# ETHIOPIAN NATIONALITY LAW AND PRACTICE

*by Fasil Nahum**

## Nationality in the International Context

Although nationality[1] is primarily a concept of international scope which ideally should be treated by international law, unfortunately, the laws applied to nationality are not only domestic in nature but conflicting as well; and the problems thus raised are numerous and complicated. The two major classifications of problems that the present international circumstances give rise to are those of statelessness and dual (or multi) nationality. The effect of statelessness is to cut the link according individuals or groups of people benefits of protection from the state which they consider to be theirs (since they identify with no other state); that of dual nationality is to force them to give allegiance to more than one state. At times of national or international crisis, the maltreatment of such individuals or group of people has been without remedy.

For purposes of this article nationality refers to 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 a participation in the functions of the state.[1a] In the world today there are several ways of acquiring nationality, but they can be grouped into two broad classes — birth and naturalization. The two basic approaches to determining nationality by birth are *jus soli* and *jus sanguinis*. By the first, a child born in a given state "A", becomes a national of state "A", irrespective of the nationality of his parents. Since it is the birthplace of the child and not the nationality of his parents that matters, a child born to nationals of state "A" residing abroad does not acquire the nationality of state "A", whereas a child born in state "A" of either national or foreign parents becomes a national of state "A". Under *jus sanguinis*, a child acquires the nationality of his parents, irrespective of the birthplace. Thus a child born to parents of state "B" nationality, becomes a national of state "B" whether born in state "A" or "B".

It is not difficult to imagine the conflict which follows a meeting of the pure forms of these two principles. A child born to parents of state "A" nationality, residing in state "B" acquires the nationality of neither state "A" nor "B" and therefore becomes stateless; a child born to parents of state "B" nationality, residing in state "A" acquires the nationalities of both states "A" and "B". Many states have systems of nationality law that compromise the two principles, with one or the other predominating, whereas others adhere to one or the other as the exclusive

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1. The term "nationality" will be used throughout, although the term "citizenship" will be employed in the latter part of the article to refer to the Eritrean local status as distinguished from federal nationality. Note that the Revised Constitution refers to Ethiopian nationals as "subjects", a term common in monarchical form of governments.

1a. The state is here defined as a geographic portion of the earth's surface having a people and an independent system of law.

determining factor for their nationality laws. For instance, Argentina is classified as a *jus soli* state whereas Germany adheres to the nationality of the parents as the determining factor. The United States of America is primarily a birthplace state whereas France, in an effort to obtain as many nationals as possible, has employed both principles extensively.[2] The complexity of the international picture of nationality is furthered by recent legislation concerning married women and the principle of the equality of sexes.[2a] Moreover the political events of this century have rendered untold numbers of people stateless; many thousands of emigrants have lost their nationality as a result of ruthless legislation of expatriation against alleged political enemies.[3]

Conflicts arising out of dual nationality have been as cruel as those arising from statelessness. Adoption and legitimitacy of children have given rise to dual nationality. Moreover, some systems have permitted their nationals to acquire a foreign nationality without losing their original nationality. A major dual nationality problem arose before and during World War II, when children born of immigrant parents in the United States of America, visiting the home country of their parents, were conscripted into the military service in those countries as nationals due to their parents' nationality.[4]

Although international conventions, treaties and protocols have attempted to solve some of the questions, the results have not been overly reassuring. Probably the most important conference so far has been the 1930 Hague Convention on Conflict of Nationality Laws, which, in an effort to avoid both statelessness and dual nationality, tried to enforce as uniform laws as possible. Although uniform solutions to the many problems in this field could not be found, the exchange of opinions and the agreement that was reached on some points was a step forward. Moreover, the Convention became the foundation for the nationality laws of some states including the 1930 nationality law of Ethiopia.

**Ethiopian Nationality Law**

The Revised Constitution of 1955 states that "the law shall determine the conditions of acquisition and loss of Ethiopian nationality and Ethiopian citizenship."[5] The law in force on the subject is the Ethiopian Nationality Law dated Hamle 15, 1922 (Eth. Cal.), as amended on Meskerem 25, 1926 (Eth. Cal.).[6] This law, published in *Berhanena Selam*,[7] is one of the oldest laws existing in the Ethiopian legal system. Except for the incorporation of a few interpretations from the modern codes, it remains intact; and since neither the Civil Code of 1960 nor any other

2. See R.A. Sedler, Nationality Domicile and the Personal Law in Ethiopia, *Journal of Ethiopian Law* (1965), vol. II, p. 162 and the discussion based on Oppenheim, *International Law* (8th ed. vol. I), p. 651.

2a. E. Rabel, *The Conflict of Laws*, vol. I (1958), p. 131-32.

3. *Ibid.*

4. Sedler, cited above at note 2.

5. Art. 39, Revised Constitution of Ethiopia.

6. The complete text of both laws are reproduced as appendicxes A and B. The Gregorian Calendar will be used throughout, unless otherwise indicated by "Eth. Cal."

