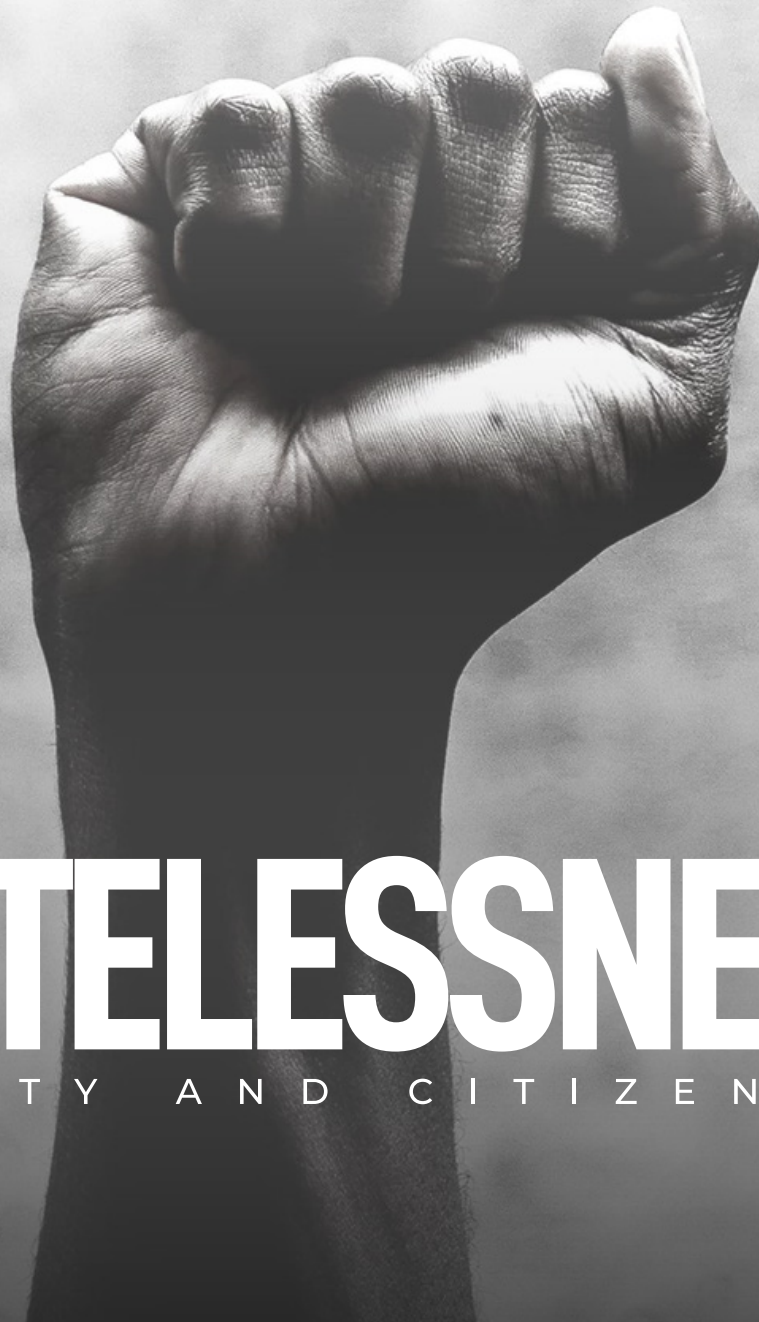


WestAfrica

INSIGHT

Special Issue



STATELESSNESS

I D E N T I T Y A N D C I T I Z E N S H I P



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WestAfrica

INSIGHT

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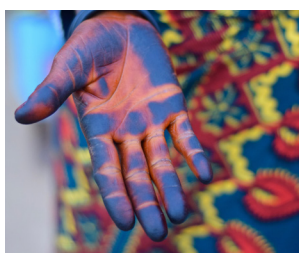
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EDITORIAL

Special Issue: Statelessness, Identity and Citizenship in West Africa


This special issue explores issues of statelessness, identity and citizenship in West Africa. Bronwen Manby offers a comprehensive overview of some of the key issues that continue to shape discourses about nationality, statelessness and legal identity in the sub-region. In asking who is, and what it means, to be stateless and highlighting legal gaps that persists she offers some reflections on efforts to implement the Abidjan Declaration on the Eradication of Statelessness.

Signed in February 2015, by the 15 Member States of the Economic Community of West African States (ECOWAS) the Abidjan Declaration aims “to prevent and reduce statelessness by reforming constitutional, legislative and institutional regimes related to nationality”. It was followed in 2017, by the adoption the Banjul Regional Plan of Action, with specific commitments on the activities required to eradicate statelessness

by 2024.

These commitments and the regional approach is discussed in an interview with Ibrahim Mohammed and Abimbola Oyelohunnu of the ECOWAS Commission.

These broader pieces on regional dynamics are complemented by two articles focusing on experiences of citizenship at the country level. Mary Boatemaa Setrana discusses the legal and logistical obstacles facing second and third generation descendants of Fulani migrants looking to obtain citizenship in Ghana. Whilst Luisa Enria looks at the ways in which the Ebola outbreak in 2014-15 started a conversation about what it means to be a citizen in Sierra Leone and in doing so revealed the ways in which the social contract was being renegotiated particularly in more remote, rural areas.



“A stateless person is a person who is not considered as a national by any State under the operation of its law.”

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STATELESSNESS



Nationality, Statelessness and Legal Identity in West Africa

by Bronwen Manby

In February 2015, the 15 Member States of the Economic Community of West African States (ECOWAS) adopted the Abidjan Declaration on the Eradication of Statelessness, agreeing “to prevent and reduce statelessness by reforming constitutional, legislative and institutional regimes related to nationality”. Two years later, in Banjul, ECOWAS ministers adopted a Regional Plan of Action to eradicate statelessness, with specific commitments on the activities required to achieve this goal by 2024.

