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**Unblocking access to citizenship in the global South:  
Should the process be decentralised?**

Edited by Bronwen Manby and Rainer Bauböck

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## **Abstract**

Why is naturalisation so rare in countries of the global South, and how could access be made easier? More than one third of global migration is into low and middle income countries; three-quarters of the global refugee population is hosted by countries in Africa, Asia, or Latin America and the Caribbean. Yet few migrants and refugees in poor or middle-income countries ever get the opportunity to change their nationality and become citizens of the states where they settle. This working paper compiles contributions to a GLOBALCIT Forum debate launched by Bronwen Manby with a proposal that the problem of lack of access to naturalisation should be addressed by developing local responses rather than national ones. The Forum was co-edited by Bronwen Manby and Rainer Bauböck, and brought responses from fifteen authors considering the viability of the proposal in relation to countries in Africa, Latin America, and South and East Asia. It concludes with reflections from both editors on the critiques of the original proposal.

## **Keywords**

Naturalisation, Africa, Asia, Latin America, Decentralisation

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## Unblocking access to citizenship in China: Is decentralisation even possible?

[Sanzhuan Guo\\*](#)

A very interesting argument was put forward by Bronwen Manby in her kick-off post that ‘the problem of lack of access to citizenship should be addressed by developing local responses rather than national ones’. My first impression is that this would not work in China as it is unheard of that a Chinese local authority could pass such laws and policies. Citizenship/nationality (used interchangeably here) is a national issue and China is a unitary country. However, a second thought comes to mind that such an idea may not be that radical even for China given that each of Hong Kong, Macau and Taiwan has its own nationality or immigration laws and policies.

### *Ius sanguinis* and naturalisation in China

Before the People’s Republic of China (the PRC) passed its *Nationality Law* in 1980, the current law on nationality, China had three other nationality laws: adopted in 1909 in the late Qing Dynasty, in 1912 by the Republic of China (RoC), and in 1929 after the Kuomintang reunited South and North China.

As historians have observed, China was not a nation-state but a ‘Tianxia’ state until it was facing challenges from the West during and after the Opium Wars in the late Qing Dynasty.<sup>1</sup> The long governing idea of membership in China under ‘Tianxia’ was that ‘all territories and all people under heaven should be governed by the son of heaven’ (普天之下，莫非王土；率土之滨，莫非王臣) (Confucius ed., *Book of Songs*,<sup>2</sup> date unknown but between B.C. 1000 and B.C. 700). This Tianxia idea means that a leader who is not necessarily an ethnic Chinese but a ‘son of heaven’ should govern all Chinese under the earth. The Yuan Dynasty (Mongolian) and Qing Dynasty (Manchu) are two examples of non-ethnic-Chinese coming from outside China but adopting Chinese culture and then ruling in China.

In the Qing Dynasty, the principles of ‘indissoluble natural allegiance’ and ‘disability of emigration’ were applied until the forced opening under the *1842 Treaty of Nanjing* after the first Opium War.<sup>3</sup> The *1909 Nationality Law* was passed directly due to the pressure of the Dutch East Indies (currently Indonesia) that were preparing to pass a nationality law adopting the *ius soli* principle for those born in their territory, including those of Chinese ethnicity. China’s *1909 Nationality Law* adopted the *ius sanguinis* approach and such an approach has ever since been the key, if not the only approach, in Chinese nationality law. Under *ius sanguinis*, a person born either in or outside China to a Chinese national is a Chinese national.

The *1929 Nationality Law* (with some amendments) is still applicable in Taiwan. Under the current *1980 Nationality Law* of the PRC, there is no right to nationality based on birth in China except that ‘any person born in China whose parents are stateless or of uncertain nationality but have settled in China has Chinese nationality’ (Article 6). As Ginsburgs has commented, the *1929 Nationality Law* was

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<sup>1</sup> Levenson, J. (1952), ‘Tien-hsia and Kuo, and the “Transvaluation of values”’, *The Far Eastern Quarterly* 11(4): 447-451; Fairbank, J.K. (ed), (1968), *The Chinese World Order*, Harvard University Press.

<sup>2</sup> Waley, A. (1996), *The Book of Songs: The Ancient Chinese Classic of Poetry*, Grove Atlantic.

