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COUNTRY
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2020/09

APRIL
2020

REPORT ON CITIZENSHIP LAW: ETHIOPIA

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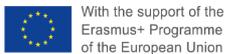
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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with
Edinburgh University Law School

Report on Citizenship Law: Ethiopia
RSCAS/GLOBALCIT-CR 2020/9
April 2020



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Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)

www.eui.eu/RSCAS/Publications/
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Research for the 2019 GLOBALCIT Reports has been supported by the European University Institute's [Global Governance Programme](#), and the British Academy Research Project CITMODES (co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

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Report on Citizenship Law

Ethiopia

*Zecharias Fassil*¹

1. Introduction

This work provides a description of the law of citizenship in Ethiopia under the previous and current legal regimes. A citizenship law was among the very first written laws in Ethiopia's modern legal system. It has gone through different regimes and the confederation and secession of Eritrea have contributed vital ingredients to its shape. Descent-based citizenship and the prohibition of dual citizenship have remained unchanged through all the regimes from the time of the Emperor to the present. Intermediate solutions recognising the rights and benefits of foreigners of Ethiopian origin and explicitly allowing refugees to make use of naturalisation have brought new colour to the picture of citizenship law in Ethiopia. Naturalisation processes used to be strict, but with emergence of demanding situations they have evolved to be less strict. Contrary to the fact that the citizenship law is one of Ethiopia's oldest laws, its subject matter is far from complex. However, limited literature exists on it and this has created gaps in terms of legal literacy both for the institutions entrusted with enforcing the law and its beneficiaries. As can be seen from the case law, there is a lack of comprehensive awareness of this special law. In greater detail, the enforcement of this law is left in the hands of administrative bodies but the absence of an administrative procedural code in Ethiopia and a slow transition to a national ID system have negatively impacted citizenship rights. This work contributes to the limited literature on citizenship law in Ethiopia by suggesting areas for improvement, both at the policy level in terms of adopting the Convention on the Reduction of Statelessness and at the level of administrative measures.

Ethiopia took the lead regarding citizenship law in Africa by having the first written citizenship law. This may be attributed to the fact that Ethiopia and has had a strong local governance structure and dealings with other countries for millennia, keeping its national identity intact. Ethiopian political society began to take shape in the time of the Axumite kingdom.² Ever since then Ethiopia has managed to keep its territorial and political sovereignty, which has helped it to successfully survive aggression and colonisation attempts. It has never been colonised by European powers, with the brief exception of occupation by Italy.

¹ The author is a senior fellow of the African Good Governance Network (AGGN) and Research Fellow at African Institute for Crime, Governance and Policy Research (AFRCGPR). He is highly indebted for the opportunity extended to him by the EUI and for the reviewing of the draft of this paper. The standard disclaimer applies.

² The demarcation of the time of the commencement of modern Ethiopia is debated among historians. However, there is wide consensus on Ethiopia's early history of civilization, with the governance and administration of citizens.

Ethiopian emperors were well aware of the fact that maintaining the political identity of the people is key to administration, governance, international relations and independence. This is evident from the fact that when Haile Selassie was crowned emperor of Ethiopia on 2 November 1930, one of the very first laws he promulgated was the 1930 citizenship law. This preceded the emperor's constitution, which was promulgated in 1931, providing an insight into the due regard Ethiopian leaders give to citizenship law.

Citizenship is one of the strongest bonds between a natural person and any given state. It confers rights and duties on the citizen. This has been underlined by many authors, and in most instances, it is the ABC of citizenship law. There is a biblical reference to the benefits of citizenship from the year 60 A.D.³

Granting citizenship and laying down the rules relating to it are sovereign acts of each state. Therefore, definitions of how citizenship is acquired and lost are state sovereign choices. However, it is worth noting that globally there are similarities between the relevant laws of different countries. For instance, according to the body of knowledge on citizenship law that developed by the European University Institute (EUI) Global Citizenship project, there are 27 ways of acquiring citizenship and 15 ways of losing it.⁴ Each country's law can have peculiar features.

In general terms, citizenship laws are based on two basic concepts: *ius soli* (literally, the law or right of the soil), whereby citizenship is earned through being born in a given country; and *ius sanguinis* (the law or right of blood), where citizenship is earned through descent from parents who themselves are or were citizens.

As most writers in this field agree, citizenship is a concept that involves three cardinal considerations, namely conferring legal status on individuals, enabling individuals to be political agents, and membership of a community and identity.⁵

One striking feature of citizenship law in Ethiopia is that, unlike other public laws, it has not undergone recurring revisions or amendments. As will be seen in the following sections, the first citizenship law in Ethiopia continued to be enforced through three regimes. However, like any other law it is not amendment-proof given social dynamics and the impacts of globalisation and political and economic integration. The 1930 law was replaced in 2003.

2. Defining Citizenship

This paper uses the terms citizenship and nationality interchangeably as they both refer to the same thing in the Ethiopian context. In social sciences, there are many definitions of citizenship/nationality. However, as this is legal research, the paper uses a legal definition without needing to refer to other definitions. Accordingly, International Court of Justice (ICJ)

³ Acts 22: 25-28 "Paul said unto the centurion that stood by, 'Is it lawful for you to scourge a man that is a Roman, and uncondemned?' When the centurion heard that, he went and told the chief captain, saying, 'Take heed what thou doest: for this man is a Roman.' Then the chief captain came, and said unto him, 'Tell me, art thou a Roman?' He said, 'Yea.' Source: KJV Bible.

⁴ See databases on modes of acquisition and loss of citizenship at <http://globalcit.eu/acquisition-citizenship/> and <http://globalcit.eu/loss-of-citizenship/>.

⁵ See Cohen 1999; Kymlicka and Norman 2000; Carens 2000 and also, <https://plato.stanford.edu/entries/citizenship/>

case law gives a comprehensive legal definition of the term. In the 1955 *Nottebohm* case, nationality is defined as follows:

According to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.⁶

In this definition, the defining elements of citizenship are a legal bond, a genuine connection of existence and reciprocal rights and duties. Similarly, a definition by an Ethiopian jurist who wrote the first article on nationality law in Ethiopia, Fasil Nahum, is that it is "the relationship of allegiance, protection and identification which an individual has with a state. Nationality is a status that results from both act and intent and usually entails participation in the functions of the state."⁷ This is the definition adopted in this paper.

Ius soli and *ius sanguinis* have become the principles with which many states determine nationality. Even though their theoretical classification is easy, their practical application is not as easy as one might assume. Some states use a compromise between the two, some adhere to one of them, and in a considerable number of nation states both principles are applicable. In this complex scenario, marriage is one of the determining variables.

The complexity of nationality law has caught the attention of states. In 1930 there was a Hague Convention on conflict of nationality laws. This convention aspired to uniformity. Historian jurists like Fasil Nahum have stated that this convention served as a foundation for Ethiopia's 1930 nationality law,⁸ which helps explain the content and shape of the imperial nationality law.

2.1. The impact of international law on Ethiopia's citizenship law

Ethiopia was one of the few African states able to participate in the formation of the United Nations. In addition, Ethiopia voted in favour of the UN General Assembly resolution adopting the Universal Declaration of Human Rights (UDHR) in 1948 – one of the few African states able to do so.

The adoption of the UDHR by Ethiopia and its active participation in the ratification and adoption of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural rights (ICESCR), the Convention on the Rights of the Child (CRC), the African Human and Peoples' Rights Charter and the African Charter on Rights and Welfare of the Child reinforced the alignment of rules in its nationality law.⁹

⁶ The decision is available at <https://www.icj-cij.org/files/case-related/18/018-19550406-JUD-01-00-EN.pdf>, see page 23, last paragraph. Last accessed 18 February 2020.

⁷ Fasil Nahum, Ethiopian Nationality Law and Practice, Ethiopian Journal of Law, VOL VIII-No.1, pp 168-183, <https://journals.co.za/docserver/fulltext/jel/8/1/344.pdf?expires=1575962782&id=id&accname=guest&checksum=A4FB4D1BE62E90EFC62C49459219F659>

⁸ Fasil, 169.

⁹ International Covenant on Civil and Political Rights, ratified by Ethiopia on 11 June 1993, International Covenant on Economic, Social and Cultural Rights, ratified by Ethiopia on 11 June 1993, Convention on the Rights of the Child, adopted by Ethiopia on 14 May 1991. Source: Office of High Commissioner for Human Rights, UN treaty data base, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN, last accessed 15 March 2020; The African Charter on Human & Peoples' Rights, ratified by Ethiopia on 15/06/1998.

