Delmi GLOBALCIT

Policy Brief

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How Citizenship Laws Differ: A Global Comparison

The Universal Declaration of Human Rights proclaims that "everyone has a right to a nationality"[1]. However, "it is for each state to determine under its own law who are its nationals"[2]. Citizenship laws do so in very different ways and many do not respect the rule of law or effectively avoid statelessness. Comparative studies of citizenship laws have been mostly limited to Western democracies and have focused on immigrants' access to citizenship. They have often assumed a contrast between ethnic citizenship regimes based on descent (*ius sanguinis*) and civic ones based on birth in the territory (*ius soli*). New data collected by GLOBALCIT reveal a more complex picture. We have calculated 12 indicators measuring how inclusive provisions in citizenship laws are in 175 states, how much scope they leave to individual choice, and whether they meet basic standards of non-discrimination and the rule of law. These indicators capture the most common rules on attribution of citizenship at birth, on ordinary (residence-based) naturalization, on special (facilitated) naturalization for spouses and culturally similar groups, on voluntary renunciation of citizenship and on loss of citizenship based on residence abroad and voluntary acquisition of another nationality. Additionally, we use UNICEF data on birth registration to assess whether persons who have a claim to birthright citizenship can actually obtain it.

Birthright Citizenship: Strong Regional Divergence

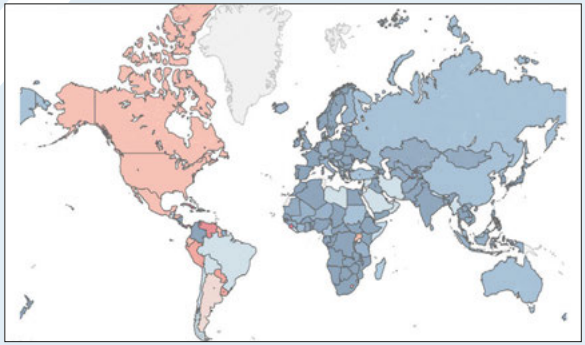
All states award citizenship by birth. The two basic rules – *ius soli* and *ius sanguinis* – have their modern origins in English common law and the Napoleonic Code respectively. *Ius soli* was adopted by the British settler states in North America and Oceania, but it dominates also in Latin America where its origins go back to the 1812 Spanish Constitution of Cádiz. In the rest of the world, birthright citizenship is primarily transmitted by descent, including in many former British colonies that changed their laws after independence.

Most states, however, mix elements of both rules. All states where *ius soli* predominates provide at least the first generation born abroad to emigrant citizens with

birthright citizenship. And 51% of states include a special *ius soli* provision for children born in their territory who would otherwise be stateless. In Europe, these are 88%, in Asia 60% and in Africa only 32%. Since *ius sanguinis* dominates in these three continents, the absence of *ius soli* contributes to statelessness there.

It is important to point out that while *ius soli* automatically includes children born to immigrants it often leaves immigrant minor children who were born abroad (the so-called generation 1.5) in a limbo until they reach the age of majority and can apply for naturalization. On the other hand, children of immigrant origin born in states where *ius sanguinis* predominates will also become citizens if naturalization is easy for their parents or if foreign parents can acquire citizenship for their children by declaration, as is the case in Sweden.

Map 1: Ius sanguinis for births in the country and for births abroad



Strength of ius sanguinis ranges from weak (red) to strong (blue).
Source: GLOBALCIT

Map 2 Ius soli for 2nd and 3rd generations combined

Strength of ius soli ranges from weak (red) to strong (blue).
Source: GLOBALCIT

Both *ius sanguinis* and *ius soli* can be awarded unconditionally or only if certain conditions are met. In the Americas, most states (83%) still give citizenship to anybody born in the territory, whereas the UK, Ireland, Australia and New Zealand have introduced various conditions, such as a certain period of residence of one parent. European countries that have newly introduced *ius soli*, such as Germany in 2000, have always chosen a conditional form. *Ius sanguinis* is unconditional if it can be passed on without limits across generations born abroad, creating thereby potentially large diaspora populations that can claim citizenship and territorial admission in an ancestor's country of origin. In Africa 62% of states do not place any limit on extraterritorial *ius sanguinis*, in Europe this is the case for 43%, whereas in Asia/Oceania and the Americas the share is below 30%.