<sup>3</sup> Chiu, H. (1990), ‘Nationality and International Law in Chinese Perspective’, *Maryland Series in Contemporary Asian Studies* 3.

more generous than the *1980 Nationality Law* in terms of the *ius soli* approach for stateless children as it did not require that ‘parents have settled in China’.<sup>4</sup>

As Manby argues, the other element of ‘the right to a nationality’ – the right to change nationality – is ‘comparatively neglected by the policy and scholarly communities’. Under Article 7 of the PRC’s *1980 Nationality Law*, foreign nationals or stateless persons can apply for naturalisation in China if they fall within one of three scenarios: being a close relative of a Chinese national, settled in China, or in other reasonable situations. It is fair to infer that the right to change nationality is respected in Chinese law as it is theoretically possible to be naturalised in China. Meanwhile, the discretionary application of the law is emphasised by the lack of clarity on what constitutes ‘other reasonable situations’. In practice, naturalisation in China is very difficult. According to the 6th census data in 2010, among 1.33 billion Chinese, there were only 1448 naturalised Chinese nationals.<sup>5</sup> Such low number of naturalisations is directly connected with the low number of permanent residencies granted in China.

According to a report from Lantai Partners, a law firm in Beijing, from 1985 to 2004, a total of about 3000 foreign nationals were granted a right to settle in China but only 50 people got a permanent residency.<sup>6</sup> In 2004, the PRC’s Ministry of Public Security and Ministry of Foreign Affairs jointly passed the *Measures on Permanent Residence of Foreign Nationals in China*, which laid down the rules for foreign nationals to obtain permanent residence in China. Among the total number of 848,500 aliens in China from the period of 2004-2013, 7,356 people have been granted permanent residency, roughly 700 per year.<sup>7</sup>

To attract more foreign talent to China, on 27 February 2020 the PRC’s Ministry of Justice published draft *Regulations on Permanent Residence of Foreign Nationals*<sup>8</sup> to solicit public opinion; the draft Regulations lower the threshold to apply for a permanent residence in China.<sup>9</sup> For example, in the category of employment-related permanent residency, the draft Regulations extended the existing practice for overseas Chinese working in China to foreign nationals without Chinese descent. Any person who has a PhD degree, and has worked in China for three years and lived in China for no less than one year accumulatively (no salary requirement), can apply for a permanent residency in China. In addition, income threshold, taxation records and the number of years of residence requirements are less onerous compared with the previous measures. In the category of ‘Significant Contribution’, ‘Outstanding Achievements’ and ‘Special Demand’, the application procedures are much clearer compared with previous laws. For example, applicants under the category of Outstanding Achievements can apply for permanent residency directly without holding a resident permit for a period of time, which is required under the employment-related permanent residency.

However, the draft Regulations have attracted hot debates and criticisms from the general public through online forums about lowering the threshold. For example, in Weibo the draft Regulations

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<sup>4</sup> Ginsburgs, G. (1982), ‘The 1980 Nationality Law of the People’s Republic of China,’ *The American Journal of Comparative Law* 30(20): 459-498.

<sup>5</sup> ‘Tabulation on the 2010 Population Census of the People’s Republic of China’ (China Statistic Press), I-6, <http://www.stats.gov.cn/tjsj/pcsj/rkpc/6rp/indexch.htm>.

<sup>6</sup> Zhou, H. (2020), ‘Comment on “Regulations on Permanent Residence of Foreign Nationals (Draft for Comment)” (Part 1): Legislative Changes of the System,’ <https://lvdao.sina.com.cn/2020-04-09/doc-iirczymi5297307.shtml>.

<sup>7</sup> Huiyao, W.(ed), (2015), ‘Annual Report on Chinese International Migration’, *Social Science Academic Press*, Beijing, China.

<sup>8</sup> ‘Regulations on Permanent Residence of Foreign Nationals,’ [http://www.moj.gov.cn/news/content/2020-02/27/zlk\\_3242559.html](http://www.moj.gov.cn/news/content/2020-02/27/zlk_3242559.html).

<sup>9</sup> Mallesons, K. & W. (2020), ‘“中国绿卡”风向标已竖起——《外国人永久居留管理条例（征求意见稿）》速览, Labour and Employment, *China Law Insight*.

attracts 5.42 billion readings and almost 4 million comments.<sup>10</sup> Although it appears to me that the draft Regulations may simply standardise the practice which has already existed, the general public seems not to care about that, but worry instead that scarce resources in China might be taken by foreigners and that foreigners might enjoy special treatment such as being exempted from limitations on the right to purchase property and from birth control.