7. *Berhanena Selam* was the official goverument reporter in which important legislation appeared prior to the establishment of the *Negarit Gazeta* in 1942.

part of the *Negarit Gazeta* expressly or impliedly repealed or amended it, it remains with full force and effect.

### (a) Birth Nationality

The Nationality Law, stating the general *jus sanguinis* principle, reads, "Any person born in Ethiopia or abroad, whose father or mother is Ethiopian, is an Ethiopian subject."[8] A child born to parents with Ethiopian nationality acquires Ethiopian nationality irrespective of the birthplace. But the general principle is somewhat qualified by subsequent articles. A subsequent general principle states that, "Every child born in a lawful mixed marriage . . . follows the nationality of his father."[9] Thus, a child born to a lawfully married Ethiopian father and a mother with foreign nationality, acquires Ethiopian nationality;[10] if it is the mother that is of Ethiopian nationality and the father has foreign nationality, the child follows his father's nationality. A child born outside lawful marriage with one Ethiopian parent acquires Ethiopian nationality, and even where the father of foreign nationality subsequently, lawfully marries the Ethiopian mother, the law states that, "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 inherent rights. Otherwise the child preserves his Ethiopian nationality."[11] A child retains his Ethiopian nationality when adopted by a person (or persons) with foreign nationality, and adoption "does not imply any change of the adopted child's original nationality."[12]

Thus Ethiopia tends to avoid both statelessness and dual nationality in following the *jus sanguinis* principle rather strictly, taking the nationality of the parents as the exclusive determining factor. No provision is made in the law for any other child born in Ethiopia to acquire Ethiopian nationality except through naturalization.

### (b) Nationality by Naturalization of Individual

As already mentioned, the alternative method of acquiring nationality is through naturalization, by which a person is granted the nationality of a state after fulfilling certain requirements. No state, of course, allows a person to be both an alien and a national at a given point in time. Those states permitting their nationals to acquire a second nationality still consider them primarily as their nationals but have given them leave to acquire a second nationality so that they may not lose certain benefits such as the right to work or own property in another state.

Ordinarily, there are several requirements which a person has to fulfill before being granted nationality, and although these requirements may vary in degree, they

8. Art. 1, Ethiopian Nationality Law.
9. Art. 6, Ethiopian Nationality Law.
10. Note that under Art. 6 such a child may have to prove that he is not vested with the original nationality of his mother, if requested to do so.
11. Art. 8, Ethiopian Nationality Law. Note that there is no concept of illegitimacy in the Ethiopian Law and therefore legitimation does not exist. Once filiation is established, it is immaterial whether that parent is married to the other parent. Cf. Civil Code of Ethiopia Book II, Title IV, Chapter 10.
12. Art. 10, Ethiopian Nationality Law. Conversely, a minor adopted by an Ethiopian subject does not thereby acquire Ethiopian nationality.

tend to be generally of the same sort. Under the Ethiopian law, these requirements are listed as follows:

"A foreign person who:
(a) has attained the age of majority according to the law of his country;
(b) has at least lived for five years in Ethiopia;
(c) can earn his living, to provide for himself and his family;
(d) can read and write the Amharic language; and
(e) produces evidence to the effect that he has not been previously convicted for crime or sin;
can become an Ethiopian subject."[13]

It has been mistakenly stated that the Ethiopian Nationality Law requires the foreign person to be "of full age according to the regulations of the national law" from which has followed that he must therefore "be 18 under Article 198 of the Civil Code."[14] The reason for requiring majority under the law of his country is simple and clear. Ethiopia wants to avoid being accused of having contracted with a person of a foreign state that may consider him too young to make such a decision. Since practically all legal systems distinguish between minors and adults and since the difference in age limit is generally not much from one system to the other, it is unlikely that this requirement would give rise to problematic cases.[15] The important thing to note is that under Ethiopian law, minority is a bar and only an adult may become an Ethiopian subject by naturalization. The justification for this requirement lies in the fact that naturalization is a juridical voluntary act with important legal and practical consequences.

As to the five-year residence requirement, it is officially understood that residence presupposes legal entry and compliance with all formalities and regulations of the immigration law of the country. Thus a naturalization application may be denied for violation of the aforesaid law. Moreover, the five-year period must be both continuous and immediately preceding the application. The obvious policy reasons for the residence requirement are to enable government authorities to test the character and suitability of the applicant on the one hand, and to enable the individual concerned to become acclimatized to the country, its people and their way of living, on the other. In short, it is to give time to both state and individual to test whether the relationship would be desirable.

The state requires the individual concerned to be able to earn his living, to provide for himself and for his family (if any), so that naturalization will not

13. Art. 12, Ethiopian Nationality Law. In some legal systems, an alternative requirement for (b) is for the person to serve under their governments in foreign soil for the stated period of time. Cf. *The India Code* (1956), vol. II, Citizenship Act of 1955.

