. In fact, the choices that are made when determining and implementing the rules of citizenship, are influenced as much by who (when and upon what terms) to ‘exclude’, as they are by who (when and upon what terms) to ‘include’.*³

After WWII, with the memory of citizenship deprivation and the holocaust still fresh on the world’s conscience, citizenship stripping was no longer seen as democratic and the prohibition of arbitrary deprivation of nationality became anchored in international human rights law. Today, while most states resist increasing these powers, the policy is regaining traction and deprivation of nationality is in active use across a range of contexts. As more states instrumentalise nationality and treat it as a privilege that can be taken away, members of minority communities, human rights defenders, dissidents and suspected terrorists are all more likely to be stripped of their nationality – facing acute human rights depravations as a result. For such individuals and communities, unfortunately, naturalisation is often viewed as a viable solution.

Having deprived people of their right to nationality, some states wield naturalisation powers more widely than they ever should to channel those who should have a citizenship by right into naturalisation processes, where the state enjoys greater power both in determining if you are in or out and where it creates the looming threat of kicking you out if you ever misbehave. Ironically, the very norms used to strengthen the right to nationality have been used against naturalised citizens to undermine their equality and security.

The experience of the Rohingya community is a case in point. The Rohingya have been systematically and arbitrarily deprived of their nationality in Myanmar through a series of discriminatory and arbitrary laws, policies and regulations, and their implementation. The 1982 citizenship law has reached levels of notoriety, but it is just one of many instruments wielded by the state – to reinforce prejudiced narratives that the Rohingya are not Burmese but that they are foreigners. This has in turn led to ‘naturalisation’ being put forward as a legitimate solution for the statelessness of the Rohingya.⁴ Under Myanmar’s citizenship law, the Rohingya – on paper at least – can access naturalisation procedures. But the more fundamental question is, why should they? If they have been arbitrarily stripped of their nationality by a state that has trampled on their right to nationality, why should they now subject themselves to yet another process riddled with arbitrariness, corruption and indignity, to achieve a second-class citizenship status? That naturalisation and ‘pathways to citizenship’ are mooted as credible solutions to this crisis by diplomats, UN agencies and other respected international actors underscores what is problematic about ‘naturalisation’ as a solution.⁵ It clearly isn’t a fair solution for ‘unwanted groups’, but it can masquerade as one, while only serving to entrench their exclusion.

³ Institute on Statelessness and Inclusion (2020). ‘World’s Stateless Report: Deprivation of Nationality’, p.131, available at: https://files.institutesi.org/WORLD's_STATELESS_2020.pdf.

⁴ Finnigan, C. ‘Myanmar 2020 – Rohingya Citizenship: Now or Never?’ LSE, 2 Nov. 2018, <https://blogs.lse.ac.uk/southasia/2018/11/02/rohingya-citizenship-now-or-never/>.

⁵ United Nations High Commissioner for Refugees. ‘Rohingya Crisis Needs Lasting Solutions.’ UNHCR, <https://www.unhcr.org/news/briefing/2020/8/5f3e60124/unhcr-rohingya-crisis-needs-lasting-solutions.html>.

The Myanmar situation – though extreme – is not exceptional. The same ‘solution’ of naturalisation is also put forward in relation to other groups arbitrarily deprived of the nationality that is rightfully theirs – Dominicans of Haitian origin,⁶ ethnic Russian Latvians and many others.⁷ It will be the solution that is eventually put forward if India carries through with its deprivation of nationality of 1.9 million people in Assam.⁸ As such, states which act in bad faith to strip entire communities of their nationality are rewarded with pleas to consider naturalising those who should instead be compensated and have their nationality restored.

Situations where children are denied the right to acquire a nationality at birth

A second concern with naturalisation as the answer relates to its application to migrant and displaced populations – where it fits more credibly to begin with. But even here, if children are born in a territory and would otherwise be stateless, the solution should not be naturalisation but recognising their nationality as of right. Article 7 of the Convention on the Rights of the Child is clear that every child has the right to acquire a nationality and that states must fulfil this obligation, particularly where the child would otherwise be stateless.⁹ This is particularly so when read with Articles 2 (non-discrimination) and 3 (best interests of the child) of the Convention. In other words, children born to refugees or migrants have a right to the nationality of their country of birth, if they would otherwise be stateless. The *ius soli* norm, which theoretically makes intergenerational statelessness an impossibility, should be applied universally if the child has no access to another nationality. If this principle were respected in practice, naturalisation would not be required as a solution to a child deprived of their right to nationality. Children who would otherwise be stateless would then have the right to obtain the nationality of their country of birth.

Some concluding thoughts

In both of the contexts addressed in this contribution – statelessness resulting from deprivation of nationality or denial of the right to nationality at birth – if ‘naturalisation’ is the answer, then the question is the wrong one. In these contexts, ‘naturalisation’ is the answer to a question that states would prefer: ‘How can we side-step our obligations related to everyone’s right to a nationality, while still maintaining a façade of providing solutions to endemic situations?’ Naturalisation will remain the answer to this question, for as long as the institution of naturalisation remains insulated from the progression of international human rights law.

As international law has evolved, there is increasing recognition that state sovereignty to determine who is and is not a citizen is limited by standards which protect individual human rights. Accordingly, the state has the sovereign authority to set its citizenship rules, but there are some fundamental principles which must be complied with. These include:

1. the right to nationality,
2. the right to not be arbitrarily deprived of nationality,

⁶ ‘Dominican Republic: Stripped of Citizenship, the Deportations of Ethnic Haitians Continue.’ in *Minority and Indigenous Trends 2018* Minority Rights Group, Sept. 2018, <https://minorityrights.org/dominican-republic-stripped-of-citizenship-the-deportations-of-ethnic-haitians-continue/>.

⁷ ‘Latvia.’ Statelessness Index, European Network on Statelessness 30 June 2020, <https://index.statelessness.eu/country/latvia>.

⁸ ‘125 Civil Society Organisations condemn mass-disenfranchisement in Assam’ Institute on Statelessness and Inclusion, 5 Sept. 2019, <https://www.institutesi.org/news/cso-joint-statement-on-assam-nrc>.

⁹ Institute on Statelessness and Inclusion, ‘World’s Stateless Report: Children’, (2017), available at: <https://files.institutesi.org/worldsstateless17.pdf>.

3. the right to due process and a fair trial,
4. the avoidance of statelessness, and
5. the prohibition of discrimination.

In the context of citizenship deprivation, these basic rules are articulated in the Principles on Deprivation of Nationality as a National Security Measure,¹⁰ which have been endorsed by a range of experts in the field and further elaborated on in the Commentary to the Principles.¹¹ In the context of the child's right to a nationality, they are articulated in various resources including The Child's Right to a Nationality and Childhood Statelessness¹² and UNHCR's Guidelines No 4: Ensuring Every Child's Right to Acquire a Nationality.¹³

There has of course been resistance to the idea that states are bound by international norms when determining who is and isn't a citizen. But just as the idea that every individual's freedom from torture cannot be overridden by a state sovereignty argument became mainstream and uncontroversial over a couple of generations (despite the Bush regime's best intentions to circumvent it in the US in the early 2000s), the right to nationality is also being increasingly recognised as a legitimate factor which shapes how state sovereignty can be exercised.

And so we should ask a different question: 'How can states be held accountable, to ensure they protect the right to nationality for all?' In order to answer this question, we should turn to the resources highlighted above (and various others), which clearly articulate the human rights principles at play.

As I mentioned at the beginning of this contribution, my focus is limited and does not apply to all contexts. However, the contexts to which it does apply are deeply problematic, and states should not get a 'free pass' by shifting the debate from 'protecting the right to nationality' to 'naturalisation and how it should happen'.

If we move beyond such contexts, we then approach the territory where we can have a constructive discourse around the decentralisation of naturalisation: situations of first-generation migration or displacement. But here too, we should make a greater effort to begin scrutinising naturalisation powers and processes through a human rights lens. Such scrutiny will expose the arbitrariness and discrimination which underpins many naturalisation processes. The question then is, what will we do about it? I do believe that, at this stage, decentralisation would have an important role to play, for all the reasons set out by the other contributors, but only as one of a number of responses needed to bring this widely unchecked power within the scrutiny and bounds of human rights standards.

¹⁰ Institute on Statelessness and Inclusion (2020), 'Principles on Deprivation of Nationality as a National Security Measure', available at: <https://files.institutesi.org/PRINCIPLES.pdf>.

¹¹ Ibid.

¹² Institute on Statelessness and Inclusion and UNICEF (2020). 'The Child's Right to a Nationality and Childhood Statelessness: Texts and Materials', available at: https://files.institutesi.org/crn_texts_materials.pdf.

¹³ UN High Commissioner for Refugees (2012), 'Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness', 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>.

The trouble with decentralising citizenship in Ethiopia's ethnic federation

Yonatan T. Fessha*

Ethiopia was the first country to adopt a nationality law in Africa in 1930. Since then, *ius sanguinis* has been the preferred mode of attributing citizenship in that country. The current citizenship law, adopted in 2003, which is based on the 1995 Constitution, has maintained the *ius sanguinis* framework by providing that 'any person shall be an Ethiopian national by descent where both or either of his parents is Ethiopian.' There is no element of *ius soli* in the law. It also provides for citizenship by naturalisation for foreigners that seek to acquire Ethiopian nationality. The Immigration, Nationality and Vital Events Agency, a federal agency, is given the power and duty to provide and revoke Ethiopian nationality for foreigners in accordance with the law.

Although it is a federal country, Ethiopia has not adopted a decentralised nationality regime. Citizenship, or nationality as Ethiopia's federal constitution calls it, is unambiguously a federal matter. According to the Constitution, the federal government "shall determine matters relating to nationality". More specifically, the House of Peoples' Representatives, the lower house of the federal parliament, has the power to enact specific laws on "nationality, immigration, passport, exit from and entry into the country, the rights of refugees and of asylum".

Most Ethiopians formally declare their nationality when they complete a form for nationally administered exams, register for elections or request a residential identification card at *Kebeles*, which are the lowest unit of local government. The most credible document that establishes the nationality of Ethiopians is the passport, which is needed for international travel and issued by the Immigration, Nationality and Vital Events Agency. Bereft of a national ID system until now, the issuance of passport by the federal agency heavily depends on IDs obtained from the *Kebeles*, which is perhaps the only way of establishing who is already a citizen.¹ This has made local governments key players in determining citizenship status, opening the room for the kind of decentralised naturalisation that Imke Harbers alludes to in her contribution on Mexico.

