



Legal Foundations of National Identification Systems in Africa


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21ST CENTURY **IDENTIFICATION** SYSTEMS
DATA — POLITICS — PROTECTION

Harvard FXB Center for Health & Human Rights


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Nationality, statelessness and legal identity



- How do efforts to define and document legal identity relate to the definition and documentation of nationality?
- When is an undocumented person stateless?
- Art 1(1) 1954 Convention: “stateless person means a person not considered as a national by any state under the operation of its law”
 - UNHCR: A “mixed question of fact and law”

Fact


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- Many millions of people undocumented in sub-Saharan Africa
 - Birth registration below 50% average – some countries below 10%
 - National ID cards becoming more common (all W Africa in 2016) but existing coverage low
 - Administrative systems weak, discrimination & arbitrary decision-making

Law



- Nationality from birth
 - Birth in the country (*jus soli*)
 - Birth in the country and one parent also born there (double *jus soli*)
 - One parent (or grandparent) who is a citizen (*jus sanguinis*)
 - Presumption for children of unknown parents
- Nationality by acquisition (after birth)
 - Birth & residence till majority (automatic, option)
 - Adoption (or given nationality as if from birth)
 - Long residence (naturalisation / registration)
 - Marriage (automatic, option, registration)

Gaps in the law

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- Gender discrimination (increasingly rare)
 - Racial and ethnic discrimination (10-12 states)
 - Weak rights attached to birth in the country: even for those with no other nationality (~1/2)
 - Dual nationality misapplied (tho most now allow)
 - Naturalization discretionary & inaccessible
 - Provisions on state succession
 - Non-existent systems for the identification & protection of stateless persons
 - Implementing regs eg alt. forms of evidence

At risk of statelessness



- **Migrants**
 - Migrants, incl. refugees and former refugees
 - Descendants of historical migrants
 - “Returnees” to a country of origin (from CAR, Libya...)
 - Internally displaced
- **Cross border populations**
 - Ethnic groups divided by international borders
 - Nomads (Tuareg, Fulani)
 - New state successions (Eritrea, S.Sudan, Bakassi)
- **Vulnerable children (who become adults)**
 - Father foreigner, out of wedlock, abandoned, orphans
 - Child workers, trafficked, forced marriage

3 case studies



- Côte d'Ivoire
 - Who is a “foreigner”
- Nigeria
 - Who is “indigenous”?
- Mauritania
 - Law amended to restrict access to new IDs

Côte d'Ivoire: Morpho



MORPHO HELPS END A
DECADE OF CONFLICT IN CÔTE D'IVOIRE

ZOOM ON CÔTE D'IVOIRE

Morpho played a leading role in helping Côte d'Ivoire end a decade-long period of crisis with the design and implementation of a new system of national identification and elections based on the company's leading-edge biometric technology. This included the mass biometric registration of the population, creation of a national population database and the production and personalization of national ID cards, voter lists and voter cards that were used to identify voters during elections. Morpho continues to provide Côte d'Ivoire with a secure and trusted form of identification for its citizens.



BACKGROUND

Rising conflict and tension in Côte d'Ivoire following a military coup d'état in 1999 saw the country enter a period of deep and prolonged crisis, which in 2002, saw the country effectively

THE OUAGADOUGOU AGREEMENT

In March 2007, representatives from the IPF and FNCI met in Ouagadougou with the objective to reach agreement on key actions that were to take place to end the conflict and structure a program

Morpho, Case Study, Oct 2014

Côte d'Ivoire: Amnesty International



**'THEY LOOKED
AT HIS IDENTITY
CARD AND SHOT
HIM DEAD'**

SIX MONTHS OF POST-ELECTORAL
VIOLENCE IN CÔTE D'IVOIRE

AMNESTY
INTERNATIONAL



Amnesty, 25 May 2011

Côte d'Ivoire: Nationality law



Loi No.61-415 du 14 décembre 1961 portant Code de la nationalité

**DE L'ATTRIBUTION
DE LA NATIONALITE IVOIRIENNE
A TITRE DE NATIONALITE D'ORIGINE**

Art. 6. — Est ivoirien tout individu né en Côte d'Ivoire
sauf si ses deux parents sont étrangers.