Through these documents, ECOWAS member states undertook to take action to prevent statelessness, identify and protect stateless persons, resolve the status of existing populations of stateless persons, and collaborate to achieve these goals. They promised to strengthen the legal framework at regional, continental and national levels, to collect better data, and to provide routes to obtain identity documents

for those whose nationality is currently in doubt. They committed “to ensure that every child acquires a nationality at birth and that all foundlings are considered nationals of the State in which they are found”.

Why were these commitments agreed to be priorities for West Africa? Statelessness is not a well-known or well-understood phenomenon and it was not previously recognised by ECOWAS as part of its agenda. There are no meaningful statistics on the number of stateless people in the region, and the problem remains often invisible.

Yet recognition of nationality is a critical issue for respect of other human rights. A stateless person may be unable to work in the formal economy, open a bank account or buy land. Stateless children lacking birth registration and other identity documents may be unable to attend school or access health care. Strong identification systems are in-

creasingly recognised as foundational for economic development. Target 16.9 of the sustainable development goals aims at universal coverage of birth registration and “legal identity”. Identity documents are central to the achievement of the ECOWAS vision of free movement in the region. The West Africa region has also seen at least one civil war—in Côte d’Ivoire—whose roots can be seen in discrimination and political manipulation of access to nationality papers.

Definitions

Who is a Stateless Person?

Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons defines a stateless person as: **“a person who is not considered as a national by any State under the operation of its law.”**

Guidelines issued in 2012 by the United Nations High Commissioner for Refugees (UNHCR) on this definition note that, for any particular state, “establishing whether an individual is not considered as a national under the operation of its law ... is a mixed question of fact and law,” based both on what the legal text says and the way in which the state concerned interprets the law in practice.

Citizenship versus Nationality

The words “citizenship” and “nationality” are used interchangeably in this article. West African countries in which English is the official language more commonly use the term citizenship in their national laws, while the former French and Portuguese territories use the translation of nationality. International treaties usually refer to nationality (in English, French or Portuguese).

Who is stateless in West Africa?

It is impossible to provide meaningful statistics for the number of stateless people in West Africa. Figures published by the United Nations High Commissioner for Refugees (UNHCR) in 2013 estimated that one million people could be stateless in the region. This included 700,000 stateless persons in Côte d’Ivoire and just a single person in Liberia. But even the figure of 700,000 for Côte d’Ivoire was a guess, not based on any survey data. Among the objectives of the Abidjan Declaration and Banjul Action Plan is the collection of better data. A number of ECOWAS States have begun to seek better information as part of their national action plans: in Côte d’Ivoire, for example, the national statistics institute has collaborated with UNHCR on a study seeking to map groups most at risk of statelessness.



Source: United Nations High Commissioner for Refugees (UNHCR) 2013 estimate

The difficulty in estimating numbers derives from the fact that so many people lack documentation of their identity, even if their nationality is not in question. Such individuals are not necessarily stateless, but those who are in this situation are at much higher risk of statelessness. Only in the effort of seeking documents does statelessness become apparent; and it may take months or years before a person has exhausted all the avenues available to obtain recognition of nationality. Among the undocumented and partially documented there is an undoubtedly large number of people who would fit the definition of a stateless person under international law: a person who is not recognised as a national by any state under the operation of its law.

Although those lacking documents are generally among the poorest and most marginalised members of society, an undocumented person who is a member of the dominant ethnic or religious group, and who comes from a settled community and stable family, is far less likely to be refused when applying for a nationality document. Those most at risk of statelessness are thus members of social groups facing discrimination of various kinds (often including religious or ethnic minorities); irregular migrants and especially their descendants; former refugees and their children; and children born out of wedlock, separated from their parents, or vulnerable in other ways. They are left stateless not only by discrimination in practice and weak administrative systems, but also by laws that provide very limited rights based on birth in the territory and that restrict the transmission of nationality from parent to child on the basis of gender or other grounds.

The largest number of people at risk of statelessness in West Africa are the descendants of migrants who no longer live in their countries or communities “of ori-

gin”. This includes those who migrated or were forcibly moved before independence. More recent migrants are generally not stateless, since, even if lacking documents, they retain knowledge of their origin country that would usually enable them to re-establish that nationality with the relevant authorities if need be. However, where rights to nationality based on birth in the territory are weak and lack of birth registration (with the host government and with consular authorities) means that there is no confirmation of a connection enabling a child to claim the citizenship of a parent, statelessness becomes more likely for each generation born outside a notional country of ancestral nationality.

Among the migrants most at risk of statelessness are refugees and their children, especially where the “ceased circumstances” clause of the 1951 Refugee Convention has been invoked. In West Africa, those who fled civil wars in Sierra Leone and Liberia are, since 2008 and 2012 respectively, no longer considered refugees by UNHCR or host-country governments. Very few former refugees have been able to access naturalisation in host countries. Those who have remained in other West African countries would have rights based on their status as ECOWAS citizens, but they need confirmation of Liberian or Sierra Leonean nationality, either to stay where they are or to repatriate. Yet vetting procedures implemented by Liberian authorities in 2013 denied Liberian passports to around 1,000 formerly recognised refugees, largely on the basis that they did not have enough knowledge of Liberia. Though some have had their status unresolved, others remain without confirmation of nationality. Without documents, individuals such as these are left stranded, often unable to access services where they live and subject to constant police harassment for lack of proper documents.

“Among the migrants most at risk of statelessness are refugees and their children, especially where the “ceased circumstances” clause of the 1951 Refugee Convention has been invoked.”



Also at high risk of statelessness are cross-border populations, divided by lines on maps drawn by the European powers without regard for commonalities of politics, language, culture, religion, lifestyle or even geography. States often allege that those in border regions are nationals of their neighbours, leaving residents without papers in either. Nomadic pastoralists, a population of several million in West Africa, face long-held suspicions about their loyalties from settled populations and are often at risk of statelessness, whether or not their migratory routes cross borders.

Border adjustments resulting from litigation before the International Court of Justice (ICJ) have not resolved these problems, and sometimes have made them worse. The ICJ's 2002 decision transferring the Bakassi peninsula from Nigeria to Cameroon left the status of people living in the affected zone unclear. The 2006 "Greentree Agreement" facilitated by the UN on the implementation of the ICJ judgment (resisted by Nigeria) assumed that the residents of the peninsula would become Cameroonian, unless they wished to remain Nigerian; but neither government put in place procedural mechanisms to implement these assumptions. Similar difficulties affect the residents of territories impacted by other ICJ judgments on border disputes between Niger, Burkina Faso, and Benin.