The procedures that the *Kebeles* follow when issuing an identification card is not uniform. Often a form has to be completed. Personal knowledge of the applicant, however, plays an important role. Sometimes the *Kebele* managers might ask the applicant to produce witnesses that can confirm his or her affiliation with the *Kebele*. A person that wants to take residence in another *Kebele* might have to produce supporting testimony from the *Kebele* he or she has left behind. This emphasises the point that *Kebele* ID is a confirmation of residence and not of origin.

Based on this, one may argue that adopting Bronwen Manby's proposal to localise citizenship, including naturalisation procedures, would not be introducing a radical change to the system in Ethiopia. It would merely formalise the existing national system that heavily relies on decisions made by local government authorities. But this conclusion would underestimate the impacts of the formal devolution of a power on an identity-related matter to ethnically defined subnational units in a country that uses ethnic federalism to manage its divisions.

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¹ World Bank (2016). 'ID4D Country Diagnostic: Ethiopia', <http://pubdocs.worldbank.org/en/822621524689442102/Ethiopia-ID4D-Diagnostic-Web040418.pdf>.

In an ethnic federation, decentralising citizenship risks reinforcing minority exclusion

Unlike in some federations, where geography or administrative conveniences have been used to structure the federation, ethnicity has been the basis for the reorganisation of the Ethiopian state.² The federation is composed of nine states that are largely demarcated along ethnic lines. Five of the nine states are not only predominantly inhabited by one particular ethnic group, but they are also designated by the name of the dominant ethnic group inhabiting the territory. The internal organisational structure of the remaining four states includes ethnically-based local governments, named, again, after the numerically dominant ethnic group, which indicates that ethnicity is taken seriously in the political and organisational make-up of the states.³ The geographical configuration of the federation has the effect of dividing the population of the component units of the federation into owners and guests (also known as settlers). In fact, this is stated explicitly in some of the state constitutions that identify and declare some of the ethnic communities as the owners or founders of the state.

Individuals that do not belong to the locally empowered group often face discrimination with regard to political rights, employment and other benefits offered by the states. Citizenship seems to be de facto differentiated in many ways. Reports of evictions of those that are considered as ‘outsiders’ are disturbingly common.⁴ In this context, decentralisation of citizenship could be used as yet another tool to marginalise persons that do not belong to the titular regional or local majority. Subnational authorities could use their power to either deny citizenship to individuals that are regarded as settlers or outsiders or make it difficult to establish their citizenship status. The issuance of citizenship certificates may also become a political instrument that is deployed for partisan purposes. The days leading up to local government elections often see local politicians making a flurry of promises to the so-called settlers in return for votes. If citizenship is decentralised, it is likely that a promise to issue citizenship certificates in return for votes from members of communities that are otherwise known as settlers would be common.

In states where no one particular ethnic group is numerically dominant and ethnic groups compete for the control of the state, the power to establish citizenship can be used as a political ploy to attain numerical advantage. This is particularly the case in states where an ethnic power-sharing arrangement is put in place and population size has a direct impact on ‘who gets what and how’. It is not difficult to imagine local elites using their newly found power to maintain or fabricate local majorities by keeping the door of citizenship wide open to ‘their kin’ while limiting it to others.

The decentralisation of citizenship might also add another dimension to the communal tension that characterises some of the states located at the periphery and bordering neighbouring countries. For example, the state of Gambella, bordering South Sudan, has continuously been embroiled in political violence that pits the Anguak against the Nuer, the two major ethnic communities that inhabit the state.⁵ In the battle for the control of the state, it is common to hear Anguak elites labelling the Nuer as foreigners. The political entanglement is complicated by the fact that the Nuer are also located in South Sudan and have been crossing the border to Ethiopia in search of a safe haven. The status of refugees from South Sudan lies at the heart of the ethnic tensions in the state. Some Ethiopians, like some in parts of India, lament about “the seemingly massive presence of undesirable ‘outsiders’”, as explained by Sujata Ramachandran, Anguak politicians often argue that Nuer refugees from South Sudan manage to

² Fessha, Y., (2016), ‘The Original Sin of Ethiopian Federalism’, *Ethnopolitics* 16(3): 232-245.

³ Ayele, Z.A., and Y. Fessha, (2012), ‘The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia,’ *Africa Today* 58(4): 88-109.

⁴ Fessha Y., and B. Dessalegn, (2020), ‘Internal Migration, ethnic federalism and differentiated citizenship in an African federation’, in A-G. Gagnon and A. Tremblay (eds), *Federalism and National Diversity in the 21st Century*, Cham: Palgrave Macmillan.

⁵ Feyissa, D. (2006). ‘The experience of Gambella regional state,’ In *Ethnic federalism: the Ethiopian experience in comparative perspective*, D. Turton (Ed.), Oxford: Currey.

easily become Ethiopians. Under a decentralised citizenship regime, the Anguak dominated state government will not be keen to see the naturalisation of Nuer refugees from South Sudan. They might even make it difficult for Nuers from Gambella to get citizenship on the ground that they are refugees masquerading as Ethiopians. A Nuer dominated state government, on the other hand, would make it easier for Nuer refugees crossing from South Sudan to obtain citizenship.

It is clear that decentralisation of the nationality regime would complicate the situation in the peripheral states. In fact, the perception that the Nuer from South Sudan have easy access to citizenship is already contributing to the ongoing tension in the state of Gambella. And Gambella is not the only state inhabited by transborder communities that share ethnic bonds with Ethiopian groups. Ethiopia is a home for ethnic groups straddling national boundaries. Tigrigna speaking peoples live in Eritrea and Ethiopia. People of Afar origin live in Ethiopia, Djibouti, and Eritrea. The same can be said about the communities living along the borders that Ethiopia shares with Sudan, Kenya and Somalia. Gambella is also not the only state that hosts thousands of asylum seekers and refugees with whom some of the communities that inhabit the territory share ethnic bonds.

The central government is taking back some control

It is also not clear that decentralisation of naturalisation would enhance inclusivity. The experience of the Rastafarians who started immigrating to Ethiopia in the 1950s and have been living in limbo since then, suggests the contrary. Despite the fact that many were born in Ethiopia and have established strong ties with the land, the local authorities refused to issue them with identity documents. That had made life for Rastafarians extremely difficult, as the *Kebele* IDs are crucial for accessing many social services. Without ID cards, they were not able to own property, get employment, travel outside Ethiopia or send their children to university. Frustrated by the response of local authorities, they appealed to federal authorities. In 2019, the federal government announced its decision to give Rastafarians who have been living in the country for over a decade the status of 'Foreign National of Ethiopian Origin'⁶ and to provide them with national residence cards.⁷ Although this gives Rastafarians most legal rights in the country, the absence of a clear road to citizenship is still a concern to many Rastafarians that regard Ethiopia as their only home.

From the foregoing, one cannot but conclude that decentralisation of citizenship to state and local governments is a potentially risky move. It might further entrench differentiated citizenship. It may also be used as a weapon of ethnic exclusion, making persons that do not belong to the regionally empowering group dependent on the whims and caprices of local authorities. It may serve as an instrument of political patronage. In short, it might contribute to the political entanglements that have gripped the Ethiopian federation. This is not to suggest that the current arrangement is acceptable. It is not transparent. Neither is it predictable. Although there are no statistics, it is clear that the current practice, which is largely arbitrary, has allowed for the naturalization of very few applicants, if any. There is no doubt that the centralised system of citizenship needs to be reformed.

Although its effect on the existing citizenship regime is not clear, the federal government is currently introducing a series of measures that diminish the role of local governments in establishing citizenship, taking back control of its constitutionally recognised power over citizenship.⁸ This is motivated by the increasing unreliability of the informally decentralised system of citizenship. As it is the case with many

⁶ Dahir, A.L. 'The Land of Haile Selassie Is Finally Recognizing Its Rastafarian Community.' *Quartz Africa*, 31 July 2017 <https://qz.com/africa/1042140/ethiopia-the-land-of-haile-selassie-is-finally-recognizing-its-rastafarians-by-issuing-them-identity-cards/>.

⁷ 'Ethiopian Jews, Rastafarians to Receive Ethiopian IDs'. Agence de Press Africaine, 27 Jul. 2017, available at <https://citizenshiprightsafrika.org/ethiopia-to-give-id-cards-to-rastafarians/>.

⁸ 'Vital Events Registration Kicks off in Ethiopia in Ethiopia.' United Nations Ethiopia, 4 Aug. 2016 <https://ethiopia.un.org/en/14847-vital-events-registration-kicks-ethiopia>.

documents that have to be issued by government offices, *Kebele* IDs, both real and fake, can be purchased in the marketplace. This has become a source of income for local authorities and their intermediaries as well as the professional forgers that have mastered the art of producing fake IDs. The absence of even a semblance of a birth registration system until recently has also effectively crippled the predominantly descent-based citizenship regime and made the works of the agency far more difficult. This has prompted the federal government to recentralise decisions made around citizenship by improving the birth registration system and introducing the national ID system.⁹ Birth registration is now compulsory. The government has launched a National ID Pilot Project that aims at harmonising and digitalising identity documents. Although these measures might address some of the problems that arise from the unreliability of the informally decentralised identification system, there is no guarantee that they will improve access to citizenship. The potential net effect of the implementation of the new identification system is to take away the management of identity documents from the hands of local governments. Obviously, this indicates that Ethiopia is actually moving away from its, albeit informal, decentralised system of citizenship.

⁹ Proclamation on the Registration of Vital Events and National Identity Card (Proc. No. 760/2012). Available at <https://www.refworld.org/docid/5ec7f94d4.html>.

Quasi-citizenship as a potential alternative to naturalisation in the Arab World

Lillian Frost*

Bronwen Manby raises a critical, and as she notes often-overlooked, issue in the global South. We know that the global South hosts the vast majority of the world's refugees as well as many other migrants.¹ Therefore, Manby rightly highlights that “few migrants and refugees hosted by poor or middle-income countries ever get the opportunity to change their nationality and become citizens of the states where they settle,” which is particularly problematic in states where there are no rights in law or practice to nationality based on birth in the territory.