The right to nationality is recognised in international human rights documents. For instance, Article 15 of the UDHR provides that

Everyone has the right to a nationality; and no one shall be arbitrarily deprived of his/her nationality nor denied the right to change his/her nationality.

Likewise, a related wording is found in the ICCPR which stipulates that “every child has the right to acquire a nationality.” Moreover, Article 7 of the CRC states that “The child shall be registered immediately after birth and shall have the right from birth to a name, **the right to acquire a nationality** and as far as possible the right to know and be cared for by his or her parents” (emphasis added).

Moreover, Article 9(4) of the current Ethiopian constitution states that “All international agreements ratified by Ethiopia are an integral part of the law of the land.” In addition article 13(2) provides that “the fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.”

As can be seen, at least in contemporary Ethiopia, the impact of the UDHR and international human rights bills have visible effects in shaping the legal norms on human rights, one of which is the right to nationality. This gives the legal basis for the observation of applicable international laws in Ethiopia.

3. The 1930 Nationality Law

The 1930 nationality law was adopted partly because Emperor Haile Selassie had a keen interest in modernisation and partly because there was concern in the international legal arena in 1930 about conflicts of nationality law among sovereign states. The Emperor issued this law, which was first drafted in French, following the Hague Convention on Conflict of Nationality laws. It was a legal transplant from the European countries as the emperor had very close diplomatic ties with Europeans. Analysis of the letter and spirit of the law suggests that much inspiration came from European laws and it was most likely based on the Swiss model.¹⁰

This first nationality law in Ethiopia and perhaps in Africa contained 18 articles. It was published in the *Berhanena Selam* newspaper, Vol. 6, No. 30 (24 July 1930). *Berhanena Selam* was the official newspaper where laws were issued before the *Negarit Gazette* was established.

Nationality is an important element in governance and administration. Reflecting the monarchical spirit of the time, people in Ethiopia were considered subjects. A cursory look at the law shows that the emperor was regarded as conferring rights on the people under his rule. For instance, Articles 1 and 2 provided that “Any person born in Ethiopia or abroad, whose father or mother is Ethiopian, is an **Ethiopian subject**” and “A lawful marriage of an Ethiopian **subject** with a foreign woman confers Ethiopian nationality upon her.” In these two articles, the law does not say ‘Ethiopian national’ but ‘subject.’ The avoidance of the term ‘national’ and the use of the term ‘subject’ in this law, subsequent legislation and the 1931 constitution

Source: https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf, last accessed on 15 March 2020.

¹⁰ On the impacts of foreign laws, see John H. Beckstrom, *Transplantation of Legal systems: an early report on reception of Western Laws in Ethiopia*, *The American Journal of Comparative Law*, Vol. 21, No. 3 (Summer 1973), pp. 557-583, published by the American Society of Comparative Law.

was to show that the king was superior and had many rights and the people were just subjects of his reign. This attitude is reflected in the preamble to the constitution.¹¹

By stating that “any person born in Ethiopia or abroad, whose father or mother is Ethiopian, is an Ethiopian subject,”¹² Article 1 of the 1930 Ethiopian nationality law established that nationality was based on descent, by *ius sanguinis*.

At first sight the law appears to be gender neutral. However, later articles undermine this. The law gives guidelines to determine the nationality of children born from a marriage between Ethiopians and foreigners. The rule is that a child born from a lawful mixed marriage follows the nationality of the father. A child born outside a lawful marriage with an Ethiopian father and a foreign mother, if requested to, has to prove that the child does not have the original nationality of the mother. When the father is a foreigner and the mother is Ethiopian, the child is allowed to maintain the Ethiopian nationality of the mother as long as he/she lives in Ethiopia and can prove he/she has divested him/herself of the paternal nationality.¹³

The law also stipulated rules on the nationality of children legitimised by a lawful marriage between Ethiopians and foreigners.

If the lawful marriage according to the national law of the foreign father is posterior to the birth of the child issued from his relations with an Ethiopian woman, the child legitimated through this subsequent marriage follows the nationality of his foreign father only on condition that the national law of the latter confers upon him the foreign nationality with all inhering rights. Otherwise the child preserves his Ethiopian nationality.¹⁴

The legitimation, without subsequent lawful marriage between the foreign father and the Ethiopian mother, of the child issued from the relation outside marriage deprives the child of his Ethiopian nationality only if the legitimation, made in accordance with the forms of law of the foreign father, confers upon the child thus legitimated the nationality of his father with all inhering rights.¹⁵

Article 2 of the law reads that “a lawful marriage of an Ethiopian subject with a foreign woman confers the Ethiopian nationality upon her.” An *a contrario* reading of this tells us that the law did not allow a foreigner married to an Ethiopian woman to automatically obtain Ethiopian nationality.

In the subsequent articles, this nationality law laid down rules on the ways of acquiring and losing nationality rights. Articles 2-5 stipulated rules on nationality in the case of marriage between an Ethiopian subject and a foreign national. They provided that Ethiopian subjects that legally marry women of foreign nationality can confer Ethiopian nationality on them.¹⁶

However, if an Ethiopian woman married a foreign man, she could be deprived of her Ethiopian nationality if her marriage with the foreigner conferred the nationality of her husband

¹¹ For example, Article 6 of the 1931 constitution states that “In the Ethiopian Empire supreme power rests in the hands of the Emperor.” Moreover, the preamble to the 1955 constitution states that “We granted to Our faithful subjects and proclaimed a Constitution for the Empire of Ethiopia.”

¹² Article 1 of the 1930 Ethiopian Nationality law.

¹³ Article 7.

¹⁴ Article 8.

¹⁵ Article 9.

¹⁶ It shall be considered a lawful marriage where the Ethiopian Subject marries with religious or customary civil marriage practiced in Ethiopia and the marriage takes place in Ethiopia, or an Ethiopian subject marries a foreign woman in a foreign country according to the foreign country marriage practice. See article 3(a &b) of the 1930 Nationality Proclamation.

on her. If it did not, she kept her Ethiopian nationality.¹⁷ Article 4 of the law can be regarded as discriminatory. The deprivation of nationality appears to be automatic as long as the marriage conferred the nationality of the woman's husband.

A striking detail of this nationality law is that under Article 10 it provides that the adoption of an Ethiopian child by foreign nationals does not change the adopted child's original nationality. This is striking for two reasons. One is that the law purported to give protection against statelessness and the other is that it envisioned the legal regime of adoption long before family law was adopted in the Ethiopian legal regime. It is surprising that the law did not provide rules on the acquisition of Ethiopian nationality in the case of a foreign child adopted by an Ethiopian.

Article 11 provides the conditions whereby the loss of Ethiopian nationality could occur. These were when an Ethiopian woman marries a foreign national and adopts her husband's nationality and when an Ethiopian changes his nationality and acquires foreign nationality.

Citizenship by naturalisation for foreigners to acquire Ethiopian nationality was also provided for by this law in five of its articles. The cumulative conditions that need to be fulfilled are that the foreigner should have the age of majority, have lived in Ethiopia for at least 5 years, be earning a living, be proficient in the Amharic language, and be free of a criminal or sinful record.¹⁸ Here, it is worth noting that, according to a translation provided by Refworld, 'sin' is translated as breaking common law. The author has referred to early texts translated into English by Fasil Nahum.

It can certainly be said that the criteria for naturalisation were strict, especially the requirement for proficiency in the working language of Amharic and the fact that there was no exception to these requirements. This could be due to the conservative nature of the monarch. After going through the evaluation procedure naturalisation was conferred by a decree.¹⁹ Moreover, the effects of naturalisation were not transferable to a legitimate wife. 'Legitimate wife' refers to a legitimate religious or civil marriage either in Ethiopia or abroad.²⁰

This strict approach, however, was relaxed four years after the nationality law was adopted. It was amended to allow granting of citizenship to foreigners who were deemed to be useful or if there was special reason to grant Ethiopian nationality irrespective of the formal requirements stipulated in the law.²¹

Another part of the law provided readmission to Ethiopian nationality by affirming that Ethiopians who have acquired a foreign nationality may always obtain the benefit of Ethiopian nationality when they return to reside in the country and apply for readmission. Similarly, an

¹⁷ Article 4 reads "*A lawful marriage contracted abroad of an Ethiopian woman with a foreigner deprives her of the Ethiopian nationality if her marriage with the foreigner gives her the nationality of her husband; otherwise she keeps her Ethiopian nationality. In case when the woman, losing her Ethiopian nationality, is the proprietor of real estate the administration of her property shall be settled in conformity with the law given to that effect by the Imperial Ethiopian government.*"

¹⁸ Article 12.