14. Sedler, cited above at note 2, p. 166. Although the provision seems ambiguous at first sight, when one considers that the law expressly mentions Ethiopia whenever it refers to Ethiopian law and does not do so here "Indageru" does not mean "according to the regulations of the national law" but in this particular instance "according to the law of *his* country" (emphasis added). The authority referred to was working with a faulty translation and the obvious disadvantage of not being able to check it.

15. One possible case that may raise problems is that of the stateless person. Presumably in this case Ethiopia's age of majority being as relevatnt as any other system's Art. 198 of the Civil Code would apply.

place an extra burden on the society and the state. The language proficiency is presumably ascertained by examinations of a uniform standard. The reason underlying the Amharic requirement is that a workable knowledge of the official language is essential not, only for the feeling of unity and oneness with the society, but also for a better understanding of the society and for a life of usefulness and co-operation.

The last requirement is the production of evidence showing that he has not been previously convicted for "crime or sin". This provision should be read in the light of the Ethiopian Penal Code of 1957 and interpreted to mean "*malum per se*" crimes—acts and omissions that have traditionally been recognised to be wrong and made generally punishable. This interpretation does not include petty offences under the Code of Petty Offences, for it would seem undesirable and unreasonable to deny nationality purely on the basis of petty offence. The state wants to avoid building up a society of criminals, thus the criminal impunity requirement should be directed only towards crime and not petty offence. The evidence must, of course, be produced in the form of document signed by proper authorities. Since the applicant would have resided in Ethiopia for a minimum of five years, under usual circumstances the production of documentary evidence from the proper Ethiopian authorities would suffice. Usually the certificate of impunity is obtained from the Registrar of the High Court. This means tha crimes committed and punishments served in other lands prior to taking residence in Ethiopian are usually not taken into consideration. This is a sound approach to the extent his five years or more stay in this country shows that he would be an acceptable citizen despite his previous commission of crime elsewhere.

After studying the practical application of these five naturalization requirements, Marein, a one-time Attorney General and Legal Advisor to the Ethiopian Government states in his famous book that, "many foreigners have lately been granted Ethiopian citizenship without possessing any of the qualifications laid down in the said law" from which he concludes that, "the said law has either fallen into desuetude or that it was never properly promulgated."[16] In fact, the law has neither fallen into desuetude or lacked proper promulgation: it has simply been amended by the Nationality Law Amendment Proclamation of Meskerem 25, 1926 (Eth. Cal.) to allow the Ethiopian Government to waive certain requirements.

The amendment reads in part, "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." Under Article 12(b), the applicant must have resided in the country for a minimum of five years. Since one of the main reasons for the five-year residence requirement is to allow the state to test the suitability of such a relationship, once the individual concerned has inspired confidence, this policy consideration has lost its meaning. Furthermore, political, social or economic interests of the state may justify dispensing with the five year residence. The Amharic language requirement of Article 12 may also be waived. Where, for instance, a person has lived in Ethiopia for many years, aided and cooperated in the national effort

16. N. Marein, *The Ethiopian Empire Federation and Laws* (1954), p. 62. Note that neither is the Proclamation Amending the Nationality Law mentioned in Sedler, cited above at note 2.

for development, thereby showing his feelings for the society and his life of usefulness, Ethiopian nationality should not be denied him simply because it may be too late for him to learn Amharic (especially where he has lost his original nationality by residing here). Again, special social, economic or political interests of the state might deserve consideration.

Article 14 of the Nationality Law establishes a special commission comprising the Ministers of Interior and Foreign Affairs and one other government official. The commission is given the duty of examining the application together with the identifying papers and a certificate of impunity submitted by the applicant to the Ministry of Foreign Affairs. It must be pointed out that the granting or refusal of such an application is within the absolute discretion of the commission. which must hear the applicant in person. If granted, naturalization is conferred after the person has sworn an oath of allegiance to the State before the commission.

Unlike some other systems, in Ethiopia naturalization is a purely administrative proceeding.[17] The decision reached by the commission is final and no legal right of appeal lies from it.[18] Moreover, the opportunity for a foreigner to become an Ethiopian subject is a mere matter of grace, favour or privilege extended to him by the state. Nonetheless, in view of the constitutional requirements of equal protection of the law and the acquisition and loss of Ethiopian nationality to be determined by the law,[19] the naturalization law and practice should be construed and enforced with uniformity.

**Naturalization of Family**

It is surprising to note that the wife of a naturalized person does not automatically become an Ethiopian subject by the act of her husband; she is required to apply for it personally.[20] The law is silent as to the status of minor children of the naturalized person, but one might anologize their position to that of the wife and conclude that they would have to apply for it personally when they reach adulthood. Although it is theoretically possible for the commission to grant naturalization to some member of a family and deny it to another, it is improbable since the Ethiopian Nationality Law is designed to avoid both dual nationality and statelessness, and ought not create unnecessary complications to the family involved. The effects of the husband-father's acquisition of Ethiopian nationality on the members of the family is an important factor for consideration and the family should generally be considered as a unit,[21] although there would have to be separate applications.