This issue is increasingly troubling as refugees remain in exile for longer in developing host states (i.e., those that the World Bank does not classify as high-income members of the Organisation for Economic Co-operation and Development). My calculations from the Office of the United Nations High Commissioner for Refugees' (UNHCR) and UN Relief and Works Agency for Palestine Refugees in the Near East's (UNRWA) data reveal that in 2018, 87% of refugees had been living in a developing host state for at least five years, compared to 76% in 2003. In addition, UNHCR reports that the average duration of a refugee's time in exile has increased from 9 years in 1993 to 17 years in 2003² to 26 years in 2006.³

Without access to nationality or legal civil statuses in their host states, refugees can lack rights to work, healthcare, and education. This situation also generates more cases of statelessness, as Manby and Amal de Chickera highlight, where refugees cannot claim these rights in any state. The fact that critical rights often are attached to nationality in the global South today provides one answer to Irene Bloemraad's question: “How much does citizenship matter to the daily lives of most global South residents?” My fieldwork in Jordan suggests that citizenship, in terms of access to nationality, matters substantially by highlighting the challenges noncitizens face compared to citizens. These include not having legal access to work in many sectors, difficulties accessing driver's licences and higher education, and limited rights to property ownership and inheritance.

In this piece, I will focus on the feasibility and potential outcomes of devolving the authority for naturalisation from national to local governments in the Arab world and particularly in Jordan, where I have conducted the bulk of my research. In the Arab world, no state offers access to nationality by birth on the state's territory and all states exercise significant discretion in the implementation of naturalisation provisions.⁴ In addition, naturalisation procedures typically are rare and viewed as ‘exceptional’ rather than ‘normal’. Arab countries certainly are not unique in this respect – Erin Aeran Chung finds similar views in Taiwan's and South Korea's pasts – but they represent an important region for Manby's proposal.

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¹ Fitzgerald, D. and R. Arar, (2018), ‘The Sociology of Refugee Migration.’ *Annual Review of Sociology*, 44: 387–406.

² UNHCR, ‘Protracted Refugee Situations.’ UNHCR Executive Committee Doc. EC/54/SC/CRP.14, 10 Jun 2004. <https://www.unhcr.org/40c982172.pdf>.

³ UNHCR, ‘Global Trends: Forced Displacement in 2015.’ 20 June 2016. <https://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html>.

⁴ Albarazi, Z. (2017), ‘Regional Report on Citizenship: The Middle East and North Africa (MENA).’ RSCAS/GLOBALCIT. With the exception of foundlings who, having no identified parents and being found on the state's territory, can acquire nationality by birth on the state's territory in some Arab countries.

Root barriers to naturalisation

Although, like Sanzhuan Guo, I commend Manby's creative thinking in suggesting that states develop "local responses rather than national ones" to low naturalisation rates and statelessness, I agree with Imke Harbers that without addressing the root causes of current barriers to naturalisation, such a decentralised approach is unlikely to change the current situation. Let me highlight three major barriers that would make a devolution of the power to naturalise infeasible or ineffective in Jordan, as well as much of the Arab world, and that seem to have relevance for cases beyond the region.

Limited and ambiguous policies

First, discrepancies between nationality laws and their implementing regulations are a major barrier to naturalisation. All Arab states include provisions for naturalisation in their nationality laws; however, these provisions either build in enough discretion that allows the government to reject nearly all applications, or the government does not implement these provisions in practice, producing an ambiguous policy. In both cases, those legally eligible for naturalisation, like many individuals I interviewed in Jordan, decide that it is not worth the time, money, and effort to try to naturalise. A few individuals noted their failures to start the process when Ministry of Interior officials implementing it discouraged their application or when applicants submitted the first round of paperwork and never received a response.

These experiences align with the findings from my research on intentional ambiguity in the rights of long-term refugee groups in developing host states, where apparent institutional weakness can hide political motivations for adopting ambiguous policies that say one thing in law and do another in practice.⁵ In Jordan, it seems that these findings also apply to naturalisation policies, which many officials admitted were not implemented in practice except in rare cases. This relates to Christine Hobden's observation in the South African case that "often inefficiency is a cover for hidden (or even explicit) agendas to prevent naturalisation." These findings also relate to Sujata Ramachandran's call to "document the myriad formal and informal ways in which naturalisation operates in practice," by highlighting the differences in the law and implementation of naturalisation policies. These law-implementation gaps also connect to Manby's description of the apparent arbitrariness of naturalisation procedures due to their governance by ministerial regulations rather than transparent laws.

Naturalisation as power

Second, another barrier to naturalisation is that states often do not want more citizens, nor do they want to devolve the power to create new citizens to local officials. This is particularly a concern in nondemocratic states, where, as Guo points out in the Chinese context, overseeing access to nationality is viewed as a "security-related issue". It also is particularly a concern in states with large per-capita migrant populations, which Alfred Babo mentions when discussing the more exclusionary approach to Ivorian nationality taken in the 1990s. My ongoing research on Arab states preventing women from conferring their nationality to their children and spouses highlights that less democratic states with larger per-capita migrant populations are far less likely to remove this discrimination and create a new pathway to nationality than more democratic states or those with lower migrant populations.⁶ This finding likely extends to naturalisation reforms that clearly generate a new pathway to nationality.

The Arab world includes many nondemocratic states with large migrant populations. In addition to major refugee host states, like Jordan and Lebanon, the Arab Gulf Cooperation Council states also host

⁵ Frost, L. (2020), 'Ambiguous Citizenship: Protracted Refugees and the State in Jordan.' Doctoral Dissertation, George Washington University.

⁶ Frost, L. (2020), 'Unequal Citizens: State Limitations on Women's Nationality Rights.' APSA-MENA Politics Newsletter, 3(2).

massive migrant populations, ranging from 30 to 90 percent of the total population.⁷ These contexts produce serious demographic and political implications of opening access to citizenship and nationality to migrants, even if this access were restricted to those who qualify under current naturalisation residence provisions, which range from 4–5 years to 20–30 years of residence.⁸ In addition, expanding naturalisation would erode state ‘benefits’ to limiting the number of its citizens. These include reducing demands on the state’s social programs and demands for political reforms as well as sustaining a pool of noncitizen workers who lack full legal protections and accept lower wages. These ‘benefits’ highlight some of the dark incentives for preserving current barriers to naturalisation, in both nondemocratic and democratic states.

Given these links between naturalisation and power, it is likely that most Arab states would view devolution as a threat. Specifically, such a reform would reduce the central state’s power and enable local officials to remake the demographic and, in doing so, also the political landscape of the country. In a country like Jordan, where identity, demographic, and authoritarian politics loom large, a real devolution of such power essentially is unthinkable. If forced to undertake such a reform, this change probably would occur only on paper, while national security officials continued to control these procedures in practice. Likewise, when confronted by the international community, national leaders might seize the opportunity to deflect blame for low naturalisation rates to local officials.

Public hostility to naturalisation

A third major barrier to naturalisation is public hostility toward accepting more migrants as citizens. This issue is not limited to the Arab world but also applies in China, as Guo highlights, in South Africa, as Hobden notes, and in Ethiopia, as Yonatan Fessha reports. Citizens, like elite government officials, have rational motivations to block noncitizens’ access to naturalisation. These include competition for work, education, and state benefits as well as a desire to maintain the country’s traditional identity, whether this is rooted in a specific ethnicity, religion, or other national narrative. In Jordan, these attitudes came across in interviews between 2016 and 2019 as well as in archival files from the 1960s – suggesting that such concerns are not new. Overall, without changing popular attitudes toward migrants – on top of national state concerns about releasing such power and continued legal ambiguities – it is unlikely that devolving naturalisation to the local level would change current rates of and access to naturalisation.

Potential benefits of devolving naturalisation

However, despite the grim outlook for decentralising and devolving naturalisation in the Arab world, there are some potential benefits that such a policy change – if states agreed to undertake it – could yield. First, all Arab states, with the exception of Algeria, include some form of discrimination toward citizen women in conferring nationality to their spouses and children.⁹ As mentioned, this discrimination is strongest (i.e., nearly no opportunities for women to confer their nationality to spouses or children) in the Arab states with the largest numbers of migrants per capita, including in Jordan, Lebanon, Kuwait, and Qatar. Although this issue is polarising on the national level due to demographic politics and the securitisation of new pathways to citizenship, there are sympathies at the popular level toward these women and their families. Therefore, on a case-by-case basis, localities might extend nationality to some

⁷ United Nations Population Division (UNPD). ‘International Migration Data, 2017.’ <https://www.un.org/en/development/desa/population/migration/data/index.asp>.

⁸ Albarazi, Z. (2017), ‘Regional Report on Citizenship: The Middle East and North Africa (MENA).’ RSCAS/GLOBALCIT.

⁹ Frost, L. (2020). ‘Brief on Women and Nationality in the Arab World’. *BCARS Brief*, Boston Consortium for Arab Region Studies Series available at <https://www.bcars-global.org/publications>.

of these women's families, particularly to their children. This is one important, though potentially uneven, benefit of devolving naturalisation.

Second, in some cases, migrants (including refugees) have family or tribal ties to their host states. This is particularly the case for Syrians in Jordan and Lebanon as well as Saudis and Iraqis in Jordan. Again, at the national level, any measures to extend nationality to particular groups is polarising. However, on a case-by-case basis, localities might be willing to naturalise some migrants, especially in border areas where the migrants have clear familial or cultural links to the host community. This could boost access to nationality for some. In general, the devolution of power could remove some of the politics surrounding naturalisation by operating at the individual rather than group level, and this could increase naturalisation rates.

Another approach: formalising quasi-citizen statuses?

Overall, one point of agreement in this discussion forum is the importance of helping people access legal identity documents to enable them to move, work, and access basic services. However, nationality may not be a feasible status to provide. Given the intense politicisation of naturalisation in many Arab states, and perhaps more broadly, even beyond the global South, another solution may include formalising quasi-citizen statuses, particularly for refugees who often lack access to the same residence documents as other migrants, as Guo, Ramachandran, and Fessha have highlighted in the Chinese, South African, and Ethiopian contexts, respectively.

Although there may be drawbacks to creating legal hierarchies, such reforms could represent one step toward making access to legal status and nationality more transparent and accessible. Although state officials may shut down a conversation about naturalisation – as many do in Jordan – they are willing to consider other forms of identification that could help noncitizens access some work, healthcare, and education, as has been the case with Jordan's distribution of identity cards to Syrian refugees. In addition, pressuring state officials to then stipulate the rights in law that these legal statuses entail would help reduce the precarity of noncitizens' daily lives. For example, Palestinian refugees who came from the Gaza Strip to Jordan after the 1967 Arab-Israeli War have had quasi-citizen status in practice since 1968 but have lacked such a status in law. Although at times they can access work sectors or temporary passports typically unavailable to foreigners, they do not have a right to these benefits in law, rendering them vulnerable to changes in practices.