Finally, there are children who cannot obtain recognition of the nationality of one of their parents. In most West African states, women can now transmit nationality to their children, with Senegal and Sierra Leone the most recent to amend their laws to remove all discrimination. But in Togo the 1978 nationality code has not yet been reformed to comply with the more recent constitution and children's code (which removed discrimination). In Benin, Guinea, and Liberia elements of discrimination also remain. Discrimination in practice remains widespread. Others at risk include children born out of wedlock (especially those born of rape in war), "foundlings" (that is, children of unknown parents), orphans, children whose parents are without documentation, and those separated from their parents by conflict, living as street kids or trafficked to another country to work. Lack of timely birth registration is a risk factor for all. These children, and the adults they become, are scattered throughout West Africa and found at the margins of every society. The longer it takes for them to establish a nationality, the more difficult it becomes.

An ECOWAS identity?

In signing the 2015 Abidjan Declaration ECOWAS Member States were responding to the campaign launched by UNHCR in 2014 to eradicate statelessness within 10 years. But the existence of a UN campaign does not explain why the ECOWAS region was one of the first to respond to this call. The basis for that rapid response can be found in the long history of regional collaboration and in the widespread recognition of the problems created by weaknesses and discrimination in nationality administration.

Resolving the question of nationality and statelessness is central to the fulfilment of the ECOWAS commitment to achieving freedom of movement across the region. In 1982, ECOWAS adopted a Protocol Relating to the Definition of a Community Citizen, aimed at creating some common principles on access to citizenship, reducing the confusion left by the different patterns of colonial laws, while also leaving discretion in the hands of Member States. Though largely ignored in practice, the idea of a common citizenship has remained.

The removal of obstacles to freedom of movement and residence was one of the primary objectives of the 1975 ECOWAS treaty, elaborated in subsequent protocols and reaffirmed in the 1993 revision of the treaty. Though still incomplete, the legal framework has effectively created a zone of free movement within West Africa. Only in 2018 was the ECOWAS regional regime matched with a document at the continental level, but the African Union protocol on free movement is much less ambitious in scope.

One of the most important requirements to be able to travel freely across international borders is to hold an identity document mutually accepted by the countries concerned. In West Africa many people cross borders without documents—from the market women crossing borders daily to trade, to the nomadic peoples of the Sahel whose traditional routes pay scant attention to colonial maps. Yet requirements to present identity documents are becoming ever more prevalent in the region, as they are globally. Governments are being supported



Many Burkinabè women work in the gold mines of Côte D'Ivoire but do not have proof of nationality, increasing their risk of statelessness. (Photo: H. Caux/UNHCR)

by the World Bank and other development agencies to strengthen their identification systems, partly in response to concerns over irregular migration, and partly in response to recognition of the importance of identification for state capacity and economic development.

There has long been an agreement on a system of ECOWAS passports issued by Member States to allow travel within the region. In 2014, an agreement was reached that travel within the Community would also be allowed on the basis of national identity cards, with a standardised biometric ID to be introduced in every country. Those countries that have had ID cards since independence—largely those with French and Portuguese colonial heritage—are upgrading to the new format; whilst The Gambia, Ghana, Liberia, Nigeria, and Sierra Leone are introducing them for the first time.

Gaps in the law

At independence, African states adopted nationality laws based on models from the former colonial powers. The new constitutions of the four former British territo-

ries in West Africa—Ghana, Nigeria, Sierra Leone, and The Gambia—established a “*jus soli*” (law of the soil) rule for those born after independence: a person born in the territory would automatically become a citizen, with very limited exceptions. Those born abroad acquired nationality based on descent through their father only. The former French and Portuguese colonies usually provided, at minimum, for the second generation born in the country to acquire nationality automatically—the rule of “double *jus soli*”; and often for children born in the country to acquire nationality automatically or on application upon reaching majority. In Liberia, the 1822 Constitution restricted citizenship to “persons of color”, a provision that remains in place, though reformulated. A detailed nationality law was adopted in 1956, which provided for *jus soli* citizenship for “persons of Negro descent”, a provision retained in the current law of 1973.

Since independence, West Africa, along with the rest of the continent, has seen two strong trends in nationality law reforms: a reduction or removal of gender discrimination, which has allowed women to pass nationality to their children and spouses on increasingly equal terms with men, and acceptance of dual nationality.



UNHCR No to statelessness campaign in West Africa(Photo: data2.unhcr.org)

By 2018, nine ECOWAS countries had granted women and men completely equal rights in relation to the nationality of their children, and ten in transmission to spouses. Liberia is the only country where dual nationality is prohibited in almost all cases, though some other countries have more limited restrictions in place, for example in case of those seeking to naturalise.

There has also been a trend to limit access to nationality based on birth in the country. In common with many Commonwealth countries elsewhere in Africa, each of the four former British territories has removed the right to nationality based purely on birth in the territory. Immediately after independence, Sierra Leone introduced a racial provision similar to that of Liberia, restricting citizenship attributed at birth to individuals of “negro-African descent”, while establishing a double *jus soli* rule for those fulfilling this criterion.

Côte d’Ivoire and Niger also reduced rights based on birth in the territory, although Niger, like the other former French territories, retains a double *jus soli* rule. Côte d’Ivoire was the only former French territory not to adopt this rule, and now has a purely descent-based regime. Côte d’Ivoire joins Nigeria and The Gambia in failing to respect even the longest standing protection in

international law against statelessness, the presumption in favour of an abandoned child of unknown parents.