¹⁹ Article 15 reads "The naturalisation shall be conferred by decree and the new Ethiopian subject shall take an oath of allegiance to the Empire before the commission." Art 16 states "The naturalisation thus conferred does not extend its effects to the legitimate wife of the naturalised man, unless she applies personally for this benefit.

²⁰ See Articles 3 and 4.

²¹ Proclamation Amending the Nationality law of Hamle 15,1922 (Ethiopian Calendar). The amendment reads "*The Imperial Ethiopian Government may Grant Ethiopian Nationality to a foreign applicant if he is deemed to be useful to the country or if there are some special reasons for granting him Ethiopian Nationality, notwithstanding non-compliance with Article 12 (sub-arts. (b) and (d) of the aforesaid Nationality Law. Date Meskerem 25, 1926 Ethiopian Calendar.*

Ethiopian woman who had lost her Ethiopian nationality by virtue of marriage with a foreigner, following the dissolution of the marriage either by divorce, separation or death, was entitled to apply for readmission provided she returned to reside in Ethiopia.

An important piece of legislation on nationality law during the time of the Emperor worth taking note of is *Imperial order No. 6 of 1952, an order to provide for the Federal Incorporation and Inclusion of the Territory of Eritrea within Our Empire*. Following the defeat of Italy in the Second World War, the United Nations General Assembly adopted a resolution providing that Eritrea (formerly an Italian colony) would be constituted as an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown.²² Section 9 of the Imperial Order adopted two years later reads:

All Inhabitants of the territory of Eritrea except persons in possession of foreign nationality are hereby declared to be subjects of our empire and Ethiopian nationals. All inhabitants born in the territory of Eritrea and having at least one indigenous parent or grandparent are also declared to be subjects of our empire; however, if such a person is in possession of foreign nationality, he is hereby permitted to renounce within six months of the date thereof the nationality granted above and retain such foreign nationality, but if he does not so renounce he shall thereupon lose such foreign nationality.

Further on in this work we shall be looking at how the unhealthy relationship between Ethiopia and Eritrea has complicated, and legal and political actions on nationality have negatively affected, the nationality rights of persons who by accident of birth happened to be in these countries.

The above-mentioned decree is a perfect example showing that nationality was conferred by force on an Italian with Eritrean origin if the person wished to live in the province of Eritrea. Such a person could not maintain his/her Italian nationality.

It is interesting to note that from the time of the Emperor up to 2000 the case of Eritrea was an important key concern in Ethiopian nationality law. Eritreans and Eritrea were a constant variable in Ethiopia's nationality law equation.

In a nutshell, as law mirrors the social and political development of any society, given the fact that modernisation efforts were being made by the Emperor and as there was no prior experience of nationality law in the country, Africa's first nationality can be praised for its succinct description of modes of acquiring, losing and regaining nationality. Without discounting these strengths, the law can be criticised for cutting through issues like gender equality. However, at the time it was promulgated, the positive contribution of the law outweighed its limitations.

²² UN General Assembly, Resolution 390 A (V) of 2 December 1950, available at [https://undocs.org/en/A/RES/390\(V\)](https://undocs.org/en/A/RES/390(V)).

4. Nationality law in the period 1974-1991 (People's Democratic Republic of Ethiopia, PDRE)

The second phase in the development and emergence of nationality law in Ethiopia includes attempts made by the legal regime during the Dergue military government that overthrew the monarchy. The political ideology practised during the Dergue regime (1974-1991) was socialism.²³

In stark contrast with the Emperor's assimilationist policy, the Dergue rolled out the principle of self-determination of nationality whereby the development of a nation's language and culture were the prime focus.²⁴ The concept of self-determination in Ethiopia began during this regime but it did not have the same content and scope as it is practised nowadays.

Article 2 of the Constitution of the People's Democratic Republic of Ethiopia (PDRE) adopted in 1987 provided that, while the PDRE was a unitary state, it should ensure the "equality of nationalities, combat chauvinism and narrow nationalism and strengthen the unity of the working people of all nationalities", as well as "the realisation of regional autonomy" and "the equality, development and respectability of the languages of the nationalities." Article 59 stipulated that "The Ethiopian people's Democratic Republic is a Unitary State comprising administrative and autonomous regions."²⁵

Among other policy guidelines, the PDRE constitution in its part two on citizenship, freedoms, rights and duties provided rules that define citizenship and citizenship rights. Article 31 (1) stated that "*Any person with both or one parent of Ethiopian citizenship is an Ethiopian.*" It also indicated that a foreign national and a person with statelessness can acquire Ethiopian nationality as stated under Article 31(3). However, it provided that the particulars to this effect shall be determined by law. Moreover, Article 32 (1) posited that the state shall "*protect the rights and benefits of Ethiopian nationals residing abroad.*"

In line with the ideological position of the PDRE government, the constitution also established specific provisions for granting asylum to members of liberation movements. Article 33 states "The people's Democratic Republic of Ethiopia shall grant asylum to foreigners persecuted for their struggle in national liberation and anti-racist movements and for the cause of peace and democracy."

The PDRE constitution also accorded protection to foreigners in Ethiopia. Article 34 (1 & 2) read together read: "*Citizens of other countries and stateless persons within the territory of the People's Democratic Republic of Ethiopia shall have freedom, rights and duties determined by law. The state may not extradite a citizen of another country or a stateless person except as stipulated by international agreement.*"

Even though Article 31 (2 & 3) stated that the details of nationality law would be determined by subsequent legislation, the Dergue regime was not in a position to manage to issue a law to that effect. Therefore, for the 17 years of its rule the gap was filled by the Emperor's nationality law. The 1930 law was in full application. The researcher posits that, unlike in the time of the Emperor when many foreigners were naturalised in Ethiopia, owing

²³ In an attempt to have a strong alliance with the USSR, the motto of the government was ህብረተሰባዊነት, which literally equates with socialism.

²⁴ The legal system of the Emperor was mostly seen as a feudalist tool. Therefore, the Dergue regime purported to react against the diversities reflected in the nation.

²⁵ Proclamation No 1 of the 1987 constitution of the People's Democratic Republic of Ethiopia, Negarit Gazettea Vol 47. No. 1. 12 September 1987, Addis Ababa.

to the repressive military rule many Ethiopians were forced to flee the country, live in foreign lands and naturalised as foreign citizens.

5. The development of the law from 1991 to the present

The Dergue regime was oppressive and suppressive in many regards, and this resulted in the formation of rebel groups. The Tigrayan Peoples' Liberation Front (TPLF) was the most important of these. It developed into a coalition of forces called the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) and after 17 years of struggle it managed to displace the Dergue government in 1991.

In the same year, the EPRDF formed a transitional government²⁶ based on a transitional charter that was effective from 1991 to 1995. Although the charter managed to establish a road map for governance, and most importantly it adopted the UN Charter on Human Rights, it did not contain articles pertaining to nationality issues.

In its Article 9 (g) the Charter gave the council of representatives the power to establish a council of Constitutional Commission (CC).²⁷ Consequently, in August 1992 Proclamation number 24/1992, “*A Proclamation to Provide for the Establishment of the Constitutional Commission*” was issued in *Negarit Gazeta*, Year 51, No.20. The CC composition comprised 29 members with equal votes: 7 members of the COR, 7 members of political organisations, 3 members from trade unions, 3 members from the Chamber of Commerce, 2 members from the Ethiopian Lawyers Association, 2 members from the Ethiopian Teachers’ Association, 2 members from the Ethiopian Health Professionals’ Association and 3 women representatives (Article 7). The Chairman of the CC’s Executive Committee was the late Ato Kifle Wadajo.

5.1. The secession of Eritrea

In 1952 the United Nations made a federation of Ethiopia and Eritrea under two different governments.²⁸ Ten years later in 1962, Ethiopia annexed Eritrea. This sparked an independence struggle which lasted for 30 years. The insurrection in Eritrea was one of the factors that caused the downfall of the Dergue. When the Dergue fell in 1991, Eritrea unilaterally declared its independence from Ethiopia.