Nigeria: Mastercard



MasterCard-Branded National eID Card Launched in Nigeria

Nigerian President Goodluck Jonathan receives his National eID card, signaling the start of Africa's largest financial inclusion program

To tweet this news: Nigerian President Goodluck Jonathan launches innovative MasterCard-branded National eID card in Nigeria <http://mstr.cd/1qL9tp5>

Abuja, Nigeria 28 August - Nigerian President [Goodluck Jonathan](#) today received his National eID card, heralding the official launch of the eID pilot program. In the pilot phase, the [Nigerian Identity Management Commission](#) (NIMC) will issue MasterCard-branded identity cards with electronic payments functionality to 13 million Nigerians. This initiative is the largest rollout of a biometric-based verification card with an electronic payment solution in the country and the broadest financial inclusion program in Africa.

Mastercard press release, 28 August 2014

Nigeria: multiple identities



Analysis
6/2/2015



Nigeria's Multiple Identity Databases (Updated)

For ID Matters in
Africa follow
@ID4Africa

Identity Registers & Databases:
Proliferate covering the same population w/ biometrics & include each its own Automatic Fingerprint Identification System (AFIS) for Deduplication

Harmonization?

1. Unique Identity Number (UIN) can link databases
2. Strong Privacy & Data Protection Required



National Identity Management Commission (NIMC)



Independent National Election Commission (INEC)



Central Bank of Nigeria (CBN)



Federal Road Safety Commission (FRSC)




Nigeria Immigration Services (passports)



The Telecom Operators & Others

Nigeria: 1999 Constitution



25. (1) The following persons are citizens of Nigeria by birth-namely:

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

Mauritania: Morpho

MAURITANIA INTEGRATED SOLUTION & EPASSPORT



CREATION OF A RELIABLE POPULATION REGISTRY



IMPROVING DATA SYNCHRONIZATION AT GOVERNMENTAL LEVEL



PROVIDING AUTHORITIES WITH SECURED ACCESS TO DATA



FACILITATE IMPLEMENTATION OF SECURITY SYSTEMS



BETTER DETECTION OF FRAUDULENT ATTEMPTS



PROTECTION OF CITIZEN'S RIGHTS



ICAO COMPLIANT ePASSPORT and other ID documents

Mauritania: biometric genocide?



« Génocide biométrique des Negro-mauritaniens » : Une saisine de TPMN devant les instances juridiques internationales



jeudi 3 juillet 2014



A l'occasion de la célébration de son troisième anniversaire, Touche Pas à ma Nationalité a organisé lundi dernier au siège de parti MPR, une conférence de presse. Son président, M. Alassane Dia a déclaré que son mouvement va saisir les instances juridiques internationales à savoir la Cour Africaine de Droits de l'homme pour dénoncer l'enrôlement biométrique qu'il qualifie de « raciste et discriminatoire »

à l'encontre des négro-mauritaniens.

Mauritania 2010 law reform

amending *Loi N° 1961-112 du 13 juin 1961 portant code de la nationalité mauritanienne*



Art. 8.- Est mauritanien:


1. L'enfant né d'un père mauritanien,
2. L'enfant né d'une mère mauritanienne et d'un père sans nationalité, ou de nationalité inconnue,
3. L'enfant né en Mauritanie d'une mère mauritanienne et d'un père de nationalité étrangère, sauf la faculté de répudier cette qualité dans l'année qui précède sa majorité,

~~Art. 9.- Est mauritanien:~~

- ~~1. L'enfant né en Mauritanie d'un père qui y est lui-même né,~~
- ~~2. L'enfant né en Mauritanie d'une mère qui y est elle-même née, sauf la faculté de répudier cette qualité dans l'année précédant sa majorité.~~

~~Art. 58.- La naissance, la filiation, l'adoption et le mariage ne produisent effet en matière de nationalité que s'ils sont établis par acte d'état-civil ou par jugement. Toutefois, est présumé remplir la double condition de naissance prévue par l'article 9-1 celui qui a sa résidence habituelle en Mauritanie et qui a joui de façon constante de la possession d'état de Mauritanien.~~

Identification & nationality

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- New identification systems are a notorious danger point for the creation of stateless populations
 - Identification initiatives therefore need to pay attention to the underlying law
 - SDG Target 16.9: By 2030 provide legal identity for all, including birth registration
 - UNHCR #ibelong campaign to end statelessness by 2024