In conclusion, formalising different forms of quasi-citizenship, or denizenship, might be a more fruitful step to helping the most vulnerable migrants (including refugees) access rights. This focus on a solution that provides people with better guarantees of secure residence and access to basic rights could garner more popular and elite support than the occasionally explosive issue of naturalisation. This returns to Bloemraad's other question of "why it is worth promoting access to citizenship in the first place." Although citizenship is not worthless in the global South, she perhaps highlights that it might not be the right issue to focus on now. Instead, it seems we need creative solutions that can de-politicise access to basic rights for migrants as much as possible in order to secure more feasible, effective reforms.

Should Senegalese local authorities get competences to naturalise foreigners?

Ibrahima Kane*

Bronwen Manby proposes that a decentralisation of naturalisation formalities and procedures could contribute to a significant increase in the number of people able to acquire nationality in the countries of the global South. The radicalism of such an approach would not, in her view, be due to the addition of a local approval phase to an application process that is still centralised, but to the fact that local decisions – overseen by the courts – would become determinative of the national citizenry.

My response considers whether the administrative practice of naturalisation in a country as open politically, economically and socially as Senegal confirms or invalidates such an assertion. How has the well-known bureaucratic and centralised concept of the state inherited from the French colonial administration dealt with the issue of naturalisation? Was it an obstacle to naturalisation in a country where "a person is a person through another person" (*nit nit ay garabam*)? I will analyse, through the evolution of national legislation on nationality since independence, the role played by central and decentralised authorities in the naturalisation process of foreigners, the way Senegalese society is managing diversity, and draw some lessons from 60 years of implementation of the Senegalese nationality law.

Senegalese nationality legislation

When Senegal gained international sovereignty in 1960, a large number of foreign nationals were living in the country, most of them African and French-speaking, as a result of the pivotal role played by this small territory during French colonial rule of West Africa (*Afrique occidentale française*, AOF). Dakar had been the administrative capital of the AOF, and the bulk of the educational, health and economic infrastructure was located there. Senegalese legislators decided to recognise this reality and the Code of Senegalese Nationality adopted in 1961 included special provisions to allow people from the former French colonies in sub-Saharan Africa and its neighbouring countries to acquire Senegalese nationality by option – although only during a very short three-month period after entry into force of the law.¹

More generally, the 1961 Nationality Code provided for the automatic attribution of Senegalese nationality to a child born in the country if one parent (father or mother) was also born there, as well as to the child of a Senegalese father (or the child of a Senegalese mother, if born out of wedlock or the father was stateless). In the circumstances where most residents of Senegal were undocumented at the moment of independence, nationality based on two generations born in the country ('double *ius soli*') was presumed fulfilled if a person had "continuously and publicly" behaved as a Senegalese citizen and "been treated as such by the Senegalese population and authorities" (the concept known as *possession d'état de sénégalais*).

The legislation has been amended on several occasions since 1961, most recently in 2013 to remove discriminatory treatment of women in the transmission of Senegalese nationality via marriage, descent, and adoption, and to remove discrimination based on birth in or out of wedlock.² The requirements for naturalisation have remained the same, however, except to modify the provisions where naturalisation

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¹ Loi no.61-10 du 7 mars 1961 déterminant la nationalité sénégalaise, available at <https://citizenshiprightsafrika.org/senegal-loi-no-61-10-du-7-mars-1961-determinant-la-nationalite-senegalaise/>.

² Loi 2013-05 du 8 juillet 2013 portant modification de la loi no 61-10 du 7 mars 1961 déterminant la nationalité, available at <https://citizenshiprightsafrika.org/loi-2013-05-portant-modification-de-la-loi-no-61-10-du-7-mars-1961-determinant-la-nationalite/>.

can be granted for “exceptional circumstances”, and to decrease to 16 years the minimum age for applying for naturalisation. A person may apply for naturalisation after ten years of habitual residence in Senegal. In recognition of the reality of West African migration, there is no requirement for the residence to be legal.

On the surface, naturalisation seems to be a purely administrative matter. Applications – which must be accompanied by document from the *chef de quartier* confirming factual residence, a health certificate, a certificate of taxation or non-taxation, a clean criminal record, and a certificate of good conduct and morals – are addressed to the Minister of Justice, who then conducts a three-level administrative investigation with the State Prosecutor (to check the applicant's criminal record); with the Interior Ministry (to verify residence in the territory); and with the relevant governor (province) or prefect (*département*) (for more in-depth investigations to be carried out by the police or gendarmerie).

After this information is collected, the Ministry of Justice prepares a report on the basis of which the Minister of Justice issues a naturalisation decree (which is unusual among francophone West African countries, where it is mostly the president who does so), on the basis of which the recipient can apply for a certificate of nationality issued by the tribunal of his or her place of residence. If the naturalised person was not born in Senegal, he/she must be registered by the Senegalese civil registry, enabling access to Senegalese administrative documents such as an identity card or passport. This ultimate phase of the naturalisation procedure enables the local administration to detect cases of naturalisation fraud.³

Officially, only about 14,000 foreigners have been naturalised through this process since independence.⁴ This figure does not, however, reflect the reality of alternative forms of ‘naturalisation’ in the country, which can take more twisted paths.

Civil registration as an alternative path to citizenship

A number of foreigners have taken advantage of the permeability of Senegalese civil registration to obtain civil status documents from local authorities, enabling them to get recognition of Senegalese nationality without going through the formal naturalisation procedures.

In Senegal, decentralised local government authorities are generally responsible for registration of civil status events, such as birth and marriage. These documents are then the basis for acquisition of a national identity card, the most important identity document. Where birth registration is not carried out in time, however, the judiciary also plays an important role in the recognition of an existing nationality. The tribunals can adjudicate whether a person has Senegalese nationality, including a person without documents on the basis of *possession d'état*, and issue a “certificate of nationality” that is proof in case any state or other authority questions a person’s status. The tribunals can also authorise late registration of birth (through a *jugement supplétif*).⁵

Thus, a Civil Registrar “accomplice” to a foreigner may issue a certificate of non-registration of birth; based on this certificate the person can apply to the *Tribunal de Grande Instance* (the court of first instance in the Senegalese court system) for authorisation of late registration of birth. The court would carry out an investigation, following which the judge would then decide whether or not to authorise the registration of the person. But the social realities (high levels of corruption, ethnic solidarity, etc.) are

³ In 2019, a Ministry of Justice official was charged with fraudulently selling Senegalese nationality to Lebanese and Syrian citizens based in Senegal. “Nationalité sénégalaise vendue à 1 million : Comment le scandale a été découvert”, Seneweb News, 17 Aug. 2019, https://www.seneweb.com/news/Societe/nationalite-senegalaise-vendue-a-1-milli_n_291312.html.

⁴ It is quite difficult to provide an exact estimate of the numbers of naturalised persons in Senegal simply because the books are not well maintained in the administration. The figures above were obtained from the Ministry of Justice and the National Civic Registry Centre.

⁵ ‘Jugement Supplétif.’ Wikipedia, Wikimedia Foundation, 27 Dec. 2018, www.fr.wikipedia.org/wiki/Jugement_suppl%C3%A9tif.

such that an inquiry may not strictly apply the law, and that such practices are accepted by the local population.

In this way, some communities established in Senegal, such as the Bambara (originating in Mali), have managed over time to change their patronyms to those of the Wolof and to access civil registration under the matching names. Thus, in some regions of the country, the Traoré and the Dembélé have become Diop, the Sissoko have become Gueye, the Diarra have become Ndiaye, the Coulibaly have become Fall, and the Diakité have become Ba. Though this process is not legal ‘naturalisation’, it fulfils the same function in integrating long-term migrants both into the local community and the national population register. Recourse to traditional Senegalese names also prevents them from administrative hassles during the replacement of administrative documents such as identity cards and passports.

Political leaders in the regions also use these procedures to expand the ranks of their supporters, particularly during the renewal of voter registration preceding national elections. Both the *Parti Socialiste* (PS) and the *Parti Démocratique Sénégalais* (PDS) were accused, when they were in power, of providing Senegalese identity cards to members of the Malian, Mauritanian and Guinean communities to allow them to vote in national elections.

Integration in the country of Teranga

The Senegalese nationality legislation has contributed to making Senegal the country of *Teranga* (“hospitality” in Wolof), known for its tolerance in welcoming foreigners and the relative political and economic stability of the country.

Almost all the foreign population that has settled in Senegal since the colonial period has originated from neighbouring countries, or from other states within the Economic Community of West African States (ECOWAS). Two thirds of all foreigners originate from Gambia, Guinea, Guinea Bissau and Mali. They are mainly concentrated in the region where the capital of Senegal, Dakar, is located, and in the regions of Ziguinchor and Kolda, in the south of the country.⁶

The linguistic and religious affinities that exist among people originating from today’s Gambia, Mali, Guinea, Mauritania, and, to a lesser extent, Burkina Faso, and those from Senegal, mean that this population of foreign origin shares with the Senegalese a cultural and historical heritage and a framework of economic cooperation and political integration that have been the cement for harmonious cohabitation among the different groups. Many members of these different foreign communities also belong to the Sufi Muslim fraternities of Senegal (the Tidjanes, the Mourides and the Khadres) integrating them within religious solidarity networks and providing the protection of the country’s large religious communities, regardless of their origin or nationality.

The Senegalese authorities have also welcomed the persecuted populations of the region, especially from Guinea and Mauritania. From the 1970s, the dictatorial regime established by the first president of Guinea, Sékou Toure, and the economic disaster it caused, made thousands of Guineans, particularly members of the Peulh (Fulani) community, flee to Senegal. This group is now a remarkable example of the integration of a foreign community established in Senegal, spatially as well as economically, socially and culturally.⁷

⁶ Ndione, B. (2018), ‘Migration au Senegal: Profil National 2018’, Agence Nationale de la Statistique et de la Démographie (ANSD) & Organisation internationale pour les migrations (OIM), p.10-11. https://www.ansd.sn/ressources/publications/ANSD-OIM_Profil_Migratoire_du_Senegal_2018.pdf.