A succinct historical summary of the secession of Eritrea from Ethiopia in 1993 notes as follows:

Eritrean and Ethiopian government representatives discussed Eritrea’s relationship to Ethiopia during talks in Addis Ababa on July 1-5, 1991. The government agreed to recognise the right of the Eritreans to hold a referendum regarding their status. The UN General Assembly established the *United Nations Observer Mission to Verify the Referendum in Eritrea* (UNOVER), which consisted of some 110 election monitors, on

²⁶ A copy of the charter can be accessed at <https://chilot.files.wordpress.com/2011/11/the-transitional-period-charter-of-ethiopia.pdf>. Last accessed on 18 February 2020.

²⁷ Under Article 7 of the charter, the council of representatives exercised a legislative function. It was composed of representatives of national liberation movements, other political organisations and prominent individuals, with a total of no more than 87 members.

²⁸ See, University of Central Arkansas, Political Science, 16. Ethiopia/ Eritrea (1950-1993), available at <https://uca.edu/politicalscience/dadm-project/sub-saharan-africa-region/ethiopiaeritrea-1950-1993/>, last accessed on 28 February 2020.

December 16, 1992. Isaias Afwerki was elected president of Eritrea by the National Assembly on March 21, 1993. The referendum on Eritrean independence from Ethiopia was held on April 23-25, 1993, and 99.8 percent of Eritreans voted for independence.²⁹

Until the emergence of South Sudan, Eritrea was the youngest African nation. In practice, the secession split one country into two (Ethiopia and Eritrea). Under international law, individuals who had the nationality of a predecessor state should have the right to the nationality of at least one of the successor states. However, as Manby rightly argues, this rule has not always been respected in African national laws. Indeed, manipulation of the transitional rules on citizenship applied at independence or on division of a state has often been at the heart of efforts to deny people nationality.³⁰ The issue of Eritrea and Ethiopia was not an easy case when it came to the treatment of each other's nationals. At times, some politically motivated treatments were too harsh, especially in the deportation/expulsion scenario that followed the war in 1998-2000 (see below). The converse is true when there is relative peace between these two nations as their peoples share common cultural, language and historical ties. At least at the *de facto* level, preferential treatment was given to Eritrean refugees as Eritreans were the first refugees to enjoy the benefits of the 'out of the camp' policy in Ethiopia.

5.2. The drafting of the 1995 Constitution

As indicated above, a constitutional committee was assigned to draft the new Ethiopian constitution after the secession of Eritrea. After passing through deliberation at lower- and high-level meetings, the constitution of the Federal Democratic Republic of Ethiopia (FDRE) was promulgated in 1995. This constitution, which is still in force with no amendment whatsoever, has articles on nationality. In an attempt to fully understand the underpinning intentions and justification of the letter and spirit of its provisions, the researcher has consulted the minutes of the constitutional drafting committee.³¹

While discussing the provisions, the drafters of the constitution duly stressed that the acquisition of nationality derives from birth to Ethiopia parents. Therefore, they kept the existing descent-based framework for citizenship law. There is no indication whatsoever that they considered introducing an element of *ius soli*. One of the important issues raised in their deliberations was the inclusion of dual nationality, especially for children born to Ethiopian nationals living abroad in a country that applies *ius soli*. As dual nationality was not included in the previous legal regimes, however, including it in the constitution was not seen as a viable option as the decent-based rule was already in place.³²

Some of the drafters opined that naturalisation should be included in the constitution, and justified it as follows: "as Ethiopia is part of the international community, foreigners who come to Ethiopia, if they wish to get Ethiopian nationality a permissive rule needs to be included." However, some considered that an indication that subsidiary legislation would govern naturalisation would suffice. Accordingly, the wording "particulars shall be determined by law" was thought to be enough.³³

²⁹ Ibid.

³⁰ Bronwen Manby, *Citizenship in Law in Africa - A Comparative Study*, Open Society Foundations, 3rd edition, 2016, pp 11-12.

³¹ Minutes of the Constitutional Committee, Compilation Volume 2. የኢትዮጵያ ህገመንግስት ፖሊቲካል ምክርቤት (000026) Page 10-14, Library of Ethiopian Justice and Legal System Research Institute (JLSRI), 1994.

³² Ibid.

³³ Ibid P. 13-14.

An intriguing issue raised by the drafters of the constitution was “when the constitution states that a person born to an Ethiopian parent is an Ethiopian, is this a matter of choice or obligation?” A consensus was reached among the drafters that for a child born to parents with mixed nationalities nationality is a matter of choice not an obligation. This reaffirmed that children born to Ethiopian parents in the US or another *ius soli* jurisdiction are not under an obligation to be Ethiopian but it is their individual choice to claim the nationality they want, even if dual nationality is not an option. Furthermore, some members invited a legal professional to elaborate on the dual nationality issue but the archive does not include anything further on this.

With the adoption of the federal democratic form of government, in 1995 the FDRE constitution had the most progressive human rights norms. As Adem argues, the relevance accorded to human rights is reflected from the outset in the preamble to the FDRE Constitution, which strongly affirms “the full respect for individual and people’s fundamental rights.”³⁴ Unusually among African constitutions, the 1995 constitution explicitly provides for the right to a nationality in its text.³⁵

The archives of the committee do not record a justification for including such a constitutional provision, although as constitutional drafting takes some lessons from preceding constitutions, the inspiration might have come from there. Another possibility is that if the constitution is to champion itself as vehemently adamant about human rights, stating nationality rights is systematically meaningful as nationality provides access to a wide range of human and democratic rights.

5.3. The Ethiopian-Eritrean war, 1998-2000

The Ethiopian-Eritrean war that broke out in 1998-2000 had tremendous implications for citizenship law and in many ways can be seen as a linchpin for the shape and content of recent nationality law.

Apart from the constitutional guidance on the issuance of a special law on nationality, the secession of Eritrea and the aftermath of the subsequent war was the prime guiding force behind the existing nationality law. The reason is that the war raised the very sensitive issue of who is Ethiopian or Eritrean. As there was no clear law, decisions on nationality were based on participation in the referendum and the situation was painful for tens of thousands of people who had lived for long in and were forced to be deported from Ethiopia and Eritrea.³⁶

The following is an extract from a Human Rights Watch document which backs up the above reasoning in greater detail:³⁷

Ethiopian authorities launched a vast campaign to round up and expel people of Eritrean origin from Ethiopia in June 1998. *Most had been born in Ethiopia when Eritrea was still held to be a part of that country – and had no other recognised citizenship other than Ethiopian.* Most adults had spent all or most of their working lives in Ethiopia, outside of Eritrea. Ethiopian authorities in June 1998 announced the planned expulsion of residents who posed a security risk to the state, to include members of Eritrean political and community organisations, and

³⁴ Adem Kassie, *Human rights Under the Ethiopian Constitution: Descriptive Overview*, Mizan Law review Vol. 5 No 1 (2011).

³⁵ Bronwen Manby, *Citizenship in Law in Africa - A Comparative Study*, Open Society Foundations, 3rd edition, 2016, p 4.

³⁶ See, Human Rights Watch: *The Horn of African War: Mass expulsion and the Nationality Issue*, January 2003 <https://www.hrw.org/sites/default/files/reports/ethioerit0103.pdf>

³⁷ Ibid.

former or current members of the Eritrean liberation front. The Ethiopian authorities moved almost immediately to carry out arrests and to expel Eritreans and those of Eritrean origin in a manner that became increasingly indiscriminate over time. *No meaningful steps were made to determine “risk” on a case-by-case basis – or to distinguish between those who had formally assumed Eritrean nationality and Ethiopian nationals distinguished only by their Eritrean origin.*

The first wave of arrests and deportations began on June 12, 1998, targeting people of Eritrean origin in Ethiopia who were prominent in business, politics or community organisations. In conjunction with this campaign, the Ethiopian government revoked business licenses and ordered the freezing of assets of thousands of individuals of Eritrean origin. Those with bank accounts were informed that their accounts had been frozen and were inaccessible. *The government provided no avenue for affected individuals to challenge these actions. The main targets of the deportation campaign after June 1998 were tens of thousands of ordinary people who were deported and dispossessed on the sole basis of their national origin.* In a June 18 broadcast, Ethiopian Foreign Minister Seyoum Mesfin had already put members of the Eritrean-Ethiopian community on notice that their citizenship was to be put to the test. “[I]f the Eritreans are innocent citizens and if they appeal in unity, if they condemn the aggression...[and] raise their voices together with the [Ethiopian] people for the achievement of peace, they will not be under threat.”