Even when a person fulfils the legal conditions, this may count for little due to onerous requirements and costs attached to obtaining proof of nationality, and discrimination that makes proof unobtainable in practice. The weakness of civil registration systems in West Africa means that questions of proof can be highly discretionary. In Liberia, only 4% of births are registered, while Guinea-Bissau, Niger and Nigeria all recorded rates of less than 50%, according to a 2013 UNICEF study. Fees, official and unofficial, for nationality documents prevent many people from obtaining proof of a status they should in theory hold. The inaccessible nature of naturalisation means it is near-impossible to acquire nationality based on long-term residence. Statistics are hard to come by, but it appears a maximum of a few hundred naturalise annually in any West African state. The gaps in the rules on attribution of nationality at birth thus become even more salient.

Implementing the Abidjan Declaration

Significant steps have been taken to implement the Abidjan Declaration in the almost five years since it was adopted. At least three ECOWAS states have adopted national action plans at the ministerial level: Benin, Burkina Faso, and The Gambia. Twelve are now parties to both international conventions relating to statelessness (the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness): Benin, Burkina Faso, Côte d'Ivoire, The Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal and Sierra Leone. Seven of these completed the process since 2014. Only Ghana, São Tomé and Príncipe, and Togo have taken no steps to do so.

Sierra Leone amended its nationality law to remove gender discrimination in transmission of citizenship to children born outside the country in 2017. Niger removed gender discrimination in transmission between spouses in 2014 (though at the same time it also made acquisition based on marriage more difficult). There have been new initiatives to register births in populations at risk of statelessness: for example, among Mauritanian refugees in Mali and Malian refugees in Mauritania, and through the adoption of legislation aimed at extending birth registration to more people in Benin. Guinea-Bissau has undertaken special measures to grant nationality to long-standing refugees. Côte d'Ivoire initiated a special application procedure in 2013 enabling thousands without Ivorian documents to obtain them, but the process was inaccessible to many and left unaddressed underlying problems in the law.

The decision to introduce a common-form biometric identity card across ECOWAS Member States provides an opportunity to strengthen weak identification systems, but also carries risks. The introduction of new identity documents is a well-known danger-point for the creation of stateless populations. Biometric data is useful for eliminating duplicates in the system and preventing a person using another's document, but does not address the central question of entitlement to nationality. To resolve this issue, states will need to take

action to remove discrimination in nationality law and administration and provide some rights to acquire nationality based on birth in a country, at minimum to those who cannot, within a reasonable period, acquire recognition from another state.

Continental institutions have begun to recognise the extent of the problem, with decisions and resolutions affirming the right to a nationality by the African Commission on Human and Peoples' Rights (ACHPR) and the African Committee of Experts on the Rights and Welfare of the Child. In November 2018, ministers of immigration of AU Member States considered and approved a draft protocol on the right to a nationality and the eradication of statelessness that was developed by the ACHPR. A major push to improve civil registration in Africa, one of the main administrative means to reduce the risk of statelessness, has been backed by both AU and UN agencies. ECOWAS States have been among the most supportive of these initiatives; but the detailed work in establishing more inclusive legal and administrative framework at national level lies ahead.

Bronwen Manby is a Senior Policy Fellow at the London School of Economics, and has written widely on issues of nationality and statelessness in Africa.

Further resources

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SEEING & BEING SEEN

Citizenship on Sierra Leone's borders

by Luisa Enria

On 7 November 2016, the anniversary of the official declaration of the end of the Ebola outbreak, Sierra Leoneans commemorated the thousands of lives lost and countless more affected by the epidemic between 2014 and 2015. 3956 deaths were officially recorded, and 14,124 cases in total. The experience of Ebola in Sierra Leone revealed significant cracks in the national health care system and international humanitarian mechanisms when faced with an epidemic of unprecedented proportions. However, the story of Ebola is also one about citizenship. The outbreak was equally revelatory about the health of the social contract, the relationship between state and its citizens.

Mistrust in, and resistance to, the Ebola response laid bare the tensions at the heart of this relationship. At the same time, Ebola created important opportunities for negotiating what the content and nature of such a contract should be. It opened a conversation about what it means to be a citizen in Sierra Leone, whilst also giving life to new imaginations as to what it might mean in the future. In parts of the country such as borderlands, where the state had previously been largely invisible, inhabitants in some ways became citizens through their experiences of the protracted crisis.

Fragile terrain

When Medecins Sans Frontieres sounded the alarm on Ebola in March 2014, it would have been difficult to predict the extent to which the disease would wreak havoc in Liberia, Guinea and Sierra Leone. A large number of factors contributed to the ultimate escalation of the epidemic: an unforgivably slow international response, weak health systems, or what has been unhelpfully characterised as “cultural and behavioural practices” that acted as vectors of disease transmission. More helpful is an appreciation of institutional fragility and in particular of the historically fraught relations between state and society.

Rumours about the epidemic being an instrument of sinister political machinations, avoidance of healthcare centres and, in some instances, active resistance towards disease control interventions, signalled a deep-seated lack of trust. The mistrust was not unfounded. As a recent International Growth Centre report on governance in Sierra Leone notes, a long history of social exclusion and predatory politics has underpinned fragility in the country. After the 11 year civil war ended in 2002, efforts to rebuild state institutions have struggled to effectively embed them within society. Whilst the economy saw signs of recovery in the years before the outbreak, peace dividends were slow to trickle down, especially in rural areas. Democratic reforms that promised to bring governance closer to the people - decentralisation was enshrined in the 2004 Local Government Act - were undermined by challenges over the resourcing, effectiveness and independence of the district councils tasked with implementing development programmes and delivering services.

Ebola reaches Makuma

By July 2014, then President of Sierra Leone, Ernest Bai Koroma, had announced a state of emergency to aid local and international efforts to curb the disease. This included lock-downs, restrictions of movement and quarantines. At chiefdom level, by-laws were put in place to address violations of Ebola regulations such as the reporting of illness and death within communities. District Ebola Response Centres (DERCs) were set up in the autumn of 2014 to decentralise the intervention, with large numbers of volunteers deployed to act as contact tracers and social mobilisers within their communities.