⁷ Lefebvre G., (2003), “La communauté guinéenne de Dakar, une intégration réussie?” In *Etre étranger et migrant en Afrique au XXe siècle: Enjeux identitaires et modes d’insertion, Volume II : Dynamiques migratoires, modalités d’insertion urbaine et jeux d’acteurs*. Catherine Coquery-Vidrovitch, Odile Goerg, Issiaka Mande, and Faranirina Rajaonah (eds) Éditions l’Harmattan, p. 144.

Senegal's membership of ECOWAS, whose regional citizenship allows free movement of people and goods, also reduces the number of irregular migrants, as well as registered refugees and asylum seekers in the country.

Possible approaches to the involvement of local government in the naturalisation of foreigners

These close affinities facilitate the acquisition of nationality by the routes described above: acquisition that could be described as fraud, but also as a practical and accepted route to the gradual integration of immigrants and their descendants. In this way, the local Senegalese administration is already participating in the “naturalisation” process of integrating foreigners who have chosen to live permanently in Senegal. Could this role be strengthened and made official, to reinforce the inclusion of foreigners in the social, political and economic life of their adopted country?

The Senegalese authorities inherited a centralised unitary state. For the past 20 years there has been a policy of decentralisation, in order to “involve and empower people, and promote the emergence of a local elite, and consolidate representative democracy and citizen participation in defining policies affecting their living environment”.⁸ In practice, however, the process has rather strengthened central control over local political authorities, and contributed to fragmentation of the political opposition. This is visible especially in the large cities where borough municipalities have been created, leading to the establishment of new political constituencies more than to the strengthening of local government powers.

This sort of decentralisation, “more concerned with the texts than with reality, above all with the capacity or not of local authorities to manage themselves and to invest”,⁹ is unlikely to assist Senegalese local authorities in handling problems as politically sensitive as the naturalisation of foreigners.

The adaptation of existing civil registration procedures to integrate foreigners has, however, demonstrated that municipalities could contribute to the credibility of the naturalisation process. Rather than concentrating the investigations of a person's suitability for naturalisation in the hands of an administration controlled by the central government, it could be possible to enable the local administration to carry out enquiries concerning the integration of individuals into Senegalese society. Such an approach would help to minimise cases of fraud – that is, applications by those who are not in fact integrated into Senegalese communities – and even encourage cities to develop genuine diversity management policies within the municipal territory.

This would motivate the Senegalese state to ensure, within the framework of its national migration policy, that local authorities are given a significant role in the handling of the admission, residency and the integration of foreigners in the country. The example of the large and integrated Guinean community established in the Senegalese capital Dakar could serve as a stimulus for other local authorities and the state to mutualise means and skills for the success of any migration policy in Senegal. This could even result in Senegalese cities becoming players in municipal diplomacy, providing opportunities for twinning between African cities and consequently contributing to the African integration process. Their role at present is limited to encouraging foreigners established in Senegal to participate, through their associations, in the animation of the cultural life of the city, in the reception of heads of state visiting Senegal or even in the political mobilisations around elections in which they are not themselves enfranchised.

⁸ Sane, Y. (2016), ‘La décentralisation au Sénégal, ou comment réformer pour mieux maintenir le statu quo’, *Cybergeog : European Journal of Geography*, p. 799, <https://doi.org/10.4000/cybergeog.27845>

⁹ Ibid.

There are thousands of immigrants with Senegalese nationality documents that have been fraudulently obtained but are an acknowledgment of the social reality of the country. This situation could be avoided if, for example, the municipality of Dakar had the opportunity to identify and formally nominate for naturalisation Guineans and other immigrants who have made a significant contribution to the reputation of the city, or who would be stateless if they did not have Senegalese nationality. It would result in better management of Senegalese civil registry and of the diversity in the capital, in addition to improving its finances. It would even allow for the use of procedures established by the new local government code enabling cooperation among local government authorities¹⁰ to encourage several communes in a given region to address issues of statelessness and integration of foreigners in a pragmatic way.

This description of the Senegalese reality seems to support Bronwen Manby's point when she asserts the importance of decentralisation in the naturalisation process. It confirms what a recent study on migration in Southern Africa has stated: that host communities, including municipalities “should be counted as important actors in the governance of migration and human mobility”,¹¹ meaning in the integration of foreigners in the local communities.

Decentralisation, contrary to what Alfred Babo suggests in his contribution on Cote d'Ivoire, could greatly contribute to reducing the level of fraud and increasing access to nationality, by enhancing the reliability of civil registration and creating the conditions for greater integration of foreigners into the local social fabric.

The history of French colonisation in West Africa attests that municipalities played an important role in the transition from the status of *indigène* (“native”) to that of French citizen, through the registration of births of indigenous children in the civil registry, which was the first step towards their acceptance in the colonial school and, later on, the acquisition of French citizenship rights.¹²

Naturalisation is not a guarantee of integration into a given community. It is the first step in a more or less lengthy process leading to the recognition of belonging to the community. The municipality is the ideal actor that can quickly contribute to the achievement of this objective, if it is given the means to do so.

¹⁰ Loi n° 2013-10 du 28 décembre 2013 portant Code général des Collectivités locales, articles 16, 279 and 283.

¹¹ Loren B Landau and others (2018). ‘Free and safe movement in Southern Africa’ African Centre for Migration and Society, p.33. <https://osisa.org/product/free-safe-movement-in-southern-africa/>.

¹² Thiam, I.D. (2014). *La Révolution de 1914 au Sénégal ou l'élection au Palais Bourbon du député noir Blaise Diagne*, Paris : L'Harmattan.

Promises and pitfalls of decentralised naturalisation

[Rainer Bauböck*](#)

Bronwen Manby's proposal for decentralising naturalisation builds on the idea that local communities may often be more welcoming than national governments when it comes to recognising people as *de facto* members of the community. Manby suggests that devolving the power to determine *de iure* citizenship to the local level may help to increase rates of naturalisation in countries of the global South. One of the lessons to draw from the debate in this forum is that this strategy needs to be contextualised. Its success will depend, on the one hand, on the nature of the state and its political regime and, on the other hand, on local communities' openness for including groups stigmatised as foreigners.

Before discussing a therapy, we need to agree on the diagnosis. Manby starts from the observation that many countries in the global South have experienced large scale migrations and refugee movements or host native minorities that were not awarded citizenship after the country gained independence. Naturalisation is, however, generally considered an exceptional privilege and political authorities enjoy wide discretion in granting citizenship. Where large populations reside permanently in a territory without having access to citizenship, this is bad for the individuals concerned, since it deprives them of security of residence and a say over their future. It is also bad for the country since it means that its politicians don't have to listen to entire sectors of the population and represent their interests.

The political value of citizenship in the global South

Irene Bloemraad raises the question of how beneficial it is to acquire the citizenship of poor and unstable countries. Comparative scholars studying naturalisation have noticed that immigrants from the global South in countries of the global North experience a greater improvement of their economic prospects through naturalisation compared to North-North migrants.¹ This suggests that the economic value of naturalisation in South-South migrations may be rather low. Even more obviously, as Yossi Harpaz shows, where middle class people in countries with 'second-tier' citizenships can choose to obtain a second passport without moving to the state issuing it, they will dig up their ancestral roots in a country with 'first-tier citizenship' rather than in a poor one.² For similar reasons, as documented in Jelena Dzankic's recent book,³ demand for passports in those countries that offer them for sale to global investors is highest in countries like Cyprus and Malta, where it comes with the extra benefits of EU citizenship.⁴

Yet, as this forum has shown, the value of citizenship is not merely determined by the number of countries one can travel to without visa. Citizenship involves a claim to protection by a particular government and, as Christine Hobden emphasises, a claim to political equality. Not every citizenship has this kind of value. That of North Korea doesn't. There are countries where only regime change can give back value to citizenship. Yet promoting the protective value of citizenship and the inclusion of

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¹ Peters, F., H. Schmeets, and M. Vink, (2019), 'Naturalisation and Immigrant Earnings: Why and to whom citizenship matters', *European Journal of Population* 36: 511-545.

² Harpaz, Y. (2019), *Citizenship 2.0: Dual Nationality as a Global Asset*, Princeton University Press.

³ Dzankic, J. (2019), *The Global Market for Investor Citizenship*, Palgrave Macmillan.

⁴ Harpaz's and Dzankic's books are jointly reviewed in a GLOBALCIT review symposium available at: <https://globalcit.eu/globalcit-review-symposium-on-jelena-dzankic-the-global-market-for-investor-citizenship-and-yossi-harpaz-citizenship-2-0/>.

currently excluded groups must be high on any agenda of furthering democracy and development throughout the global South.

The problem of blocked access to citizenship is, however, not unique to the global South. My own country, Austria, has had a naturalisation rate of just 0.7 percent for the last ten years.⁵ In elections in Vienna in October 2020, 30 percent of residents in the capital were disenfranchised because they did not have Austrian citizenship.⁶ While democracy suffers a legitimacy deficit everywhere if large populations remain excluded from citizenship, the protective function of citizenship is comparatively more important in countries with weaker rule of law and political institutions where non-citizens can easily become the scapegoats for government failure. The problem we are discussing in this forum is thus a big one in the global South and it ought to be addressed.

Looking at naturalisation through two lenses

A second question raised by Amal de Chickera in one of the strongest interventions in this forum, is whether facilitating naturalisation is the right answer where the problem is a denial of the right to nationality that a group has previously held. When minorities perceived as undesirable are deprived of citizenship and children born in the territory remain stateless, governments should be pushed to respect a human right to nationality instead of being encouraged to grant these excluded people naturalisation. In de Chickera's view, naturalisation is by its very nature "a discretionary process far removed from rights" and governments should not be let off the hook by allowing them to decide whom they want to grant citizenship. Focusing on naturalisation as an answer risks legitimising ex post the violation of the human right to a nationality. De Chickera himself concedes, however, that naturalisation may be the right response to "situations of first-generation migration or displacement. But here too, we should make a greater effort to begin scrutinising naturalisation powers and processes through a human rights lens."

Let me suggest that we can see the problem in full depth only if our spectacles combine a human rights lens for one eye with a democratic inclusion lens for the other one.⁷ Looking through the first one will show us which norms apply universally and ought to be fleshed out in international law. These include indeed strong protection against citizenship deprivation and statelessness and they cover also norms against discrimination in naturalisation, e.g. on grounds of gender, race or ethnicity. Yet this does not address concerns about large populations of migrants who do possess a citizenship of origin and are barred from becoming citizens of their host country by strict, but not overtly discriminatory, naturalisation conditions and highly discretionary procedures. Looking through the human rights lens points us towards courts, and especially international ones as the institutions that are called on to address the problem, as Diego Acosta argues for the Latin American context.