As can be seen, the action of the government was politically motivated and based on a non-existent criterion for determining the citizenship of Eritreans to justify its actions. This brought criticism of the Ethiopian government from human rights groups and the international community.

The fact that a more progressive constitution existed in Ethiopia did not inhibit the right of nationality from being violated. This could be due to the fact that the legislators were not proactive enough to issue the necessary secondary legislation to give effect to the aspirations of the constitution.

Eritrea took a step-by-step approach to expelling Ethiopians in Eritrea. The expulsions from both countries resulted in not only violations related to citizenship rights but most importantly to individual stories of human rights abuses and violations ranging from limiting freedom of movement to the violation of the right to life.

5.4. The Ethiopian-Eritrean Claims Commission

Following the ceasefire in 2000, an Ethiopian-Eritrean Claims Commission was established to rule on the claims of each state. Both countries justified their actions and also demanded redress for damage sustained. The Ethiopian government defended its expulsion and denationalisation of Eritreans by arguing that persons who had participated in the referendum on Eritrean independence in 1993 were no longer Ethiopians and had lost Ethiopian nationality. The counter-argument raised by Eritrea was that this was not a tenable argument as there was no Eritrea as such in the time that the referendum took place. On this core issue, the Claims Commission stated

Nationality is ultimately a legal status. Taking into account the unusual transitional circumstances associated with the creation of the new State of Eritrea and both Parties’ conduct before and after the 1993 Referendum, the Commission concludes that those who qualified to participate in the Referendum in fact acquired dual nationality. They became citizens of the new State of Eritrea pursuant to Eritrea’s Proclamation No.

21/1/1992, but at the same time Ethiopia continued to regard them as its own nationals.³⁸

The Commission said that the outbreak of the war did not in itself suspend this dual nationality but placed these dual nationals “in an unusual and potentially difficult position.”³⁹ The Commission determined that in two categories of cases, Ethiopia’s action in denying its nationality to the dual nationals had been arbitrary and unlawful.⁴⁰

These findings of the commission and the criticism from the international community had minimal effects and the government of Ethiopia tried to justify the expulsion by arguing that there had been a threat to national security – which was not a palatable argument as there were other foreigners in the country. Likewise, the decision of the border commission was not enforced as the Ethiopian government at that time adopted a fuzzy stance of accepting the decision in principle but not taking action. Instead a no-war-no-peace policy was adopted with strict military border control.

5.5. The 2003 nationality proclamation

One could assume that a constitution which gave due regard to nationality would warrant immediate legislation to give effect to its provisions. However, the FDRE government promulgated the law on nationality in 2003, which is eight years after the coming into effect of the constitution. During this time, the nationality law promulgated in 1930 was in force as it was the only source of law that guided citizens and authorities on nationality matters and, legalistically speaking, a non-repealed law is applicable until it is repealed. Although an attempt has been made to look for the background of the drafting procedure and explanatory notes on the law before it was adopted by the parliament of Ethiopia, no information has been found.

6. Current Citizenship Regime

The 1995 Constitution

The FDRE constitution gives important guidelines on the nationality law regime existing in Ethiopia. Articles 6, 33 and 36 embody the guidelines. For ease of reference here are the wordings of the FDRE constitution on nationality:

Article 6 Nationality

- 1. Any person with one or both parents of Ethiopian citizenship is an Ethiopian.*
- 2. Foreigners may acquire Ethiopian citizenship.*
- 3. Particulars relating to citizenship shall be determined by law.*

Article 33 Rights of Nationality

- 1. No Ethiopian of either sex shall lose his/her Ethiopian citizenship against his/her will.*

³⁸ Manby 3rd Edition p 30.

³⁹ Ibid.

⁴⁰ Ibid

2. Every Ethiopian shall be entitled to the rights, protections, and benefits deriving, in accordance with the law, from Ethiopian citizenship. Marriage of an Ethiopian citizen of either sex to a foreign citizen shall not result in the loss of Ethiopian citizenship.

3. Ethiopians shall have the right to change their citizenship.

4. Ethiopian citizenship may be granted to foreigners in accordance with laws and procedures enacted in a manner not inconsistent with international agreements ratified by Ethiopia.

Article 36 The Rights of the Child

(b) [Every child has] the right to a name and nationality.

The 2003 nationality law

A quick comparison between the 1930 and 2003 laws reveals that the 2003 Proclamation removed the gender discrimination that was in the 1930 law. It amended that an Ethiopian national of either sex may pass nationality to his or her spouse, and also simply stated that “any person shall be an Ethiopian national by descent where both or either of his parents is Ethiopian.” The proclamation also eased restrictions on naturalisation and provided that “all Ethiopian nationals shall have equal rights and obligations of citizenship regardless of the manner in which nationality is acquired.”

Regulation

The relevant regulation in this regard is the Council of Ministers regulation to provide for the definition of power, duty and organisation structure of the Immigration, Nationality and Vital Events Agency 449/2019.

In the context of the Ethiopian legal system, regulations provide implementation rules for primary legislation and proclamations. This regulation, however, focuses on the powers and functions of the agency but does not give clear guidance to further elaborate the substantive rights enshrined in the nationality proclamation.

6.1. Modes of acquisition of Ethiopian citizenship

Proclamation No. 378/2003 on Ethiopian Nationality provides for nationality to be acquired primarily on the basis of descent. It also includes provisions on acquisition after birth based on adoption, marriage and naturalisation.

Nationality by Descent

The Proclamation on Ethiopian Nationality of 2003 indicates the following regarding the acquisition of Ethiopian nationality by descent and the conditions to be fulfilled:

3. Acquisition by Descent

- Any person shall be an Ethiopian national by descent where both or either of his parent is Ethiopian.

- An infant who is found abandoned in Ethiopia shall, unless proved to have a foreign nationality, be deemed to have been born to an Ethiopian parent and shall acquire Ethiopian nationality.

The proclamation thus affirms the previous rule that the law of blood (*jus-sanguinis*) is the dominant way of acquiring Ethiopian citizenship. No general rights to acquire citizenship through birth in the territory (*ius soli*) are applicable in the case of Ethiopia. However, protection against statelessness is provided for foundlings for the first time.

Adoption

Unlike the 1930 nationality law, the 2003 proclamation provides for the possibility of citizenship acquisition through adoption. The proclamation provides that “*any child adopted by an Ethiopian national may acquire Ethiopian nationality by law*” (article 7). For this to take place the following clear guidelines are provided.

- The adopted child shall not have attained the age of majority.
- The child must live in Ethiopia together with his/her adopting parents.
- If one of the adopting parents is a foreigner, the foreigner parent shall express his consent in written form.

If the child has a previous nationality this must be revoked.

Marriage

The acquisition of citizenship through marriage is practised in line with Article 6 of the nationality proclamation, which states “*a foreign national who is married to an Ethiopian national may acquire Ethiopian nationality by law....*” The procedure to do so requires the following cumulative conditions to be fulfilled:

The marriage needs to be conducted in accordance with Ethiopian law or the law of any other country.

- There must be a total lapse of two years since the conclusion of the marriage.
- People must live in Ethiopia for a total of two years preceding the submission of the application.
- People must also fulfil the conditions stated in Article 5, sub articles 1, 7 and 8 of the proclamation on naturalisation requirements.

Even if the concluded marriage is dissolved by divorce or death, the acquired nationality shall remain intact in law, yet the person is free to change.