Table 1: Birthright citizenship

	World	Africa	Americas	Asia/ Oceania	Europe
Ius Sanguinis (in the country)					
-Unconditional	59%	72%	17%	64%	71%
-Conditional	14%	17%	3%	13%	21%
-Limited	10%	8%	-	22%	7%
-No provision	17%	4%	80%	-	-
Ius Sanguinis (abroad)					
-Unconditional	41%	62%	29%	22%	43%
-Conditional	38%	25%	43%	42%	48%
-No or limited provision	21%	13%	29%	36%	10%
Ius Soli					
-Unconditional	18%	4%	83%	2%	-
-Conditional	21%	23%	14%	16%	29%
-Limited	6%	8%	-	13%	2%
-No provision	55%	66%	3%	69%	69%
Ius Soli (stateless)					
-Special provision	51%	32%	23%	60%	88%
-No special provision	49%	68%	77%	40%	12%
Number of countries	**175**	**53**	**35**	**45**	**42**

Ineffective Birthright – the need for registering births

Birthright citizenship is supposed to provide all individuals with a lifelong protected status. However, where states fail to register births in their territory and to their citizen parents, children will not enjoy this protection and may end up stateless. UNICEF identifies 60 states where the share of registered births among those born in the territory is less than 90%. In Africa this is a large majority of all states (77% with an additional 8% where data are lacking and which are likely to belong to the same group). Lack of birth registration is also a major problem in Latin American and Asian states. It is mainly due to deficits in administrative capacity, but Bronwen Manby finds also African countries where birthright registration is specifically neglected for children belonging to ethnic, racial or religious minorities.[3]

Naturalization – a right or a privilege?

A citizenship acquired at birth can be changed later in life through naturalization. Unlike for acquisition at birth, there is a much greater variety of reasons why states accept applications for naturalization and of conditions they impose. We have selected a few significant ones and distinguish ordinary naturalization based on time of residence from special naturalizations, which usually imply a shortening or complete waiving of residence requirements. In nearly half of all states (48%), five years of regular or permanent residence are enough to qualify for ordinary naturalization. In the Americas this is true for 2/3 of all countries. At the other end of the spectrum, 34% of all citizenship laws require a residence of 10 years or more, contain explicitly discriminatory provisions or leave the assessment entirely to the discretion of state authorities. Among the many other conditions that states impose on applicants for ordinary naturalization we have examined those that are probably the highest hurdles. Toleration of dual citizenship in case of naturalization is more common in Africa (70%) and the Americas (71%) than in Asia (60%) and Europe (52%). Economic conditions, such as levels of income, stable employment or no past receipt of welfare payments are very common in Europe (64%) and Asia/ Oceania (67%) and much less so in the Americas (37%).

60% of states worldwide and 88% in Europe facilitate acquisition of citizenship by those who are married to a citizen. Until the 1970s most countries discriminated between men and women by forcing wives to adopt their husband's nationality upon marriage. Although this is now contrary to binding international norms, 47 states (more than 40% of African and Asian states) still have such gender discrimination enshrined in their nationality laws. By contrast, privileged access to nationality for those who speak the same language or share an ethnic and cultural identity with the majority population is much more common in Europe (48%) than in the rest of the world (15%).

Table 2: Ordinary and fast track naturalization

	World	Africa	Americas	Asia/ Oceania	Europe
Residence requirement					
-After 5 or fewer years	48%	36%	66%	51%	45%
-After 6 to 9 years	18%	13%	29%	2%	33%
-After 10 to 12 years	22%	38%	3%	18%	21%
-After 15 years / no or discriminatory provision	12%	13%	3%	29%	0%
Dual citizenship for immigrants	64%	70%	71%	62%	52%
Economic Requirement	53%	43%	37%	67%	64%
Spousal transfer					
- Yes	60%	57%	69%	31%	88%
- No special provision	13%	0%	17%	27%	12%
-Discriminatory provision	27%	43%	14%	42%	0%
Fast track for cultural affinity	23%	13%	14%	18%	48%
Number of countries	175	53	35	45	42

Losing citizenship – by choice or deprivation

Citizenship can be lost through voluntarily renouncing it or through having it withdrawn by the state. The Universal Declaration of Human Rights proclaims: "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."[4] Do states live up to this norm?