In the spring of 2015 one of the several thousand cases of Ebola that was documented during the crisis, was reported in the fishing village of Makuma, on Sierra Leone's border with Guinea. A local contact tracer called in to report that a young man had died. Accounts differed as to where he came from, with residents debating whether he was he a visitor from Guinea or a local fisherman. But what was clear was that those who had come into contact with him needed to be quarantined. Makuma is far from the district headquarter town of Kambia, and therefore from the DERC. From Kambia it takes three hours on a bike to reach the closest town, Mapotolon, with Makuma a further hour along a swamp path. During the rainy season, which was beginning around the time the case was identified, the village is almost entirely inaccessible. A team of response workers from the DERC, accompanied by a soldier were dispatched to Makuma to set up the quarantine.

“ Mistrust in, and resistance to, the Ebola response laid bare the tensions at the heart of this relationship. At the same time, Ebola created important opportunities for negotiating what the content and nature of such a contract should be.”

What happened in Makuma the day the response team arrived remains contested. But the story that resonated with response workers depicted a mob of villagers attacking and disarming the soldier in a revolt against the proposed quarantine. In the end the quarantine was moved to Kychom, the chiefdom headquarters, which response workers explained as a decision in response to logistical challenges but one which was interpreted by Makuma residents as a punishment for the violent incident.

This story was emblematic of the difficulties of implementing the Ebola response in the face of fear and mistrust in affected communities. The challenge was heightened in the borders; spaces notoriously difficult to tame, where the loyalty of communities, physically and politically marginalised from the centres of power, could not be guaranteed. Residents in the borderlands around Makuma spoke directly about their physical and political exclusion as akin to a denial of citizenship. The disrepair of the road linking them to the district headquarters, for example, was interpreted as a sign that “they [the government] don’t see us as Sierra Leoneans”.

On the fringes

Borders posed several layers of threat to efforts aimed at containing the disease. Mobility through informal crossing points facilitated the undetected spread of Ebola. In a region where strong social and economic ties do not respect borders, the disease easily and rapidly spilled over from the initial epicentre in Guinea. Border areas were also hard to reach for response workers, even more so during the rains when roads became inaccessible and approaching via the sea, in the case of coastal districts, was treacherous. Above all uncertainty over villagers feeling of belonging and recognition of government authority was at the forefront of response workers minds when considering whether their efforts would be accepted or violently resisted.

A young woman from Kambia who worked as a social mobilisation officer in the DERC, reflecting on the residents of Makuma and the challenges they faced in the border areas, said she saw them as “more Guinean than Sierra Leonean”. She pointed to residents’ kin re-

lations that spanned across the border, the ancestry and Soso language they shared. Whilst there are undoubtedly very strong social, cultural and economic ties with neighbouring Guinea, being recognised as Sierra Leonean was very important to inhabitants of borderland communities like Makuma. The government of Sierra Leone remained the primary object of hopes of future development.

Contestations over belonging and national loyalty point to a tangible problem of exclusion that was amplified during the outbreak. The confrontation between Makuma’s fisherman and the soldier who came to quarantine them, reflect a suspicion borne out of years of neglect.

Mistrust, an eroded social contract and exclusion are only one side of the story. Ebola also made the state visible, sometimes, but not exclusively, in violent ways, to the people in border areas. The epidemic meant that the borderlands were ‘seen’ in ways that they had not been for some time. This was partly due to the dangers posed by porous borders in fostering Ebola’s unmonitored spread. As the virus appeared at the border so too did the various arms of the response; from the army to health officials. The signature white cars of the humanitarian response and the sudden presence of soldiers stationed within border towns provoked anxiety. On the other hand, it signalled the much-awaited presence of “the government” and recognition of the border areas as an integral part of the country.

In Sella Kafta, another village further along the border, where every household was quarantined during one of the last operations of the outbreak, inhabitants remembered feeling a mixture of terror and hope upon seeing helicopters landing in a field nearby. The assumption was that now that the village had come into the spotlight development would follow. Memories of emergency provision of services and relief, such as access to healthcare and food supplies, were offered as examples of what the government could do. Never before, a farmer told me a year after the end of the epidemic, had the government said: “here, have some rice”.

The crisis showed that a duty of care could be established and therefore it became more expected. It allowed those living at the border to become citizens in ways more meaningful than simply as a subject of intervention or as a population to be kept under control. They saw in the crisis a momentary opportunity to become visible, and to enact their quest to be right-bearers; making legitimate claims to service delivery on a government that had felt at best distant and worst actively exclusionary. Whilst this political imagination existed before Ebola, the emergency made it concrete and offered a path towards a renewed social contract.

A new contract?

In practical terms, taking seriously the lessons from the borders means to focus, rather than solely on mistrust and exclusion, on the positive expectations that citizens have. Visibility was the most striking concept used in rural areas to describe these expectations: a wish to see the government and to be seen by it. “Deepening decentralisation”, as the Institute for Governance Reform in Freetown has suggested is needed in a report entitled *Influencing President Bio’s New Direction Agenda*, is particularly important as a commitment to tangible and equitable service delivery. This goes hand in hand with a reform of the tax system. This is not only important as a way of raising revenue to finance service delivery but also to render concrete the state’s relationship of accountability to its citizens.

The newly elected Sierra Leone People’s Party government is likely to continue the work of the previous administration in building infrastructure. Roads, connecting areas like Makuma to trading centres and district headquarters, plays both a practical and symbolic role when it comes to creating meaningful inclusion. Citizens in Sierra Leone have become used to interacting with the state as a result of crises; becoming recipients of services by virtue of being war-affected groups, Ebola survivors or flood victims. But reforms aimed at normalising these services would not only be empowering and inclusive, they would also help avert the next emergency, by fostering greater trust and encouraging meaningful interaction with communities on a more consistent basis.

Luisa Enria is a lecturer in international development at the University of Bath, where her research focuses on the politics of crisis, citizenship and global health in Sierra Leone.

Further reading

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An Ebola Healthcare Worker
Source: Oxford University



"I am Ghanaian and Fulani!"

Questions of citizenship in Ghana

by Mary Boatemaa Setrana

Across West Africa, descendants of migrants are being discriminated against. In Ghana, issues of citizenship rights for second and third generation descendants of Fulani migrants require urgent critical examination. Some are pastoralists but even those who are engaged in different economic activities are impacted by the challenge of securing a state-issued identity.