Naturalisation

The specific legal term for a foreigner becoming a citizen of another country is naturalisation. Unlike citizenship through birth, naturalisation has numerous criteria such as social, economic, language, political and legal requirements which foreign nationals needs to fulfil. In the FDRE nationality law, “*any foreigner may acquire Ethiopian nationality by law in accordance with the provisions of article 5-12 of this proclamation.*”

The FDRE Nationality Proclamation states that a foreigner who fulfils the following requirements can acquire Ethiopian nationality following a formal letter of application. He/she must

- have attained majority age and be legally capable under Ethiopian law
- have been domiciled in Ethiopia for a total of four years
- be able to communicate in any of the languages of nations/nationalities in the country
- have sufficient and lawful sources of income
- be a person of good character
- have no record of criminal convictions
- be able to be released from a previous nationality
- be able to take the oath of allegiance stated under article 12.⁴¹

In addition to regular naturalisation procedures, the law provides for naturalisation in “special cases” with reduced formal requirements. This seems to be initiated by the government or the state, allowing citizenship as a way of giving special recognition to foreigners who have made an astounding contribution to the country. This is a very common practice in many jurisdictions. In Ethiopia, “*a foreigner who has made an outstanding contribution in the interest of Ethiopia may be conferred with Ethiopian nationality by law irrespective of the conditions stated under ...*” (Article 8).

It should be noted, however, that as dual nationality is not allowed in Ethiopia, the option of taking this nationality lies in the hands of the ‘awardee.’ However, the law is silent on whether this award can be claimed after remaining dormant for some time or if there is a specific time period for reacting to the conferring of nationality.

The 2003 nationality law of Ethiopia should be praised as it has eased the burden of language proficiency for naturalisation. The 1930 nationality law contained the condition that a person who wishes to be naturalised with Ethiopian nationality must “know [the] Amharic language perfectly, speaking and writing it fluently.” Under the 2003 Proclamation, the ability to “communicate in any one of the languages of the nations/nationalities of the country” suffices.⁴²

With regard to refugees, the Ethiopian law has now made some new room for naturalisation with the integration of protracted refugees who have lived in Ethiopia for 20 years, as in Pledge no. 6 of the New York Declaration 2016⁴³ and Article 41 of Refugee Proclamation 1110/2019.⁴⁴ Nationality for a stronger reason can be part and parcel of local integration. Article 42 of the new refugee proclamation affirms that a refugee may apply for naturalisation as in the nationality law.⁴⁵

⁴¹ Article 5 of Proclamation 378/2003.

⁴² Article 5/3.

⁴³ Administration for Refugee and Returnees Affairs (ARRA), Roadmap for the implementation of the Federal Democratic Republic of Ethiopia Government Pledges and for the practical application of the CRRF, 2018, p 7, Local Integration Pledge.

⁴⁴ Refugee Protection Proclamation no. 1110/2019.

⁴⁵ Ibid.

6.2. Modes of loss of Ethiopian citizenship

The Proclamation provides that deprivation of Ethiopian nationality is not permitted. Therefore, Ethiopian nationality can only be lost on the basis of voluntary renunciation or, in a procedure the law deems to be voluntary, on acquisition of another nationality. Dual nationality is not permitted.

Loss on acquisition of another nationality

In line with the intentions of the UDHR, Ethiopia recognises the right of individuals to change nationality and specifies that “*any national has the right to change his Ethiopian nationality*” (Article 16).⁴⁶

The loss of Ethiopian nationality on the acquisition of another nationality is considered voluntary renunciation of Ethiopian nationality: “*... any Ethiopian who voluntarily acquires another nationality shall be deemed to have voluntarily renounced his Ethiopian nationality*” (Article 20 (1)).

Article 20 (4) provides that “*A person who retains another nationality in addition to Ethiopian nationality shall be considered solely an Ethiopian national until the loss of his Ethiopian nationality pursuant to Sub-Articles (2) or (3) of this Article.*”

One inbuilt caveat of the law is that the loss of Ethiopian nationality does not have implications for spouses and/or children: “*a person’s loss of Ethiopian nationality shall have no effect on the nationality of his spouses and children*” (Article 21).

Renunciation

Article 19 (1) states that “any Ethiopian who has acquired or has been guaranteed the acquisition of the nationality of another state shall have the right to renounce his Ethiopian nationality.” This article tells us that renunciation has to be operational after securing another nationality. The Ethiopian law provides additional safeguarding conditions on renouncing Ethiopian nationality. Article 19 (4) a & b states that:

An Ethiopian who has declared his intention to renounce his nationality may not be released until:

- a) he has discharged his outstanding national obligations;
- b) if he has been accused of or convicted of a crime, he has been acquitted or served the penalty.

No involuntary deprivation

Ethiopian Law embodies strong protection against involuntary deprivation of citizenship. This is constitutionally recognised. Article 33 (1) of the FDRE Constitution provides that “*no Ethiopian national shall be deprived of his/her Ethiopian nationality against his/her will.*” This statement should be read in conjunction with Article 17 of the nationality proclamation: “*No Ethiopian may be deprived of his nationality by the decision of any government authority unless he loses his Ethiopian nationality under article 19 or 20 of this proclamation.*” One can conclude that the Ethiopian law has no room for involuntary deprivation of citizenship. This is

⁴⁶ Article 16 of Proclamation 378/2003.

a hugely commendable side of the law in times in which the world is shocked by problems of statelessness.

Reacquisition

The conditions for readmission to Ethiopian nationality include renunciation of a foreign nationality. The current law on readmission reads:

Article 22. *Re-Admission to Ethiopian Nationality*

I/ A person who was an Ethiopian national and who has acquired foreign nationality by law shall be readmitted to Ethiopian nationality if he:

- a) returns to domicile in Ethiopia;*
- b) renounces his foreign nationality; and*
- c) applies to the Authority for re-admission.*

In practice, however, readmission is not that common and as in a very recent case, it can be problematic. The case of a political activist is very important. Activist Jawar Mohammed, a foreigner of Ethiopian origin, has been living in the US and has American citizenship. He has been a figurehead in leading the youths of Oromia as a resistance force against the government, which in effect brought about the coming into power of a new leadership. The activist decided to join a political party, the Oromo Federalist Congress (OFC). He joined the political party by claiming that he has renounced his American citizenship and has started living in Ethiopia. There is, however, an unsettled debate about him reacquiring his Ethiopian nationality. The political party argues that Jawar Mohammed is an Ethiopian national.⁴⁷

The words of the law seem to be clear. However, there is a lack of practical knowledge, or what can be called an *untried provision*. The activist claims he has renounced his foreign nationality and has applied for re-admission and he argues that he has re-acquired his Ethiopian nationality. In this conviction Mr. Jawar Ahmed has taken a political party ID card from OFC and has been observed to participate in party activities. Much of the debate now revolves around a legal issue of whether applying for readmission as under the article amounts to reacquiring his Ethiopian nationality or whether the Agency for Immigration, Nationality and Vital Events needs to give a positive response affirming the readmission decision.⁴⁸

Puzzled with this lack of clarity, the National Election Board of Ethiopia (NEBE) has asked the Agency for Immigration, Vital Events and Nationality in writing if Mr. Jawar has been readmitted to Ethiopian Nationality.⁴⁹

6.3. Dual nationality

Ethiopia has never recognised dual nationality. The 1930 Nationality Law, the 1995 Constitution and the 2003 Proclamation on Ethiopian Nationality all provide that when an

⁴⁷ See, <https://www.ezega.com/News/NewsDetails/7711/Jawar-Mohammed-is-Ethiopian-per-Proclamation-378-2003-OFC-Claims>, last accessed 15 March 2020.

⁴⁸ See the narratives at <http://addisstandard.com/news-ofc-says-jawar-mohammed-is-ethiopian-as-electoral-board-demands-citizenship-proof-for-2nd-time/>, last accessed 15 March 2020.

⁴⁹ See <https://www.africanews.com/2020/02/12/ethiopia-s-electoral-body-seeks-verification-of-activist-jawar-s-citizenship/>, last accessed 15 March 2020 and <http://citizenshiprightsafrika.org/ethiopia-vote-agency-queries-key-opposition-leaders-citizenship/>, last accessed 15 March 2020.

Ethiopian acquires another nationality he or she automatically loses his or her Ethiopian nationality and that a person naturalising must renounce their existing nationality.

Dual nationality was debated and justification by legal experts was sought by the constitutional drafting committee.⁵⁰ It appears that the lack of justification to support dual nationality is the possible reason for the drafters not including it.⁵¹ However, despite being unconfirmed there are alleged cases of people having two passports with some of them alleged to even be government office holders. There is currently a debate on the pros and cons of allowing dual citizenship in Ethiopia.⁵²

The withdrawal of citizenship from birth is only allowed in Ethiopian law in the case that a person acquires another citizenship. This leaves open the question of whether this means that the rule is also applicable if Ethiopian nationality is acquired through naturalisation, marriage or adoption. However, as the constitution does not make a distinction between nationality from birth and acquired nationality, it is strongly argued that this would apply to both. However, to not leave matters open for contention it would be important to make a clear statement.