If we now squint through the second lens, we will see instead governments that require some kind of legitimacy in the eyes of the people over whom they govern. The conundrum is that through their citizenship laws states define who belongs to the people in whose name their government claims to rule. To escape the paradox of democratic boundaries that lurks behind this, citizenship laws must be sufficiently inclusive *and* politically widely supported.⁸ This cannot be achieved through court decisions and external pressure alone. It requires instead mobilising internal resources for inclusion within the society and forcing government institutions to be responsive.

This is what I think Manby's proposal tries to achieve by betting on the social dynamics of inclusion from below, at the local level. Looking through this second lens will provide support not only for *ius*

⁵ This means that each year only 7 out of 1000 non-citizen residents have acquired Austrian citizenship.

⁶ As Vienna is also a federal province, citizens of other EU countries can vote in urban districts but not at the city level.

⁷ Bauböck, R. (ed) (2018), *Democratic Inclusion*, Manchester University Press, available open access at: <https://www.manchesteropenhive.com/view/9781526105257/9781526105257.xml>.

⁸ Whelan, F. (1983), 'Prologue: Democratic Theory and the Boundary Problem', *Liberal Democracy* 25: 13-47.

*sol*i for otherwise stateless children, but also for those born and raised in the country who inherit another citizenship from their parents. And it would strengthen the case for changing the nature of naturalisation from a discretionary grant to an entitlement for those who meet a set of reasonable conditions specified in the law.⁹ At the same time, the democratic argument points to the need for broad popular support for such inclusion, which cannot be legislated but must be brought about by intermediary actors and through political campaigns, as Erin Aeran Chung shows in her comparison of South Korea, Taiwan and Japan. Authoritarian regimes like the Chinese one with a population that is generally hostile towards foreigners do not make for promising settings, as Sanzhuan Guo explains.

I think this democratic lens provides a helpful complementary view even where statelessness is the issue. Consider the case of Latvia, mentioned by de Chickera. When Latvia seceded in 1990 from the Soviet Union, by which it had been unlawfully annexed in 1940, it was not entirely unreasonable to turn only those automatically into citizens who had already been Latvian citizens in 1940 or would have been so by descent from Latvian parents if the country had not been swallowed up. Unlike the long-established Russian minority from the pre-war period, the large population of ethnic Russians who had settled in Latvia during the period of annexation could be reasonably expected to show their loyalty and commitment to the newly independent state by applying for naturalisation. What was wrong in this case was not naturalisation as the pathway to citizenship, but the conditions that made it very difficult for Russian speakers to actually get the status. As a result, in 2018 more than 10% of the country's population were still stateless.¹⁰

The case of the Rohingya is clearly different, since it involved indentured labour migration from North India to Burma under British rule, and the establishment of administrative boundaries that cut through pre-existing communities, rather than territorial annexation by a powerful neighbour. The Rohingyas' citizenship in Myanmar should therefore be recognised, instead of being made conditional upon naturalisation. Sujata Ramachandran discusses Bengalis in Assam, some of whom may have arrived as irregular migrants from Bangladesh, but many of whom are legally citizens and have in the past been registered as voters.¹¹ The key point is that these are cases of denial or deprivation of a citizenship status that had previously been already recognised *de facto* or *de iure*. Where membership claims remain unclear, a human rights goal of overcoming statelessness may be best achieved through a process of regularisation with a guaranteed pathway to citizenship through naturalisation. Building a political consensus that these people have already become *de facto* members of the community will be as important in bringing about such a solution as insisting on their human right to a nationality.

Four pitfalls to be avoided when decentralising naturalisation

Most contributors to this forum are, however, sceptical that decentralisation will help to facilitate access to naturalisation. Based on their expertise on specific countries, regions or historical periods they raise many objections against giving local authorities the power to determine who will become a new citizen. I will take a slightly different approach. Instead of demonstrating why Manby's proposal is unlikely to work in a particular context, I will try to extract from this debate the general arguments under which conditions decentralised naturalisation is likely to be blocked or have perverse effects. This leaves the space open for two positive conclusions. First, there may be contexts in which these negative conditions are absent or sufficiently weak to make pursuing this strategy worthwhile. Second, once we know the

⁹ Ordinary naturalisation is formally an entitlement in quite a number of Northern states (e.g. Belgium, Canada, Germany, Netherlands, Portugal) and, as Diego Acosta mentions, also in some South American ones (Chile and Argentina).

¹⁰ 'Lower birth and migration rates recorded in Latvia' Central Statistical Bureau of Latvia, 28 May 2019. <https://www.csb.gov.lv/en/statistics/statistics-by-theme/population/number-and-change/search-in-theme/2444-number-population-latvia-2018>.

¹¹ Sadiq, K. (2008), *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*, Oxford University Press.

pitfalls, it may be possible to avoid them. I don't have sufficient expertise on the contexts for citizenship policies in countries in the global South to flesh out either of these positive responses. All I hope to show is that, in the absence of plausible alternative strategies, Manby's proposal may survive the critiques and become even stronger once they have been taken on board.

Decentralisation may generate more exclusion

The first caveat is the most obvious one. Decentralisation must not lead to even more exclusion than a current centralised procedure does. Barbara von Ruetten explains how the Swiss federal citizenship law specifies the rules for acquisition by birth and for loss of citizenship as well as minimum conditions for naturalisation, but lets the cantons and municipalities add more naturalisation requirements and apply their own procedures. The effect is not only strong inequality of conditions for naturalisation in different parts of the country but probably also lower numbers overall than could be achieved if the federal conditions were sufficient and uniformly applied.¹² Switzerland is a unique case of a confederation in which federal citizenship is formally derived from local and cantonal citizenship rather than the other way round as in all other modern federal states. There is thus no reason to fear that decentralisation in other countries would follow a Swiss logic. But the cautionary lesson is still important and suggests that national level legislation should set not only minimum but also maximum conditions for naturalisation and monitor their application through national courts (as Manby herself says). Luicy Pedroza suggests a similar approach to decentralised procedures when arguing that national laws should allow local authorities to exercise discretion only in favour of the applicant but not when undercutting national standards.

Hobden mentions another reason why decentralisation may lead to even higher barriers for naturalisation than central state procedures. Where societies have become infested with pervasive xenophobia, local governments may be under greater pressure to restrict access to citizenship than more remote national authorities, and local witnesses may not dare to step forward in support of applications. As Bloemraad points out, the local 'warmth of welcome' matters. Yet often it is the national government that instigates xenophobia to mobilise nativist political support and deflect from its failures. Where this is the case, decentralisation cannot guarantee access to citizenship throughout the country, but may open it up in parts of the territory where central government control is weaker.

Decentralisation makes access to citizenship more unequal

A second worry about decentralisation is closely related to the first. As pointed out by Bloemraad, Ramachandran and several others, even devolving naturalisation might unblock it for more people, it is likely to make the conditions for access highly unequal. Since citizenship is a status of political equality, should we be willing to accept a trade-off between more persons being admitted and stronger inequality of access?

Hobden makes this objection most forcefully when arguing that democratic principles require keeping the differences in access to citizenship to a minimum in order to protect the core value of political equality. Yet, as she notes herself, access to citizenship is already highly unequal for those who get it automatically at birth and those who have to apply for naturalisation. Moreover, virtually all citizenship laws in democratic countries grant fast-track citizenship access to certain categories, e.g. if they are the children or spouses of citizens. Unequal conditions for access to citizenship need not be unfair as long as they reflect the different strength of claims. If decentralised determination of citizenship

¹² This is, however, not entirely clear. A comparison with Austria, a neighbouring country of similar size and immigration history, shows that the latter's much more centralised naturalisation regime in which the nine provinces are in charge of implementing the same conditions specified by federal law produces considerably lower naturalisation rates than Switzerland's. Of course, other factors may explain this difference.

leads to better access for people whom a local community recognises as belonging this does not have to be an arbitrary selection criterion and could in fact produce greater equality of respect between old and new citizens within the local community.

There are again strong caveats here. It is one thing to fast track some naturalisations based on local recognition and quite another to exclude others on grounds of local non-recognition. Maybe decentralisation should thus be used only for facilitated naturalisation with a state-wide procedure for ordinary naturalisation remaining under central administrative control? When assessing this proposal, we must keep in mind that not only in countries of the global South, but also in some old democracies in the North (including Austria) fewer people acquire citizenship via so-called ‘ordinary naturalisation’ based on length of residence in the territory than are granted facilitated naturalisation. This means that unblocking access to citizenship through decentralisation may do more to boost numbers than strengthening uniform national standards for ordinary naturalisation.

This proposal differs from Imke Harbers’ interesting argument about two pathways to citizenship in Mexico. As she explains, naturalisation is a centralised process for few and better-off immigrants, whereas access to citizenship through late birthright certification is already decentralised and helps to include larger populations born to irregular migrant parents. However, we need to find also a pathway for first-generation immigrants. For them, it would be important to strengthen a procedure for ordinary naturalisation at central state level while also opening up facilitated naturalisation at local level, tapping into the same resources of social membership as for local birth registrations. When considering any such proposal, inequality of access should be a lesser concern than overcoming exclusion.

Decentralisation may produce unequal citizenship statuses

A third concern follows from the second one and is articulated by Pedroza: “More than the risk of unequal processes across localities, I worry that decentralised processes may produce unequal citizens.” Involving the local community in admitting new citizens may make it more likely that they will be accepted as equal members, but it may also make it less likely that such locally created citizenships will be recognised throughout the country. Ramachandran likewise points out how local practices of inclusion of Bangladeshi migrants in Assam through issuing ration cards and voter registration arose suspicion towards the holders of these documents and may even have contributed to a backlash against them in the region.

This is a very serious worry. While inequality of access to citizenship is often inevitable and sometimes justified, it must not carry over into inequality of rights and status, as this would undermine the core meaning of citizenship itself. But this concern does not only arise where naturalisation is decentralised. As mentioned by Pedroza, in Latin America naturalised citizens do not enjoy the same political rights (especially in access to public offices) as birthright citizens do.