As far back as the 11th century, Fulani settled in eastern parts of West Africa; originally migrating from Futa Jalon in Guinea through the Sahelian and Sudan savanna regions. In the early 20th century Fulani migrated into northern parts of what is now Ghana, from Burkina Faso, Niger, Nigeria and Mali. They settled between Bolgatanga and Bawku - part of the current day Upper East region - where rich vegetation and a relatively few inhabitants offered good economic opportunities. But since the late 1960s, the increase in human and animal populations has led to increasing competition for avail-

able resources, creating conflict points between farmers and herders as they struggle to co-exist in rural communities. The Fulani, and their descendants, are viewed by historic residents as 'strangers' occupying their land and competing for livelihoods. However, these so-called 'strangers' have a strong sense of belonging to their place of residence in Ghana.

Ghanaian citizenship

It is very common to find second and third generation descendants of Fulani migrants who have lost contact with their countries of origin. Either because they have lived in Ghana all their lives or because they were born in either the colony or independent Ghana. However, in line with Ghana's 1992 constitution, the Citizenship Act of 2000 and its 2001 regulations, the citizenship rights of this group remain contested and at the margins of public discussions. Although the Fulani have

lived in Ghana for decades, they are counted along with other West African immigrants during the national census process. A 2005 study by Steve Tonah, based on estimates from the 2000 census, estimated there were as many as 300,000 Fulani in Ghana; a number that has almost certainly increased though no-one has conducted a similar survey using 2010 census data.

Ghana's 1992 constitution, its Citizenship Act of 2000 and 2001 regulations, provide for citizenship by birth, through adoption, marriage or naturalisation. Among these four modes of acquiring citizenship, the most contested has been by birth. The Act requires that citizenship of Ghana is traced to a parent or grandparent, even when the person is born in Ghana.

The challenge faced by many of the second and third generation descendants of Fulani migrants is tracing and finding documentary proof of this ancestry. Record keeping is poor in many remote parts of Ghana. Coupled with the fact that, until recently, the majority of rural dwellers gave birth at home and so lack official birth records. Legal provisions for automatic civic incorporation through *jus soli* (citizenship by birth solely) do not exist in Ghana; instead it is by blood, *jus sanguinis*.

CITIZENSHIP BY BIRTH

Section 3—Persons Born before 6/3/57

(1) A person born before 6th March 1957 is a citizen of Ghana by birth if—

(a) he was born in Ghana and at least one of his parents or grandparents was born in Ghana; or (b) he was born outside Ghana and one of his parents was born in Ghana.

Section 4—Persons Born on or after 6/3/57 but before 22/8/69

(1) A person born on or after 6th March 1957 and before 22nd August 1969 is a citizen of Ghana by birth if—

(a) he was born in or outside Ghana and either of his parents, and also one at least of his grandparents or great-grandparents, was born in Ghana; or

(b) in the case of a person born in Ghana neither of whose parents was born in Ghana, at least one of his grandparents was born in Ghana.

(2) A person is not a citizen of Ghana for the purposes of subsection (1) of this section if at the time of his birth the parent, grandparent or great-grandparent through whom the citizenship is claimed has lost his citizenship of Ghana.

(3) A person born on or after 6th March 1957 and before 22nd August 1969 is a citizen of Ghana by birth if—

(a) he was born in Ghana and at the time of his birth either of his parents was a citizen of Ghana by registration or naturalisation; or

(b) he was born outside Ghana and at the time of his birth both of his parents were citizens of Ghana by registration or naturalisation.

Section 5—Persons Born on or after 22/8/69—Constitution 1969

A person is a citizen of Ghana by birth if he was born in or outside Ghana on or after 22nd August 1969 and before 24th September 1979 and at the date of his birth either of his parents was a citizen of Ghana.

Section 6—Persons Born on or after 24/9/79—Constitution 1979

A person born on or after 24th September 1979 and before 7th January 1993 is a citizen of Ghana by birth if—

(a) he was born in Ghana and at the date of his birth either of his parents or one grandparent was a citizen of Ghana; or

(b) he was born outside Ghana and at the date of his birth either of his parents was a citizen of Ghana.

Section 7—Persons Born on or after 7/1/93—Constitution 1992

A person is a citizen of Ghana by birth if he was born on 7th January 1993 or born after that date in or outside Ghana and at the date of his birth either of his parents or one grandparent was or is a citizen of Ghana.

*Excerpts of the Citizenship Act 2000 (591) (page 2)

This puts descendants of Fulani migrants at risk of becoming statelessness. Many are born, and have lived their whole life in Ghana, and so do not know another country nor can they produce documents that would enable them to obtain citizenship in another ECOWAS state. But obtaining citizenship in Ghana is also difficult. In this limbo status they do not have the right to vote or be voted for and land is only leased to them as foreigners.

Naturalised migrants?

The Citizenship Act of 2000 provides guidance on the ways of becoming a citizen through naturalisation in part 2, sections 13-15. In fact, both the constitution and act state that for an individual to naturalise, all of the following requirements must be met:

- have resided in Ghana throughout the period of 12 months immediately preceding the date of the application
- during the seven years immediately preceding the period of 12 months, have resided in Ghana for periods amounting in the aggregate to not less than five years
- of good character as attested to in writing by two Ghanaians being notaries public, lawyers, or senior public officers
- not been sentenced to any period of imprisonment in Ghana or anywhere for an offence recognised by law in Ghana
- able to speak and understand an indigenous Ghanaian language
- a person who had made or who is capable of making a substantial contribution to the progress or advancement in any area of national activity
- a person who has been assimilated into the Ghanaian way of life or who can easily be so assimilated
- intends to reside permanently in Ghana in the event of a certificate being granted to him
- possessed a valid residence permit on the date of his application.