6.3.1. Foreign nationals of Ethiopian origin

Ethiopia has not followed the trend in African and global citizenship laws towards greater tolerance of dual nationality. It remains the case, as noted above, that a person naturalising as Ethiopian must renounce a former nationality, while an Ethiopian who acquires another nationality automatically loses Ethiopian nationality.

In place of permitting the possibility of dual nationality for the large Ethiopian diaspora, a law was adopted creating an intermediate status for people of Ethiopian origin. In this regard, Ghana and Ethiopia have taken the lead in devising such a mechanism for members of their diasporas. This goes hand in hand either in addition to or instead of creating a right to dual nationality.⁵³

Proclamation No. 270/2002 is entitled a *Proclamation to Provide Foreign Nationals of Ethiopian Origin with Certain Rights to Be Exercised in Their Country of Origin*. This proclamation applies to foreign nationals of Ethiopian Origin *other than persons who forfeited Ethiopian nationality and acquired Eritrean nationality* who had been Ethiopian nationals before acquiring a foreign nationality, or at least one of whose parents or grandparents or great grandparents was an Ethiopian national (Article 2(1)) (emphasis added). From the wording of the law one can see how the Ethiopian-Eritrean relationship is an important factor in Ethiopian citizenship law. This reaffirms the justification mentioned about the issuance of the 2003 nationality law.

In a subsequent regulation issued implementing the 2003 nationality law,⁵⁴ a foreign national of Ethiopian origin is defined as “*a foreign national other than a person who forfeited*

⁵⁰ Supra note 24.

⁵¹ Ibid.

⁵² Ethiopian Press Agency, How Can Ethiopia Accommodate Dual Citizenship in Upcoming Elections? <https://www.press.et/english/?p=2963#>, last accessed 16 March 2020.

⁵³ Bronwen Manby, Citizenship Law in Africa: A Comparative study, OSI, 2016 p 101- Rights of the African Diaspora.

⁵⁴ Council of Ministers Regulation to provide for the definition of power, duty and organisation structure of the Immigration, Nationality and Vital Events Agency 449/2019.

*Ethiopian nationality or at least one of his parents or grandparents or great grandparents was an Ethiopian national.*⁵⁵

Foreign nationals of Ethiopian origin have the following rights: once the person secures the identification card stating he/she is a foreign national of Ethiopian origin she/he is not required to have an entry visa or residence permit to live in Ethiopia, has the right to be employed with no need for a work permit with the exception of the defence, security and foreign affairs sectors and in political establishments, is covered by an applicable pension scheme, can own immovable property, can be regarded as a domestic investor and enjoys economic, social and administrative services.⁵⁶

This intermediate status is the closest version of dual nationality minus participation in political affairs. The government seem to have chosen this mechanism to strengthen economic and social ties.

The following cases illustrate the practical application of the privileges for foreigners of Ethiopian origin.

In the case of *Million Asheanfi Vs. Elisabeth Tadesse*, the couple had been living in England and had been naturalised to UK citizenship and their children had UK citizenship. However, a plea for divorce was instituted at the first instance court in Ethiopia. Considering the fact that the case concerned a private international law matter, the lower court deferred the case to the higher court. The higher court ruled that as the case has more relationship to the UK, as the marriage was concluded in the UK and their citizenship is of a foreign country, the case needed to be heard in the UK. The plaintiff, however requested for it to be heard in Ethiopia as it mainly concerned an immovable property located in Ethiopia and this was the core issue in the effect of the divorce. Therefore, the cassation bench in file number 155950 ruled that the decision of the high court constituted an error of law and the court needed to revisit the case as it has national jurisdiction on the case.⁵⁷ This case provides important insight into how nationality issues can blur the perspective on the main cause of action. The judges in the two tiers of the judiciary differed over whether the matter was a foreign case. This problem could have occurred because of a lack of comprehensive awareness of nationality law.

In *Sophia Ponatoyos vs Midregenet Cooperative House Building PLC*, federal cassation court case number 111618, the plaintiff moved out of Addis Ababa and started living in the USA. In the process she later changed her Ethiopian nationality and became a US citizen. Before she moved to the US, she had entered a cooperative house development project and had a share of a plot of land. The cooperative, cognisant of the fact that she was no longer in Ethiopia, issued a requirement for her to produce her Addis Ababa city dweller ID. This was practically impossible for her or for her agent. As this document was not produced, the cooperative attempted to remove her from the housing project by decision of its arbitration committee. This plaintiff alleged that this action constituted a fundamental error of law as the mere requirement to provide a city dweller ID could not be a ground for removing her from membership and property ownership. Instead, she had an ID that stated she was a foreign national of Ethiopian origin and submitted a copy to the PLC. Therefore, the cassation bench of the federal supreme court of Ethiopia ruled that this case constituted a fundamental error of law.

It can be concluded that the IDs issued in this regard safeguarded the interests of these Ethiopian-origin foreign nationals. The legal conflicts arise from perceptions that the

⁵⁵ Regulation Number 449/2019, Article 2(5).

⁵⁶ Proclamation 270/2002, Article 5.

⁵⁷ Cassation bench is a specialised bench under the Federal Supreme court of Ethiopia.

constitution rules that foreign nationals cannot own immovable property. Litigants who are not aware of the proclamation that increases the rights of the Ethiopian diaspora tend to assume the diaspora has no legal protection of immovable properties.

However, this privilege is not an absolute one. In another case a person claimed he was a foreign national of Ethiopian origin and he based his claim on a statement that his grandfather was Ethiopian. However, as he could not produce evidence to that end he could not enforce his alleged right to an immovable property.

6.4. Statelessness

An expert on comparative citizenship law in Africa, Bronwen Manby, argues that the Ethiopian citizenship law does not comply with the constitution as it does not provide a right to nationality for a child born in the country who would otherwise be stateless.⁵⁸

Ethiopian law does provide some safeguards against statelessness for those who are recognised as Ethiopian nationals. Article 33 of the Constitution provides that “No Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will.” Under the current nationality proclamation, renunciation of Ethiopian nationality is only allowed when acquisition of a foreign nationality is established. In the words of the law, “Any Ethiopian who has acquired or has been guaranteed the acquisition of the nationality of another state shall have the right to renounce his Ethiopian nationality.”⁵⁹ An additional striking feature of Ethiopian nationality law is that all citizens have equal rights, regardless of how their nationality was obtained.⁶⁰

However, it is important to notice that there are still cases of people born in Ethiopia to stateless parents or parents of unknown nationality or parents who cannot transmit their nationality to their children. The Ethiopian nationality law is silent on governing these cases as it lags behind in providing protection against statelessness to children who do not acquire the nationality of a parent at birth, as is required by obligations under the African Charter on the Rights and Welfare of the Child.⁶¹ It is also important to note that Ethiopia has not yet ratified the 1961 Convention on the Reduction of Statelessness.

7. Institutions for implementing nationality law in Ethiopia

The implementation of nationality law requires the involvement of different stakeholders. In the context of Ethiopia, the primary stakeholders are the Nationality Affairs Committee, the Ministry of Peace, the Immigration Nationality and vital Events Agency, kebeles and courts.

The 2003 nationality law establishes the Security, Immigration and Refugee Affairs Authority as custodian of the law.⁶² However, in an attempt to assist the work of the authority, a Nationality Affairs committee was established. This committee has the power and duty to

⁵⁸ Bronwen Manby, *Citizenship Law in Africa: A Comparative study*, OSI, 3rd edition, 2016 p 45, at <https://www.opensocietyfoundations.org/uploads/d5d1d086-1a0d-4088-b679-003e09e9c125/citizenship-law-africa-third-edition-20160129.pdf>, last accessed 16 March 2020.

⁵⁹ Article 19(1).

⁶⁰ Article 18.

⁶¹ Ethiopia acceded to the ACRWC on 2 October 2002. See the status list at the website of the African Union: <https://au.int/en/treaties>.