If an Ethiopian subject is subsequently lawfully married to a woman with foreign nationality, Article 2 of the Nationality Law confers Ethiopian nationality

17. Various systems differ in their approach. In the United States of America, for instance, naturalization is a judicial proceeding. Cf. *Corpus Juris Secundum* (1936), vol. III, p. 844.

18. This does not preclude the Emperor from using his prerogative to grant nationality. See *infra*.

19. Arts. 38 and 39, Revised Constitution of Ethiopia.

20. Art. 16, Ethiopian Nationality Law. *A fortiori*, neither would the husband of a naturalized woman automatically become an Ethiopian subject by the act of his wife. (Cf. Arts. 3 and 4, Ethiopian Nationality Law).

21. Note that the Revised Constitution takes a deep interest in the welfare of the family, a thing unknown in many constitutions. Art. 48 reads, "the Ethiopian family . . . is under the special protection of the law."

on her. Since the provision does not qualify the Ethiopian subject, the term includes both subjects by birth and through naturalization. The Nationality Law[21a] defines lawful marriage in terms of where the marriage is contracted and which party is the Ethiopian subject. But since the Civil Code has a different and expanded concept of lawful marriage, it ought to be assumed that the Civil Code supersedes the Nationality Law in this respect, since the Civil Code is the latest manifest intention of the Ethiopian Law-maker.[22]

A foreign-nationality woman legally marrying an Ethiopian subject is automatically entitled to become an Ethiopian national as provided for in Article 2. This Article however might raise the problem of dual nationality if understood to be self-executing, that is forcing, so to say, the woman in question to acquire Ethiopian nationality in addition (if the woman wants to retain her other nationality and is allowed to do so by the other country's nationality law) to her other nationality. Considering the reference in Article 6 to the "original nationality of his mother" the conclusion that Article 2 is self-executing, whether or not she still retains her other nationality, becomes pretty difficult to rebut. It has been stated that such a woman "might have dual nationality ... still, it is desirable from Ethiopia's standpoint that a married woman have the same nationality as her husband."[23] No reasons are stated why it should be more desirable for the woman to have the same nationality as her husband's and have dual nationality, than to have different nationality from her husband's but have no problem with dual nationality (like the Ethiopian woman who according to Article 4 would retain her Ethiopian nationality if her marrying a man with foreign nationality did not confer upon her the foreign nationality). The dual nationality problem would have been easily solved by conditioning the conference of Ethiopian nationality upon the loss of the other (as is done under Article 4).

An Ethiopian woman who contracts a lawful marriage with a man of foreign nationality, loses her Ethiopian nationality only if she acquires her husbands' nationality. Again one can note the effort in the Nationality Law to avoid both statelessness and dual nationality. Even if she acquires another nationality, however, the law provides that all matters arising out of her immovable property shall be governed by the Ethiopian law of property. The Civil Code forbids foreigners to own immovable property situated in Ethiopia except in accordance with Imperial Order. Thus it seems that an Ethiopian woman who through marriage acquires foreign nationality thereby losing Ethiopian nationality, would have to dispose of the immovable property she owns in Ethiopia within six months unless she succeeds to retain ownership through an Imperial Order.[24]

**Nationality by Imperial Prerogative**

Prior to the 1930 Nationality Law, the power to admit foreigners as Ethiopian subjects seems to have belonged exclusively to the Imperial prerogative, exercised with full discretion by the monarch.

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21a. Arts 3 and 5.

22. For a systematic discussion of Ethiopian marriage law refer to William Buhagiar, Marriage under the Civil Code of Ethiopia, *Joural of Ethiopian Law* (1964), vol. I, pp. 73-99.

23. Sedler, cited above at note 2, p. 165, footnote 23.

24. Arts. 390-391, Civil Code of Ethiopia.

Such power is not without parallel abroad. The British monarch had the absolute discretion to grant letters of denization. According to authoritative British sources, the grant could be temporary or conditional and could confer all or a portion of the rights of a natural-born subject except those specifically excluded by law. The petition for a letter of denization was required to set out the circumstances which made it impossible or impractical for him to comply with conditions required by statute for a certificate of naturalization to be granted; however, the only condition precedent to the grant seems to have been that of taking the oath of allegiance.[25]

In Ethiopia the grant of nationality was considered to be one of the highest honours that could be given to a foreigner. Ethiopian monarchs conferred this honour sparingly, usually as a reward for outstanding service rendered to the nation.