For the majority of second and third generation descendants of Fulani migrants, fulfilling several of these requirements is largely straightforward even if they find it hard to accept they need to naturalise in order to “become” Ghanaian. They have lived for an extended time in Ghana, are fluent in local languages and take part in social activities. More problematic are the costs surrounding naturalisation - GHC6,000 or US\$1,225 -, the lack of, particularly in more remote rural cases, of a residence permit and the fact that many descendants of Fulani migrants are not aware of these requirements or lack the formal education to produce them. Umaru Sanda, a Ghanaian journalist and a descendant of Fulani pastoral migrants, spoke of his exceptionalism in a 2017 interview, “I am the seventh and last born of my illiterate parents. My elder siblings - two men and four women - have not had formal education because they have been helping my father herd cattle”.

However, the major obstacle is in meeting the loosely defined “good character” requirement, a condition that a younger generation of Fulani migrant have found harder to meet in a climate where their identity has become increasingly associated in unsubstantiated public debate with criminality. The experience of Umaru Sanda is again instructive. “News headlines are packed with stories about crimes attributed to Fulani. This is so widespread that even in Accra, where I work, among very well-educated members of the society; people find delight in shouting Fulani whenever I am around with the intent of ridiculing me. From high school through tertiary to the work environment, I have been mocked for simply being from the Fulani ethnic group. If I hadn’t ignored most of the teasing and grown a tough skin, I wouldn’t have made it past the first stage of my education”. That is not to say all Fulani continue to be marginalised. Some, such as businessman Alhaji Grusah, Samira Bawumia, the wife of the current vice president and Collins Dauda, a former government minister have become prominent citizens. But they remain the exception.



A Fulani Herder (Photo: kessbenfm.com)

Putting down roots

Second and third generation migrants married to Ghanaians can acquire citizenship through *jus matrimonii*. In this case, any children of the marriage automatically become Ghanaian. Recent research found that whilst some male Fulani pastoralists were married to Ghanaian women, the opposite - Fulani women marrying Ghanaian men - was rare. Reflecting on these social dynamics, male farmers saw their women as being “taken away” from them by migrants. Farmers who practice a matrilineal system expressed worry that they lose the children born out of these intermarriages, if the mother is the Ghanaian. The Fulani practice a patrilineal system which automatically gives the Fulani man ownership of the children. At the official level, these children are Ghanaians, but in practice many are inhibited from inheriting their mother’s properties such as farm lands particularly in more rural settings.

Following the laws of Ghana, Fulani pastoralists have historically obtained land under the leasehold land tenure system for herding and, less often, farming. Customary law leaseholds allow foreigners, which in this

case includes Fulani, to use the land for an initial period of 50 years which is then subject to renewal for 25 years. If Fulani pastoralists do not ask for a renewal, land is given back to the lease-holder. In rural areas this is often customary authorities. Land agreements between the community (whether individual or group) and Fulani pastoralists or cattle owners often have accompanying conditions. The payment of one live cow or bull yearly as royalty and construction of ranches to prevent crop destruction on farms and compensate farmers in the event of crop destruction are common. Under this system, land has been held and managed by Fulani pastoralists for several decades.

Increasingly descendants of Fulani pastoral migrants are claiming ownership of these lands. Even though legally they are entitled to the land only if a re-negotiation is done and agreement between the herder and the leaseholder permits them to use it. Having known no other home outside of these Ghanaian communities, they reject the label of ‘strangers’ and see themselves as Ghanaians and entitled to access land on that basis. This view contrasts with that of local communities who see Fulani herders as ‘aliens’, occupying the land of indigenes. These rigid, and opposing, positions, continue to be a source of local conflict.

Inclusive citizenship ahead?

Ghana has shown commitment to the 2015 Abidjan Declaration on the Eradication of Statelessness and the 2017 Banjul Action Plan, which set out a way forward for the declaration's implementation. In 2016 a National Migration Policy was launched. Although the policy is yet to be implemented, its broad objectives, which include an ambition to identify stateless persons in Ghana; to rehabilitate and reintegrate stateless persons; to enact national legislation on stateless persons and review existing citizenship legislation; and to sign and ratify the 1954 and 1961 conventions on stateless persons, are welcome.

But for these formal processes to work in practice citizen engagement will be required. Second and third generation Fulani who already feel ostracised often lack the formal education levels to meet the existing requirements and acquire citizenship through naturalisation and registration. Therefore, any changing of citizenship laws must be accompanied by campaigns aimed at national civic education that reach rural and remote communities in a language and format they understand. Evidence from Cote D'Ivoire, Sierra Leone and Benin shows that sensitisation and training directed at key stakeholders and the general populace on the significance of birth registration and citizenship procedures are key to supporting the resolution of these issues of citizenship and statelessness.

More inclusive citizenship requires not only a review of the legal requirements but it needs recognition from other members of society. In practice being a citizen is not simply a static legal position, but a status developed through routine practices, building relations and shared experiences. Ghana is gradually progressing towards this but greater dialogue across communities is required to bridge divides if inclusive citizenship is to become an experienced reality.

“More inclusive citizenship requires not only a review of the legal requirements but it needs recognition from other members of society.”

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Further Reading

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Regional Reflections

Statelessness in West Africa

In conversation with
Ibrahim Mohammed & Abimbola Oyelohunnu

Q. Why is statelessness such an important issue for the ECOWAS region?

AO: Statelessness is not just an important issue for the entire region, but for the world at large. In West Africa about one million people are said to be stateless and many more people are at risk of becoming stateless. But this is just an estimate as we have a problem with data collection in the region. It is fair to assume that one million is an underestimate.

People who are stateless are denied their fundamental human rights because they do not have a right to nationality. If you do not have a national identity card you cannot go to school, you do not have the right to political participation or to healthcare because most of the time accessing those rights is tied to an identity document. If we look at the vision for ECOWAS, we're moving towards an ECOWAS of the people rather than an ECOWAS of states. You cannot achieve that vision when you're leaving at least one million people behind. Statelessness threatens our drive for regional integration, it compromises peace and security and it infringes

on our ability to ensure all citizens are granted their fundamental human rights.

IM: Statelessness has a major impact on basic fundamental rights such as the right to vote. We have examples where the issue of statelessness in West Africa has almost torn a country apart. In Cote d'Ivoire the issue of statelessness was a very serious issue when it came to electoral politics and many who wanted to exercise their franchise were denied the opportunity to do so.