⁶² Proclamation 378/2003 - 2(5) & 24.

examine applications to obtain nationality by law, examine evidence submitted by a person for rebutting his presumed renunciation of Ethiopian nationality and ascertain conditions for re-admission to Ethiopian nationality.⁶³

Following the ongoing reform initiatives in Ethiopia, a new law defining the powers and duties of the executive organs has been issued: proclamation no. 1097/2018.⁶⁴ This arrangement has now made the Ministry of Peace the highest echelon governing nationality and immigration. According to article 13 (k) of the proclamation, the Ministry of Peace has the power and duty to lead and follow up citizenship, national identification card, immigration, passport and vital event registration issuance functions. In practice, however, the Immigration, Nationality and Vital Events Agency is the special institution established by council of ministers regulation number 449/2019 to discharge the duties pertaining to immigration, nationality and vital events.

This agency, as its name indicates, has three major areas of engagement. Here, its role and function with regard to nationality matters is highlighted. According to Article 5 of the regulation, the agency has the power and duty to provide and revoke Ethiopian nationality for foreigners in accordance with the law.⁶⁵

This article is delicate about what is meant by revoking the Ethiopian nationality of foreigners. For one thing, the nationality law, i.e. the proclamation, states there is no involuntary loss of Ethiopian nationality. And once a foreigner has Ethiopian nationality he is no longer a foreigner as Ethiopian law does not allow dual nationality. Therefore, “in accordance with the law” seems to be a guideline to reconcile the conflict.

The agency has the power and duty to provide service to foreign nationals of Ethiopian origin. The other nationality-related service of the agency is the preparation, publication and provision of national identity cards.

The other important institutions regarding nationality matters in Ethiopia are kebele offices. These are the lowest level of decentralised administration structure. Among other things they undertake vital event registrations and issue kebele IDs for dwellers in the locality/administrative unit, and the ID needs to state the holder’s nationality and if this is Ethiopian the holder must provide evidence. This will automatically entitle him to many rights. These grass-root-level institutions are key players in nationality matters. There have alleged to have been cases where Eritreans and Somali citizens managed to corruptly obtain this ID.⁶⁶ The cause of this gap is partly the lack of a centralised registration system for vital events.

Last but not least, Ethiopian courts have an irreplaceable role in nationality matters as they interpret the laws and rule on disagreements between an individual and the state. However, the lack of an administrative procedural code in the Ethiopian legal system has heavily impacted the rights of individuals and has been an added burden on the courts.

⁶³ Proclamation 378/2003 Article 23.

⁶⁴ Article 13(k) of Proclamation 1097/2018.

⁶⁵ Regulation number 449/2019, Article 3.

⁶⁶ Although there are not specific data on this point, the allegations among community members were strong enough.

8. Groups at risk of statelessness

In Ethiopia, accessing a kebele ID is key to many services. However, this is not under the direct control of the federal government. Among other things, this can enhance the risk of statelessness, especially when a certain group is marginalised. The law is clear in that there is no different legal effect between being an Ethiopian by descent and by naturalisation. The descendants of an Ethiopian are legally presumed to be Ethiopians if they have not obtained foreign nationality. However, there are groups of Rastafarians and people of Greek, Armenian and Lebanese origin who face difficulties in getting Kebele IDs and have risked being deprived of their lands by local authorities.⁶⁷ This is due to a lack of awareness of the citizenship law and relevant legal norms. Particularly Rastafarians in Shashemene have expressed discontent on these matters. The lack of an ID has inhibited them from accessing social services and their mobility is highly limited.⁶⁸

The lack of an administrative procedural law in the country has opened the flood gates to cases on the rights of these minority groups and citizens at large. In one instance, a Rastafarian, pleaded the federal Parliament for a remedy to the obstacles set by local governments.⁶⁹ If a kebele administrator refuses to issue an ID to a person who is born to Ethiopian parents but has no means to prove if s/he is Ethiopian or not, it is evident that the lack of a kebele ID can limit the person's mobility in the country or lead to the risk of traveling with no document stating his/her identity, especially in times when each region prefers to first benefit the dwellers of the region.⁷⁰

Another problematic scenario is that if a person from a bordering Ethiopian town comes to Addis Ababa with a kebele ID that states s/he is a national of Ethiopia and asks the Immigration Authority for a passport the passport officer raises the question of whether the person is really Ethiopian. There have been many complaints in this regard. These acts are *ultra vires* and compromise the rights of citizens.

The unprecedented number of internally displaced persons (IDPs)⁷¹ in Ethiopia is also a case in point showing how citizenship rights have been challenged and those affected have had their citizenship doubted. They have been ill treated by host communities as if they were refugees from neighbouring countries.⁷²

⁶⁷ For instance, they only began getting legal recognition of their status with an ID in 2017.

⁶⁸ These are based on observations by the researcher at different times.

⁶⁹ Even though there have been very recent actions by the government to issue residence permits and IDs and identify them as foreigners of Ethiopian origin. See DW, why Ethiopia's Rastafarian Community Keeps Dwindling at <https://www.dw.com/en/why-ethiopia's-rastafari-community-keeps-dwindling/a-50339635>, last accessed on 16 March 2020. Rastafarians are highly uncertain about their land and attached properties as locals are illegally compromising their land. Irritated by the lack of active response from the local governments in Shashemne, representatives of the Rastafarian community have tried their best to reach the federal government representatives, including the Parliament, to seek apt remedies.

⁷⁰ As ethnicity is one of the elements in the ID description, the *de facto* rule is that accessing some benefits is reserved for locals.

⁷¹ There are 1,642,458 IDPs in Ethiopia. Source: IOM Ethiopia publishes the first ever National Displacement report, date of publication 25/10/2019, at <https://www.iom.int/news/iom-ethiopia-publishes-first-ever-national-displacement-report>, last accessed on 20 December 2019.

⁷² These complaints have been heard multiple times by media outlets, with IDPs stressing the lack of immediate support from the government.

9. Conclusion

Ethiopia has adopted a federal form of governance and under Article 51(17) of the Constitution the federal government has the power to determine matters related to nationality.

As has been succinctly put by the International Crisis Group, the government in power has centralised the state into a Federal Democratic Republic and also redefined citizenship, politics and identity on ethnic grounds.⁷³ This has had many different effects on citizenship protection as enshrined under Article 14(1) of the nationality proclamation. The re-definition of citizenship has impacted the feelings and identity of many Ethiopians. In the strictest sense of the term, citizenship does not fully live up to experience.

Even though the FDRE constitution has given the federal government the power to enact laws on citizenship, in practice the regional governments are the ones which can define citizenship rights. Basic social services require the presentation of IDs, and there are rules based on the ethnic federalism which only directly channel particular benefits to locals who are born in the locality and speak its specified language.

The lack of a centralised ID registration system and the high reluctance of local governments in some cases to issue an Ethiopian ID might cause a prudent passport case worker to consider the possibility of not serving a non-Ethiopian. For the service user, a kebele ID and birth certificate are the conclusive evidence of nationality to obtain a passport.

In sum, in present-day Ethiopia's political arrangements regional identity and citizenship are often in conflict rather than complimenting each other as the country is now in unionist and federalist tension.

There are now attempts to establish a national ID system.⁷⁴ The Kebele IDs are paper-based documentation references which in most cases cannot be traced due to filing problems and old archives. At a time when an election is approaching, accessing a kebele ID will be troublesome and people can have more than one kebele ID. Therefore, the Ethiopian government needs to revamp the ID registration and renewal system.

After the case of the Jawar Mohammed incident, there is a keen interest among the legal community and stakeholders alike to stay abreast of nationality law in Ethiopia. This signals that a legal training and continuing education programme for legal professionals needs to incorporate citizenship law in its curriculum. To help with this endeavour, a compilation and analysis of case law is the way to go.

⁷³ International Crisis Group, Ethiopia: Ethnic Federalism and Its Discontents, published 4 September 2019 at <https://www.crisisgroup.org/africa/horn-africa/ethiopia/ethiopia-ethnic-federalism-and-its-discontents>, last visited on 18 December 2019.

⁷⁴ Addis Ababa is said to have begun issuing digital identification cards last year. See <https://ethio.news/2019/02/23/addis-to-start-issue-digital-identification-card-next-week/> published on 23 February 2019, last accessed on 16 March 2020; APA NEWS, France to provide €40m for Ethiopia's digital ID project, published on 26 July 2019 at <http://apanews.net/en/news/france-to-provide-40m-for-ethiopias-digital-id-project/>, last accessed on 16 March 2020.

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