The Revised Constitution grants everyone in the Empire the right to present petitions to the Emperor.[26] It can be argued that there is nothing to prevent the Emperor, as sovereign and head of state, to grant Ethiopian nationality to people who have been denied by the three-man commission. It would be analogous to the power of the Emperor to grant pardon and amnesty after the courts of law have given their final judgment;[27] there is stronger reason in the nationality case since the commission's opinion is final and non-appealable to the courts. In practice, foreigners denied Ethiopian nationality by the three-man commission have on occasion been granted it on petition to the Emperor.

**Loss of Nationality**

An Ethiopian subject may lose his nationality only through acquiring another nationality.[28] Unlike some other systems the Ethiopian Nationality Law does not provide for loss of nationality as a punishment for engaging in unlawful conduct.[29] Nor does it distinguish between subjects by birth and by naturalization in respect to loss of nationality. Once an individual acquires Ethiopian nationality he retains it until he voluntarily gives it up by taking on another one. There are, of course, some questions which the Nationality Law does not expressly answer. For instance, does a woman naturalized through marriage to an Ethiopian subject, retain her Ethiopian nationality after the dissolution of the marriage? Or, if the husband loses his Ethiopian nationality, would his naturalized wife still retain Ethiopian nationality? Provided another nationality is not acquired, presumably the answer would be positive in both cases.

**Readmission to Nationality**

The last two provisions[30] of the Ethiopian Nationality Law deal with the readmission of an individual who had been an Ethiopian subject prior to losing it

25. Aliens and Nationality, *Halsbury's Statutes of England* (1952, 3rd Ed.), vol. I, p. 552.
26. Art. 63, Revised Constitution of Ethiopia.
27. Art. 35, Revised Constitution of Ethiopia.
28. Art. 11, Ethiopian Nationality Law.
29. *Cf.* Sedler, cited above at note 2, pp. 166-67, for French and American approach to loss of nationality.
30. Arts. 17 and 18, Ethiopian Nationality Law.

by acquiring another nationality. Such a person may obtain the benefit of Ethiopian nationality provided he returns to reside in Ethiopia and applies to become an Ethiopian subject.

From the language of the law, it is not clear whether readmission is a right or a privilege. To say that it is a right, assumes the possibility of judicial enforcement.[31] Since there is no express provision for this procedure, the answer will have to await future clarification.

Where Ethiopian nationality is reacquired, it seems from the context of the law that the individual retains his original nationality category. Thus someone who previously was an Ethiopian subject by birth, upon readmission is considered an Ethiopian subject by birth and not by naturalization. This is important to consider because of the distinction that exists between th e two.

**Distinction Between Naturalization and Nationality by Birth**

Once a person is naturalized, he is considered an Ethiopian subject, and as such most rights and duties of an Ethiopian national by birth are conferred upon him. Nontheless, some legal distinctions exist between subjects by birth and through naturalization. These distinction arise only in matters that can be conveniently classified as political rights, and that are expressly provided for in the Revised Constitution.

The most fundamental of these is the right to vote, which is limited by the Revised Constitution to those who acquired Ethiopian nationality by *birth*.[32] The policy reasons behind this provision are not clear. It is not strongly persuasive to say that a naturalized subject may not be acquainted enough with the society to make a reasoned and intelligent decision as to who and what programmes should be supported to reach Parliament, because that is precisely what the five-year minimum residence requirement is intended for — to acquaint the individual with the society and vice-versa.

From the right to vote follows the right to be elected, and again only subjects *by birth* are eligible to run for the Chamber of Deputies.[33] Moreover, a person may be appointed to be senator only if he is a subject *by birth*.[34] It is obvious then that naturalized subjects are carefully excluded from having any say in the law-making of their adopted country.

One last distinction is the denial of naturalized subjects to be appointed as ministers of the Imperial Ethiopian Government. The ministerial exclusion affects more than the naturalized subject because the Revised Constitution requires not only that the individual concerned be an Ethiopian subject by birth, but also that his parents be Ethiopian subjects at the time of his birth.[35] Thus an Ethiopian subject

31. It is interesting to note that the Eritrean Citizenship (Amendment) Act of 1954 provided for an appeal which could be instituted in the Eritrean Supreme Court against the order of the Eritrean Secretary for the Interior, by a person who, having satisfied the requirements, was not readmitted into Eritrean citizenship.
32. Art. 95, Revised Constitution of Ethiopia.
33. Art. 96, Revised Constitution of Ethiopia.
34. Art. 103, Revised Constitution of Ethiopia.
35. Art. 67, Revised Constitution of Ethiopia.

by birth, whose parents were not both Ethiopian subjects at the time of his birth, would be excluded from being appointed as Minister. This group includes the child born to an unmarried Ethiopian mother and a man with foreign nationality against whom paternity is established. But would not include the child born in a lawful marriage, where the mother had originally another nationality, if as noted *supra*, the law not only entitles but automatically confers Ethiopian nationality upon her.