Maybe the example of the European Union can be helpful in pointing towards an answer.¹³ EU citizenship is derived from Member State nationality, access to which is fully decentralised to each state. In its *Micheletti* judgment, the Court of Justice of the EU obliged Member States to recognise all those who have been turned into EU citizens by any other Member State under that country’s own national rules.¹⁴ And EU law prohibits discrimination on grounds of nationality of mobile EU citizens who take up residence in another Member State. These rules have been necessary to create an area of free movement between states that jealously guard their sovereign right to determine their own citizens. The model has its limits because it lacks even minimum standards for acquisition of the common citizenship

¹³ Bauböck, R. (2019) (ed.). *Debating European Citizenship*, Springer, available open access at: <https://www.springer.com/gp/book/9783319899046>.

¹⁴ *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria*. European Court of Justice Judgment of the Court of 7 July 1992. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61990CJ0369>.

of the Union and because it has to rely heavily on the authority of the court to interpret the rights of citizens. But it still illustrates that equal recognition of a citizenship obtained under unequal conditions in a highly decentralised procedure is possible.

Instead of considering potential non-recognition of decentralised naturalisation as a knockdown objection, we should consider how this problem could be tackled in particular national contexts. Some of these will be very unfavourable and it may then indeed be unwise to push for decentralised naturalisation. Yonatan Fessha's analysis of ethnoterritorial federalism in Ethiopia, where decentralising naturalisation could strengthen titular majorities and deepen the exclusion of ethnic minorities, provides clear enough objections. Yet in national contexts that are less unfavourable it may still be worthwhile to consider how nation-wide recognition for decentralised naturalisations could be achieved.

Decentralisation facilitates abusive mass naturalisation

The final worry that I find in the contributions to this forum is that local naturalisations may not perpetuate exclusion from or inequality of citizenship, but provide instead political leaders with opportunities to increase the number of their voters. Based on historical reports about decentralised naturalisation until the early 20th century, Bloemraad points to the experience that local political outreach to immigrants "could be rife with corruption and graft as politicians hustled for supporters". This concern is as old as citizenship itself. Already Aristotle warned that democratic leaders "habitually add in as many men as possible and make them all citizens".¹⁵ We may wonder, though, how this problem is associated with decentralisation. Mass naturalisation can also be used as a political tool by central state leaders. The answer seems thus that naturalisations should generally be a process of admission to citizenship based on individual applications and vetted by public administrations according to criteria laid down in the law, no matter whether these administrations are local or national ones. Naturalisation decisions should never be a prerogative of executive leaders, as is unfortunately often the case in African and Asian states. Just as presidents should not be able to create new citizens according to their personal whims or political interests, such powers should also not be transferred to local mayors.

Yet this answer is still incomplete. There are circumstances when citizenship needs to be bestowed on larger groups in order to overcome a situation of protracted exclusion. Alfred Babo mentions the case of mass naturalisation of 8000 Burkinabe (descendants of immigrants from Burkina Faso) in Côte d'Ivoire in 1995, many of whom were arguably already Ivorian under the law although not formally recognised as such. Collective inclusions will often be regarded by political opponents as self-serving policies to boost support for incumbents. And where such groups are locally concentrated and clearly marked as ethnic minorities, decentralised mass naturalisation may become politicised in a nasty way. Again, this is a contextual caveat rather than a general objection.

The presence of very large and distinct groups excluded from citizenship raises a more general conundrum. Naturalisation is meant to be a process through which individuals join an existing community of birthright citizens. The higher the percentage of non-citizens in the population, the more urgent the problem of their exclusion, but the more disruptive massive naturalisations will be in political terms since they challenge the very idea of integration into a pre-existing community. Decentralisation presupposes a relatively stable national context and can obviously not provide a solution in such circumstances. Instead, just as when new states are formed, citizenship may have to be reset altogether. Consider the Arab Gulf states discussed by Lillian Frost where majorities of the population consist of non-citizens who had originally been imported as temporary migrant workers. A democratic transition in such countries could not keep them excluded. Yet under which conditions would current citizens be willing to acquiesce and become a minority? In a context very different from that of massive immigration changing the demography of a receiving country, the abolition of apartheid in South Africa

¹⁵ Aristotle, (1962), *The Politics*, London Penguin, book VI, iv.

provided a rare hopeful example for how an exclusionary citizenship regime can be peacefully replaced with an inclusive one. Its lesson is that it takes responsible leadership to avoid mayhem in such transitions.

Tapping into the resources of local citizenship

In the preceding GLOBALCIT forum I asked whether local citizenship should be denationalised by disconnecting it from national citizenship.¹⁶ In our current debate Manby asks the converse question whether access to national citizenship should be localised, which presupposes that the two levels of citizenship be connected. I think that it is still possible to answer both questions affirmatively. Local citizenship can offer resources of solidarity among residents independently of their origin and place of birth. Turning local citizenship into a recognised status of all residents that comes also with local voting rights can complement a national citizenship based on birthright that immigrants can acquire only through individual naturalisation. However, where access to national citizenship is denied to large groups, tapping into the resources of local citizenship could help to unblock this route to citizenship. This strategy will not work in many contexts and the contributions in this forum have shown why. They have not shown that it should be abandoned altogether.

¹⁶ ‘Cities vs States: Should urban citizenship be emancipated from nationality?’ GLOBALCIT, 18 Feb. 2020, <https://globalcit.eu/cities-vs-states-should-urban-citizenship-be-emancipated-from-nationality/>.

Why and where local naturalisation may work – a rejoinder

[Bronwen Manby](#)*

In my introductory piece for this forum, I proposed that, in order to increase access to citizenship for migrants, the process should be decentralised. The vast majority of the responses to my proposal pointed out why this was a bad idea – which is more or less what I expected. In this rejoinder, I consider whether my original idea survives these critiques.

I should state right away that I agree with many of the objections: the proposal needs to be treated with care. Like Barbara von Rütte and Irene Bloemraad, I recognise that a decentralised naturalisation process could be more discriminatory rather than less. Like Sanzhuan Guo, I do not think that decentralised naturalisation is likely to achieve much in a system where citizenship administration is highly securitised and suspicion of foreigners widespread. Like Christine Hobden and Luicy Pedroza, I can see the risks of tiered citizenship rights if differential criteria are created for naturalisation in different localities. Like Sujata Ramachandran, I am concerned that more flexible local integration processes may turn out to be vulnerable to manipulation or reversal by central authorities in the longer run. And like Amal de Chickera, I think that naturalisation should never be proposed as a solution, even as a political compromise, if it forces people to apply to be granted a citizenship that in law they already hold or of which they have been arbitrarily deprived.

If I agree with these criticisms, what are the circumstances in which I nonetheless think that decentralisation of naturalisation may provide a good way forward? Like Rainer Bauböck, I think that national context is the central consideration.

Where might decentralised naturalisation work?

The countries where I think decentralised naturalisation could work are above all those states in Africa where many people are currently without state-issued identity documents of any type – birth certificates, national identity cards, passports – and therefore their legal status as citizens or non-citizens of the country of residence is not clear. My proposal was, however, not for unregulated local autonomy in naturalisations. Rather it seeks a more active deliberation on the proper balance between national level rules and oversight, and local level implementation and certification of membership, and to make those rules and processes more transparent and equitable.

The states where such reforms are most necessary are those that have established descent-based legal regimes, with limited or no rights to citizenship based on birth in the territory, so that particular minorities have been excluded from recognition of citizenship over more than a single generation. The individuals for whom it is most necessary are those who are of mixed parentage, born in a third country, perhaps long-term residents in another; and who hold none of the documents that would enable them to naturalise under current procedures or be recognised as the citizen of any other state. Unless they are recognised as refugees, there is indeed no legal residence status available to them.

In this context, the choice may not be between a centralised system that treats applicants more objectively and equally, and decentralised discrimination; but between types of discrimination. The existing centralised regimes for naturalisation discriminate in favour of the wealthy, who have the income and status enabling them to secure a work or residence permit, access to lawyers, and existing identity documents. A decentralised regime might discriminate against those groups and in favour of people who have shown themselves to be integrated and valued members of the community at local

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level. This could perhaps rather be described as a form of affirmative action in favour of minorities that have faced past discrimination in access to documents, or more generally, the poor. Nonetheless, there is always the danger that decentralised processes may favour some groups over others, and they may not be a good solution in contexts where there are severe local tensions over access to land and other resources.

There are particular challenges where nationality law is exclusively descent-based and many are currently excluded, as is the case, for example, in Côte d'Ivoire, where Alfred Babo traces the history of controversy over access to citizenship. The risks are even higher where citizenship is also ethnically determined, as it is in practice (though not in law) in Ethiopia, where Yonatan Fessha points out the dangers of decentralisation. Yet even if citizenship is closely linked to ethnicity, decentralised naturalisation could be a solution if well-regulated in law. In Nigeria, for example, the *de facto* basis of citizenship is a 'certificate of indigeneity', similar to the 'Kebele ID' issued in Ethiopia, and it creates similar problems of discrimination against 'non-indigenes'.¹ But the flexibility of this system can also allow for the absorption of migrant populations²; the problem may lie not in the idea, but in the lack of a legal framework and independent oversight of decision-making.

Ibrahima Kane points out that in the more favourable environment of Senegal, the creation of a formal role for local government could provide a much-needed boost to the integration of foreigners. The empowerment of municipalities could also help to eliminate corruption in nationality administration – by making legal the practices that already take place within the civil registry and judicial system to recognise late registration of birth. Such alternative pathways to citizenship are also widespread in Mexico, as Imke Harbers reports.

Corruption is frequently reported as a concern in Africa in relation to fraudulent access to citizenship documents: in October 2020, the former Malawian minister of home affairs and national security was sentenced to six years imprisonment for the sale of passports.³ Yet sometimes corruption is enabled by the law itself: in Comoros, a law allowing the grant of 'economic citizenship' was transformed into a scheme to impose Comorian citizenship on tens of thousands of stateless Emirati *bidoon*,⁴ and, incidentally, mobilised by Iranians seeking to evade US sanctions.⁵ The entirely legal 'golden passport' schemes of Cyprus and Malta have enabled corrupt individuals to move freely within Europe.⁶ And what is called corruption in the issuing of civil registration documents to ordinary Africans – who wish only to live their lives and lack the means to obtain identity documents through the usual channels – could simply evaporate if practical routes were provided to regularise their legal status.