13% prevent their citizens from changing their nationality based on a doctrine of "perpetual allegiance". A further 3% allow for renunciation only under very limited circumstances. It is interesting that this illiberal approach is not only widespread among non-democratic states (especially in Asia and North Africa) but is also strongly present among the *ius soli* states of Latin America (11 countries without or with very limited renunciation option). More commonly, states do not allow renunciation where it would lead to statelessness or make it conditional upon residing abroad.

A bit less than a third of all states (with not much variation across continents) assume that long-term residence abroad leads to the loss of a genuine link to the state that justifies withdrawing citizenship if the person has already acquired another nationality. For a slightly larger number (42%) it is the voluntary acquisition of another citizenship itself that warrants such withdrawal. This attitude has diminished strongly since the 1960s with more and more states becoming interested in retaining ties to their diaspora by tolerating dual citizenship among their emigrants[5]. Two thirds of European states and 58% of all countries worldwide do so now. Only Asian states are mostly still trying to resist this global trend.

Table 3 Voluntary and involuntary loss of citizenship

	World	Africa	Americas	Asia/ Oceania	Europe
Voluntary renunciation					
- Yes	84%	85%	69%	80%	100%
- Only limited	3%	0%	17%	0%	0%
- No	13%	15%	14%	20%	0%
Loss due to residence abroad	30%	26%	23%	40%	31%
Dual citizenship for emigrants	58%	58%	71%	40%	67%
Number of countries	175	53	35	45	42

Policy recommendations

(1) Our study reveals an urgent need for strengthening global minimum standards for citizenship laws and policies with the goal of reducing statelessness, combatting overt discrimination, and strengthening the rule of law. The focus should be on

- citizenship by birth in the territory for otherwise stateless children in countries without or with conditional *ius soli* provisions (especially in Africa)
- abolishing discrimination against women and ethnic, religious or racial minorities in *ius soli* provision, naturalization, the transmission of citizenship by descent and through marriage (especially in Asia and Africa)
- introducing a cap on length of residence conditions for ordinary naturalization and requiring laws to clearly lay out all conditions so as to reduce arbitrariness in the exercise of discretion (especially in Asia and Africa)
- securing the right to change one's nationality through renunciation (in Asia, Africa and Latin America)

(2) Inclusive rules for citizenship at birth are ineffective where states lack the administrative capacity or deliberately do not register children belonging to ethnic, religious and racial minorities. International organizations should support and push for comprehensive birth registration, especially in African states.

(3) International legal norms can be more easily developed at a regional level. Organizations such as the African Union, UNASUR and ASEAN should initiate intergovernmental processes aiming for regional conventions on nationality, similar to the European Convention on Nationality adopted by the Council of Europe in 1997.

(4) Democratic states must aim at higher standards than minimum human rights guarantees. Many European states have failed to make their citizenship accessible to large populations of immigrants. European immigration states should introduce conditional forms of *ius soli* or include the children of immigrants through strong entitlements to naturalization. They should also promote naturalization among first generation immigrants through removing obstacles, such as economic conditions, difficult language and naturalization tests and requirements to renounce a previous nationality.

Notes

1 UDHR Art. 15 (1)

2 Convention on Certain Questions Relating to the Conflict of Nationality Laws, Art. 1 (The Hague, 1930)

3 See Manby, B. Citizenship in Africa: The Law of Belonging, Hart Publishing, November 2018.

4 Universal Declaration of Human Rights, Art. 15 (2).

5 See https://macimide.maastrichtuniversity.nl/dual-cit-database/

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