Although important, these are the only distinctions that separate Ethiopian subjects by birth and by naturalization. Otherwise the Revised Constitution provides that "there shall be no discrimination among Ethiopian subjects with respect to the enjoyment of all civil rights."[36]

**The Eritrean Situation**

At this point we may consider the status of Eritrean citizens under the Federation. The issues raised by the Eritrean situation are as interesting as they are complicated. It is helpful to note that Eritrea has had to pass throuth several legal stages in a relatively short period: from an Italian Colony towards he end of last century, to a Territory under British caretaker administration in 1941, to an autonomous unit federated under the Ethiopian Imperial Crown in 1952, and finally to its present status as part of a unified Empire in 1962.[37] Of the several legal stages, it is the Federation and its aftermath that are of direct interest when dealing with the question of nationality.

The Imperial Order[38] issued for the federal incorporation of Eritrea provided that, "all inhabitants of the territory of Eritrea except persons possessing foreign nationality are hereby declared to be subjects of Our Empire and Ethiopian nationals." Moreover, "all inhabitants born in the territory of Eritrea and having at least one indigenous parent or grandparent" were also declared to be Ethiopian subjects. If such persons were already in possession of foreign nationality, they were "permitted to renounce within six months of the date thereof [Order issued on September 11, 1952] the Ethiopian nationality granted above and retain such foreign nationality."[39] Thus, all inhabitants of Eritrea who had at least one indigenous grandparent and did not actively renounce Ethiopian nationality (by declaring that they intended to retain their foreign nationality) automatically became Ethiopian subjects.

As was previously noted, the 1930 Ethiopian Nationality Law follows the *jus sanguinis* principle strictly and exclusively, but by this order, Ethiopia was forced to deviate from that priciple and allow "*all inhabitants* of the territory of Eritrea" who did not possess foreign nationality to become Ethiopian subjects. Furthermore, those of foreign nationality who had at least one indigenous grandparent had the burden of declaring their foreign nationality within a six-month period to be able to retain it. The order ensured, however, that no person in Eritrea was left stateless.

36. Art. 38, Revised Constitution of Ethiopia.

37. For further facts on Eritrean legal status refer to the case comment by the same author on International Law: State Succession, *Journal of Ethiopian Law* (1968), vol. V, p. 201.

38. Imperial Order No. 6 of 1952, an Order to Provide for the Federal Incorporation and Inclusion of the territory of Eritrea within Our Empire, *Negarit Gazeta*, year 12, no. 1.

39. The full text of Art. 9, Imperial Order No. 6 of 1952 is attached as appendix C.

This order, having established Ethiopian nationality to the inhabitants of Eritrea, does not qualify it and therefore poses the interesting problem of distinguishing between birth and naturalization nationals. This question is important because of the legal and practical results that follow the classification. The portions of the order we are dealing with here are taken *verbatim* from the Federal Act, and the Eritrean Constitution which accompanied it, made no distinction between birth and naturalization citizens. All Eritrean citizens had exactly the same rights and duties in front of the law. They had the same voting rights as well as rights to public office. In light of this background information, it can be strongly argued that the order, by excluding classifications, meant to create no distinction among Eritreans. *All* Eritreans who acquired Ethiopian nationality through the order had the same rights and duties and since they could not all be denied voting and other such rights, they all had to be considered Ethiopian nationals by birth. Federation occurred prior to the promulgation ot the Revised Constitution and therefore does not raise constitutional issues. In any case, since it all came about through the Federal Act and since "international treaties, conventions and obligations" to which Ethiopia is a party, together with the Revised Constitution, constitute the supreme law of the Empire,[40] no constitutional problems arise.

One group to be specially considered are those who became naturalized Eritrean citizens *after* Federation. The Eritrean Citizenship Act of 1953, establishing the conditions for the acquisition and loss of Eritrean citizenship, made the possession of Federal nationality a condition precedent to the acquisition of Eritrean citizenship. The Act distinguished three methods of acquisition of Eritrean citizenship, namely, by birth, by grant and by marriage. A person was considered a citizen by birth if he was born in Eritrea prior to September 15, 1952 had at least one grandparent indigenous to Eritrea, and had not renounced Federal nationality according to Article 6 of the Federal Act. If born on or after September 15, 1952, he was required to be born of parents who had acquired Eritrean citizenship through the Federal Act. If born outside of Eritrea, the requirements were that both of his parents be Eritrean citizens at the time of his birth and that he reside in Eritrea and apply for it not later than two years after his entry or his twenty-first birthday. After the dissolution of the Federation, such a person would also be considered an Ethiopian subject by birth and would therefore be entitled to all rights and duties of Ethiopian subjects by birth.