To strengthen the regional integration component of ECOWAS's Vision 2020 - that is moving from ECOWAS as a body of states to a community of people - true integration and human development is needed.

"People who are stateless are denied their fundamental human rights because they do not have a right to nationality."

Q. Following on from the signing of the 2015 Abidjan Declaration on the Eradication of Statelessness, in May 2017 in Banjul, ECOWAS members agreed to a plan aimed at resolving the obstacles to the acquisition of nationality so as to end statelessness by 2024. What are some of the key steps in the implementation of this regional action plan? And what progress has been made?

AO: In February 2015, the Abidjan Declaration was adopted by ministers in charge of nationality across West Africa. The declaration states the obligations agreed to by state parties but these obligations are not binding and this is why we went further, in 2017, to adopt the Banjul Plan of Action. It is a legally binding instrument on our member states. The Banjul plan operationalises the Abidjan Declaration; it transforms the obligations into actionable measures to combat statelessness.

One key thing that we set out to do using the Banjul plan was to gather evidence and data because there is still a lot of denial about the level of statelessness in the region. In seven member states work to improve data is ongoing, in collaboration with UNHCR. On the issue of birth registration, we are working with our member states, and with the support of UNICEF, on specific issues that are topical to individual member states. Whilst we are cognisant that the 15 ECOWAS States have different challenges, the statistics are quite dismal for the region in terms of the number of children whose births are registered. That is one key element that the Banjul Plan of Action and the Abidjan Declaration seeks to address using a multi-sectoral approach.

The problem of statelessness cuts across a lot of issues; gender, child protection, security and law enforcement so the strategy is to work with a broad spectrum of stakeholders at a national level. Statelessness is much more than just the issuance of a national identity document.

IM: I think when ECOWAS took the decision to steer this issue, it became more prioritised. Sensitisation around the issue of statelessness has risen dramatically within a short period of time.

AO: On the issue of awareness, we are planning to have a statelessness roundtable where the ECOWAS institu-

tions in Abuja - the Court, Commission and Parliament - will explore ways of forging linkages with each other to end statelessness. The issue of awareness is very critical. There continues to be a lot of denial of statelessness even within the ECOWAS commission. I think the best approach will be to work with civil society organisations (CSOs) who have the foot soldiers on the ground to support the identification of stateless populations and to partner with them. Advocacy is good, sensitisation is good, but we also need to address the problem, to offer redress and then show that those who are aggrieved are assuaged in the long-term. For this we need to have that network of CSOs and lawyers who are willing to assist stateless persons, because we cannot continue to play lip service to the issue, we need to tackle it head on.

A lot of progress has been made in accordance with the Banjul Plan of Action. Sierra Leone and Senegal have reformed their laws to ensure that women can confer nationality on their children. Work is ongoing to ensure that safeguards are in place to prevent statelessness in states national laws. Prior to 2015, there were no focal points for the issue of statelessness but now I think all of our member states have focal points. Even here at the ECOWAS commission we didn't have a regional statelessness focal point; now we have a structure that is tasked with addressing the issue of statelessness. In terms of acceding to the international conventions on statelessness; 12 out of the 15 member states have acceded to both (the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness). The Banjul plan runs until 2024, so we are not even halfway yet, but think we can say we are doing creditably well, with the help of our partners.

“A lot of progress has been made in accordance with the Banjul Plan of Action. Sierra Leone and Senegal have reformed their laws to ensure that women can confer nationality on their children.”

Q. It is estimated that up to 30% of people in the region lack documentation which proves their identity or their claim to a nationality and those lacking documents are generally among the poorest and most marginalised. How are you able to identify and target these individuals?

AO: I don't agree that it is the poorest that lack identity documents. In Nigeria for example, obtaining a birth certificate is free. So in Nigeria it is not a problem of poverty neither is it a problem of marginalisation, I think the primary problem is awareness. In Nigeria the government is making efforts to ensure that there is universal birth registration. That is a good place to start. Along with ensuring that the birth certificate can be obtained free of charge.

However, I do agree that the identification of stateless populations is a big challenge. The weakness of data collection in the region and in Nigeria in particular is pronounced. This is one area where we need to do a lot of work and where we need all stakeholders to join hands together to ensure that we address the challenges. In line with the provisions of the Banjul Plan of Action we are collaborating with our colleagues in the Free Movement Directorate of the Commission to identify and target these individuals. I think the only way to do it is through increased advocacy and sensitisation at the grassroots level. But for now this is an issue that is not yet fully explored. We do not have a strategy for the identification of stateless persons.

IM: There is no Francophone person in West Africa that doesn't have his or her national ID card. They have it and they carry it with pride, and they can use it to travel from one part of the country to another. But in Nigeria it remains an uphill task to get a passport or national ID card.

Q. What role does technology, and in particular biometric identity documents, have to play in tackling the problem of statelessness and citizens without identity documents?

AO: ECOWAS is aware of the need to use or deploy technology to address the issue. Of course there are challenges. IT across the region might not be as advanced as we expect it to be, but there are already efforts to ensure that technology is deployed to tackle the problem of citizens without identity cards.

IM: ECOWAS passports have been made biometric. On a Nigerian or Ghanaian passport, the first thing that will be visible on the front is the ECOWAS logo. The harmonisation of the national passports of citizens has been a big step forward and one that can be learned from and replicated when it comes to the issuance of national ID cards that are standardised across the region.

Q. How do commitments made by ECOWAS member states align with their own laws around nationality and is this a potential political obstacle to be overcome?

AO: These commitments were negotiated by, and agreed on, by all member states, so I think at the point where they were being negotiated any conflict with national laws should have been pointed out. But bear in mind that the Abidjan Declaration and the Banjul Plan of Action are not statements of law, they are action points. They do not impinge on national laws around nationality. What we have in the Abidjan Declaration is statements of commitment and measures that can be taken to prevent and reduce statelessness as well as protect stateless persons. In the Banjul Plan of Action, there is an action that talks about drafting a model law on statelessness for the region. If, and when, there is a model law that states agree to, then you might have issues of conflicting laws.

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