A key point here, however, is that Senegal's nationality law is already quite open: the second generation born in the country acquires citizenship automatically at birth (the rule of double *ius soli*). In Mexico, as in most of the Americas, the law is even simpler: any child born in the territory acquires citizenship at birth. As Diego Acosta argues, naturalisation in pure *ius soli* states becomes less important.

¹ Human Rights Watch (2006). "'They Do Not Own This Place": Government Discrimination Against "Non-Indigenes" in Nigeria' <https://www.hrw.org/reports/2006/nigeria0406/index.htm>.

² 'Indigeneity, Belonging, & Religious Freedom in Nigeria: Citizens' Views from the Street', Nigeria Research Network Policy Brief (University of Oxford and Development Research and Project Centre, Kano, 2014).

³ 'Malawi Ex-Minister Uladi Sentenced to 6 Years in Jail over Passport Scandal.' *Nyasa Times*, 22 Oct. 2020 available at, <https://citizenshiprightsafrika.org/malawi-ex-minister-uladi-sentenced-to-6-years-in-jail-over-passport-scandal/>.

⁴ Abrahamian, A.A. 'Comoros: The Bizarre Scheme to Transform a Remote Island into the New Dubai.' *The Guardian* 11 Nov 2015 <https://www.theguardian.com/world/2015/nov/11/the-bizarre-scheme-to-transform-a-remote-island-into-new-dubai-comoros>.

⁵ Sharafedin, B. & Lewis, D. 'As US sanctions bit, Iranian executives bought African passports.' Reuters, 29 Jun. 2018, <https://www.reuters.com/investigates/special-report/iran-passports-comoros/>.

⁶ 'Europe's Golden Doors: Lack of Progress in Stopping the Criminal and Corrupt Accessing Europe via Golden Passports and Visas.' Global Witness, 27 Mar. 2020 <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/europes-golden-doors/>.

While late birth registration may function as a form of naturalisation in these countries, it is not radically disturbing the idea of the nation. This context is very different from Côte d'Ivoire (the only country of former French West Africa not to adopt double *ius soli* at independence) or Ethiopia. If nationality laws already provide only very weak rights based on birth in the territory – as in Switzerland – then it seems that naturalisation will also be difficult to access, at whatever level of government it is carried out. Nevertheless, Barbara von Rütte acknowledges that decentralised naturalisation in Switzerland can help to create 'a feeling of ownership for citizenship at the local level'. Even if naturalisation remains a centralised decision, local governments can still play an effective role in facilitating access, as Erin Aeran Cheung shows in the case of Korea.

I have to agree, however, that if a central government, following (or leading) a xenophobic national mood, chooses to restrict and reduce access to citizenship – the situation Sujata Ramachandran describes in the North-East Indian state of Assam, and Christine Hobden in South Africa – then it is unlikely that any procedural changes will make much difference.

Legal identity and status as an alternative solution to naturalisation

Some of the contributions to this discussion have proposed that, although local naturalisation is not conceivable, local authorities could play a role in recognising a form of legal status tied to that locality. Such a status would at least give a person some degree of protection and ability to integrate into society, with rights to work and access healthcare and education, even if not citizenship and its associated civic, political and unconditional residence rights. Lilian Frost considers that in the Middle East a devolved naturalisation procedure might only be contemplated as a means of softening gender discrimination in transmission of citizenship to children, or to recognise cultural or family ties across borders. Thus, forms of quasi-citizenship, such as the status held by some Palestinians in Jordan, could be a more practical way of helping the most vulnerable – including refugees – than insisting on access to citizenship itself.

Luicy Pedroza cautions against blurring the lines between local authority recognition of legal identity and the award of citizenship status. In her view, the conflation of civil registration with a form of 'naturalisation' is to be avoided; the former should rather be seen as an important first step, valuable in its own right. It is a 'different endeavour', albeit equally important, to establish a legal path of access to naturalisation.

I can see the case for this approach: if access to citizenship is politically impossible, let us be pragmatic. It is an approach that has helped, gradually, to reduce statelessness in some states. In Estonia (similarly to Latvia, highlighted by de Chickera), the reaction to the period of Soviet rule was to decide in 1992 that citizenship would be extended only to the citizens of the Estonian Republic created in 1918 and their descendants. Residents who did not qualify for citizenship under this rule, largely Russian-speakers, were documented as 'persons with undetermined nationality', giving them legal residence, but not citizenship; at the same time naturalisation was made more difficult. In January 2015, however, Estonia reformed its law to attribute citizenship automatically to children born in the country to a parent holding this status.⁷ The interim legal status permitted a political movement towards recognition of the rights of those born in the country after independence was restored.

In many African states, by contrast, there is no permanent residence status (there are of course exceptions). Non-citizens resident in the territory either have a temporary permit (which could include a refugee permit) or are in irregular status. In West Africa, there is a third possibility, since they may be exercising their free movement rights within the Economic Community of West African States (ECOWAS). ECOWAS citizens in other ECOWAS states, however, may face the same problems of

⁷ 'Good Practices Paper - Action 2: Ensuring that no child is born stateless' UNHCR, March 2017.

proving their residence as EU citizens are now facing in the UK.⁸ The universal adoption of rules to establish a status of permanent residence could facilitate not just naturalisation, but also the grant of citizenship to children of permanent residents.

Such an approach could, however, undermine the ideal of political equality – a value highlighted by Christine Hobden – much more than any local naturalisation scheme. If there were a formal requirement to apply for permanent residence, the application procedure could simply create a new barrier in the path to naturalisation. If, on the other hand, permanent residence was acquired on a nearly automatic basis after a certain number of years, the introduction of the concept could provide a powerful tool for resolving the situation of those whose status is currently unclear. Nonetheless, there remains the danger that a permanent residence status, while at least enabling a degree of stability for the daily lives of those included, becomes a permanent non-citizen status of second-class members of society.

The problem of democratic boundaries

As Rainer Bauböck highlights, the central problem in the African states with which I am most familiar is the paradox of democratic boundaries: who decides who makes up the ‘demos’? In post-colonial states whose boundaries were drawn with rulers by European powers sitting round a table in Berlin in 1885, the legitimacy of central rules for the grant of citizenship has been repeatedly put in question, whether that be the attribution of citizenship at birth or acquisition through naturalisation. At independence, the laws established rules that both presumed some level of initial consensus over belonging in the new states, and also that everyone’s birth was already registered and that those not in the country of their birth had migrated through regular routes with the appropriate visas. This fantasy world meant that decentralised decisions over the formal recognition of local belonging or national citizenship were inevitable.

The simple *ius soli* rule put in place at independence in all former British territories proved unacceptable in the context of the radical disturbances to pre-colonial political economies, and has gradually been repealed or disregarded in all states where it was initially intended to apply. Yet the double *ius soli* rule of most former French territories has proved remarkably durable, and is not questioned where it exists; the possibility of judicial recognition that a person has the “apparent status” of a citizen (the idea of *possession d’état*) is similarly accepted. Moreover, as I argued in my kick off contribution, opinion polling shows that African citizens are more open to naturalisation of foreigners or the grant of rights based on birth in the country than their politicians have been. Depending on context, local level structures may well have more legitimacy and accountability in decision-making around admission of new members of the community than the national government – though national regulation of the process, through laws that establish clear criteria and oversight mechanisms, would remain a critical check against the sorts of abuses others have warned of in this dialogue.

Conclusions

In considering whether local naturalisation may be both feasible and desirable, we must answer a number of interconnected questions. What is the current basis for attribution of nationality at birth: does it provide at least some general rights to access citizenship based on birth in the country (even if not simple *ius soli*), so that naturalisation is not the only route to integration? What is the current percentage of the population estimated to be ‘foreign’? Is access to citizenship highly politicised, whether at national level or in specific localities? Is xenophobia generally a dominant feature of politics? Are the basics of the rule of law in place, such that arbitrary decision-making may be checked by the courts, and there is

⁸ McKinney, CJ. “EU Citizens Unlawfully Resident in the UK to Stay That Way during ‘Grace Period.’” Free Movement, 9 Nov. 2020, <https://www.freemovement.org.uk/eu-citizens-unlawfully-resident-in-the-uk-to-stay-that-way-during-grace-period/>.

space for lawyers and civil society organisations to assist those who need help? Is the society one where very large numbers of people are currently undocumented, including many who are completely integrated; or is that true of only a handful, so that more usual routes to access naturalisation may be available?

A decentralised naturalisation procedure may be most easily conceived of in countries where many are currently undocumented, and where citizenship laws are relatively liberal in granting rights based on birth in the territory, so that access to citizenship through naturalisation is not such a high-stakes game. But could it be more universally proposed?

I recognise again the force of Amal de Chickera's argument: sometimes naturalisation is the wrong answer to the question of exclusion from birthright citizenship. This is of course the case for those who have been subjected to a collective refusal to recognise previously held citizenship, as in the case of the Rohingya of Myanmar, the Bengali-speakers in Assam, or Dominicans of Haitian descent. But could naturalisation be an answer to the situation of groups and individuals who have never previously been recognised as citizens? Is the example that [Luicy Pedroza](#) gives of the registration and naturalisation of members of Ngäbe-Buglé indigenous community on the border between Costa Rica and Panama illegitimate? After all, the Australian courts have judged that people of indigenous origin cannot be aliens in Australia, whatever the technical legal position.⁹ Or was this procedure a pragmatic solution framed within the legal procedures that work in that context?

Above all, however, I return to the point that where many are undocumented, including those whose citizenship is uncontested, local procedures for validation of citizenship are already pervasive. The blurring between registration of legal identity and the grant of citizenship that Pedroza warns against is to some extent inevitable. My proposal aims to establish more transparent regulation and more predictable decision-making within these procedures. By creating this legal framework, it pushes back against the radical centralisation of these processes in many African states as new identification systems are being rolled out – as Yonatan Fessha notes in the case of Ethiopia. Decisions over the legal framework for recognition or grant of citizenship will always be political, and in some contexts may seem impossible to resolve; yet, as I have argued elsewhere, reforms to law and procedures may also contribute to a gradual de-politicisation of citizenship, if the processes are seen to be legitimate and fair.¹⁰

⁹ 'Love v CTH; Thoms v CTH [2020] HCA 3: Can Aboriginal Australians Be Aliens Under Law?' TimeBase, 14 Feb. 2020 www.timebase.com.au/news/2020/AT04994-article.html.

¹⁰ Manby, B. (2018), *Citizenship in Africa: The Law of Belonging*. Oxford: Hart Publishing.

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With the support of the
Erasmus+ Programme
of the European Union

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