The person who acquired citizenship by grant or marriage, however, stands in a different light. Since such a person is required to possess federal nationalty as a "condition precedent" to acquiring Eritrean citizenship, he must be a naturalized Ethiopian subject. Although in Eritrea (and under the Federation) he would enjoy all the rights and duties of all other Eritrean citizens, after unification he would enjoy rights and duties strictly as a naturalized subject. The Eritrean situation raises a few issues because in the acquisition of nationality and even more markedly in the enjoyment of rights the Ethiopian and Eritrean approaches diverge considerably.

**Concluding Remarks**

To summarise, there are two basic approaches in determining nationality by birth and Ethiopia follows the *jus sanguinis* principle exclusively. On the whole,

40. Art. 122, Revised Constitution of Ethiopia.

Ethiopia's policy of trying to avoid both statelessness and dual nationality is quite sound. Nonetheless, the 1930 Nationality Law requires amending to take into account provisions of the modern codes.

Some of its basic principles may also need modification. Adoption, for instance, does not affect the child's nationality under Ethiopian law. Thus, an Ethiopian child adopted by a person with foreign nationality, remains an Ethiopian subject, even though under the national law of the adopting parent the child may be considered to have acquired the adopting parent's nationality. Conversely, a minor of foreign nationality does not acquire Ethiopian nationality though he may lose his foreign nationality on being adopted by an Ethiopian. Since both dual nationality and statelessness may ensue by the application of the Ethiopian rule on adoption, it would be in conformity with the general policy and the liberal readmission rule to modify it so that adopted children neither acquire dual nationality nor become stateless. Dual nationality may also follow the automatic conferring of Ethiopian nationality on a foreign-nationality woman contracting marriage with an Ethiopian subject. Moreover, the wife and children not naturalized together with the husband-father, may become stateless by the husband-father's change of nationality.

As to the effects of naturalization, in the United States of America, such a person is put on equal footing with a native-born citizen, both as to rights and obligations, the only exception being that he is not eligible for the presidency and vice-presidency.[41] In the United Kingdom, a person to whom a certificate of naturalization has been granted has essentially the status of a natural born British subject, is entitled to all political and other rights, powers and privileges, and is subject to all obligations, duties and liabilities.[42] Of course, it has not been so in all systems. Sixteenth century Spanish enactments, instigated by the inquisition, made the possession of Christian blood a requirement for the status of full citizenship. In the last century, there was a tendency in France to distinguish between *la grande naturalisation* which conferred the legal status of *citoyen* and *la petite naturalisation* which granted citizenship without the right to vote.[43]

Classification of citizens was taken to its extreme under Hitler by the *Nuremberg laws*, which established a gradation among those who were simple nationals of the *Reich* and those who possessed the racial qualities to acquire the privileged status of full citizens of the *Reich*. The former were void not only of political rights but of the fundamental human rights to life, liberty and property. We have learned in this century that the distinction between first and second-class citizens in a state may be undesirable. Any distinctions permitted now may be precedents for far-reaching, destructive discrimination, subjecting the security of the less-fortunte class to the political temper of those in power. Particularly during periods of national and international unrest, distrust of the naturalized citizen may lead to an attempted abridgment of his freedom.[44]

41. United States Constitution: Art. II Section 1; Amendment XII; and Nationality Act of 1940.
42. Aliens, *Halsbury's Statutes of England* (1948, 2nd Ed.), vol. I, p. 672.
43. M. Koessler, Subject Citizen National and Permanent Allegiance, *Yale Law Journal* (1946-47), vol. 56, p. 76.
44. *Schneiderman v. U. S. A.*, United States Supreme Court Reports (1942), vol. 320, p. 118.

In Ethiopia, naturalization confers all the rights and duties of any other subject, except for certain political rights. These can be conveniently classified as voting and office-holding rights. But since under the Revised Constitution, the right and duty to appoint Ministers and Senators is reserved to the Emperor, and since no individual would as of right be entitled to these appointments, it is difficult to understand why the requirement of being a subject by birth was thought to be so important as to need express stating in the Revised Constitution. It is also difficult to understand why such a fundamental right in any democratic system of government as the voting right should be denied to a segment of the citizenry.

As regards the international problems in this field, a realistically anticipated future world, it seems, will not be able to do away with the legal concept of nationality. Nonetheless, it may be expected that international law will assume supremacy determining acquisition and loss of nationality, depriving domestic laws of their present controlling importance. It is also feasible that *domicile* rather than birthplace or parentage will in the future be the determining factor for acquisition and loss of nationality.[45]

45. Koessler, cited above at note 43.

## APPENDIX A

## PROCLAMATION PROMULGATING THE ETHIOPIAN NATIONALITY LAW*

**Conquering Lion of the Tribe of Judah**

**Haile Sellassie I**

**Elect of God, Emperor of Ethiopia**

We have promulgated the following law for any foreigner who deserves to become an Ethiopian subject.

**Nationality of Children Born of Ethiopian Subjects in Ethiopia or abroad.**

1) Any person born in Ethiopia or abroad whose father or mother is Ethiopian, is an Ethiopian subject.

**Nationality in case of Marriage between Ethiopians and Foreigners.**

2) A lawful marriage of an Ethiopian subject with a foreign woman confers the Ethiopian nationality upon her.

3) It shall be considered as lawful marriage under such circumstances, where:

   a) an Ethiopian subject marries a foreign woman in accordance with the religious or customary civil marriage practiced in Ethiopia, and the marriage takes place in Ethiopia;

   b) an Ethiopian subject marries a foreign woman in a foreign country and according to that country's marriage practice.

4) A lawful marriage 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 cases where 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.

5) It shall be considered as lawful marriage under such circumstances, where:

   a) a marriage is contracted in Ethiopia of an Ethiopian woman with a foreigner before the consular authorities of the husband;

   b) a marriage is contracted abroad of an Ethiopian woman with a foreigner in accordance with the legal practice of the national law of the husband.

**Nationality of Children of a Marriage between Ethiopian Subjects and Foreigners.**

6) Every child born in a lawful mixed marriage, as provided for in the preceding articles, follows the nationality of his father.

A child born of an Ethiopian father and a foreign mother united by the bonds of a lawful marriage should, however, prove before the Ethiopian authorities that he does not belong to the original nationality of his mother, if requested to do so.

7) A child born in a lawful marriage of an Ethiopian mother with a foreigner is always able to recover the benefit of Ethiopian nationality, provided he lives in Ethiopia and proves he is completely divested of the paternal nationality.

**Nationality of Children Legitimated by lawful Marriage between Subjects and Foreigners.**

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* *Translated by the author from Balambaras Mahteme Sellassie Gebre Meskel,* Zekre Neger, *pp.* 899-902.

8) 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.

**Nationality of Children Legitimated without Subsequent Marriage of Foreign Father with Mother being Ethiopian Subject.**

9) The legitimation, without subsequent lawful marriage between the foreign father and the Ethiopian mother, of the child issued from their relation outside marriage deprives the child of Ethiopian nationality only if the foreign father confers upon the child thus legitimated the nationality of the father with all inhering rights.

**Nationality of Ethiopian Child Adopted by a Foreigner**

10) The adoption of an Ethiopian child by a man or woman of foreign nationality, the adoption being made in accordance with the forms of law of the adopting person, does not imply any change of the adopted child's original nationality.

**Loss of Ethiopian Nationality**

11) They stop being Ethiopian subjects:

a) when a woman of Ethiopian nationality marries a foreigner and adopts her husband's nationality;

b) when an Ethiopian subject changes his nationality and acquires foreign nationality.

**Naturalization**

12) A foreign person who:

a) has attained the age of majority according to the law of his country;

b) has at least lived for five years in Ethiopia;

c) can earn his living, to provide for himself and his family;

d) can read and write the Amharic language;

e) produces evidence to the effect that he has not been previously convicted for crime or sin; can become an Ethiopian subject.

13) Any foreigner wishing to become an Ethiopian subject shall present to the Ministry of Foreign Affairs, his application together with identity papers and a certificate of impunity.

14) A special Government Commission comprising of the Minister of Interior, the Minister of Foreign Affairs and another official of the Government shall examine the application, proceed to necessary inquiries and after having heard the applicant in person approve or refuse the naturalization.

15) The naturalization shall be conferred by Government Notice (Decree) and the new Ethiopian subject shall take an oath of allegiance to the state before the Commission.

16) The naturalization thus conferred does not extend its effects to the legitimate wife of the naturalized man, unless she applies personally for this benefit.

**Re-Admission to Ethiopian Nationality.**

17) Original Ethiopian subjects having acquired a foreign nationality may always obtain the benefit of Ethiopian nationality when they return to reside in the country and apply to the Government for readmission.

18) An Ethiopian woman having lost her Ethiopian nationality through her marriage with a foreigner may resume it after the dissolution of this marriage by reason of divorce, separation or the death of her husband if she returns to reside in Ethiopia and applies to the Ethiopian Government for readmission to her original Ethiopian nationality.

The present law abrogates every law previously promulgated on this subject.

Hamle 15, 1922 (Eth. Cal.)

## APPENDIX B

### PROCLAMATION AMENDING THE NATIONALITY LAW OF HAMLE 15, 1922*

Having considered Article 9 of Our Constitution and Article 12 of the Nationality Law of Hamle 15, 1922 Eth. C., We have promulgated the following;

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.

Meskerem 25, 1926 (Eth. Cal.)

**Translated by the author from Balambaras Mahteme Sellassie Gebre Meskel*, Zekre Neger, p. 902.

## APPENDIX C

### IMPERIAL ORDER No. 6 OF 1952

An Order to provide for the Federal Incorporation and Inclusion of the Territory of Eritrea within Our Empire.

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**Section 9:** All inhabitants of the territory of Eritrea except persons possessing 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 preson 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.