How far the final law might go is yet to be seen. However, one thing is clear: unlike in many countries that have included such possibility in their immigration law, the draft Regulations did not expressly include the possibility for refugees to apply for permanent residence in China. As Lili Song has commented, China has experienced at last four mass influxes of displaced foreigners in the past 20 years, mainly consisting of North Korean escapees and Kokangs and Kachins from Myanmar.<sup>11</sup> Although Article 46 of the *PRC's Law on Exit and Entry Administration* provides that 'foreigners who are recognised as refugees may stay or reside in China', it is not clear on how to obtain a refugee status in China.<sup>12</sup> The number of refugees in China and their visa status (permanent or temporary) are also unknown. I note that Article 19 of the draft Regulations might be used for asylum seekers to apply for permanent residence as it could be argued that refugees fall within the category of 'other reasonable causes'. However, the implementation of law in China could be difficult if the meaning of the law is implicit or requires discretionary interpretation as officials can easily refuse to apply the provision, and therefore Article 19 on 'other reasonable causes' might not be helpful at all.

## **Hong Kong and Macau**

Hong Kong and Macau are two special administrative regions in China. Their governance returned to China in 1997 and 1999 respectively. On 15 May 1996 the Standing Committee of the National People's Congress (SCNPC), the legislative branch of the PRC, passed the *Interpretation on Some Questions concerning the Implementation of 'Nationality Law of the PRC' in Hong Kong Special Administrative Region* (1996 HKSAR Nationality Interpretation), under which the *1980 Nationality Law* applies to Hong Kong and all Hong Kong residents of Chinese descent who were born in China (including Hong Kong) are Chinese nationals.<sup>13</sup> Similarly, in 1998, the SCNPC passed an interpretation on the nationality of people in Macau,<sup>14</sup> which states that the PRC's *1980 Nationality Law* applies to Macau and all people in Macau of Chinese descent shall have Chinese nationality whether or not they also have Portuguese nationality; those who have both Chinese and Portuguese origin should choose one nationality and after the selection the person shall have only a single nationality. In contrast with the nationality selection approach in Macau, people from Hong Kong became Chinese nationals but (if born before the transfer of sovereignty) at the same time may be eligible for a British National (overseas) (BNO) passport, which is only a travel document and not the equivalent of full British citizenship (replacing the British

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<sup>10</sup> Yao, Y. (2020), 'Dialogue with Peking University's WANG Xixin: Super-National Treatment Would Exist No Matter Whether or Not There Is a Permanent Resident Ordinance,' *Caijing Magazine*, <https://mp.weixin.qq.com/s/bL0aXPVSIJvpLV3lSo-CjQ>.

<sup>11</sup> Song, L. (2018), 'China and the International Refugee Protection Regime: Past, Present, and Potentials,' *Refugee Survey Quarterly* 37(2): 139-161.

<sup>12</sup> 'PRC's Law on Exit and Entry Administration,' <http://cs.mfa.gov.cn/zlbg/flfg/crjxg/t1054650.shtml>.

<sup>13</sup> 'Ministry Of Commerce People's Republic Of China.' Interpretation By The Standing Committee Of The National People's Congress On Some Questions Concerning Implementation Of The Nationality Law Of The People's Republic Of China In The Hong Kong Special Administrative Region, 19 May 1996 <http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200211/20021100050297.shtml>.

<sup>14</sup> Law No. 8/1999 - Law about Permanent Resident and Right of Abode in the Macao Special Administrative Region Macau SAR Identification Department, [http://www.dsi.gov.mo/legislativelaw\\_e.jsp](http://www.dsi.gov.mo/legislativelaw_e.jsp).

Dependent Territory Citizen passport).<sup>15</sup> In addition, Hong Kong and Macau were authorised to deal with applications for nationality in their region.

As some commentators have stated, an alternative way to acquire Chinese nationality is through Hong Kong or Macau as these two regions/cities do accept and approve naturalisation regularly and people naturalised in Hong Kong/Macau are Chinese nationals.<sup>16</sup> It seems common that working and living in Hong Kong or Macau for seven years may lead to permanent residency and naturalisation. The Immigration Department of the Hong Kong Government is responsible for issuing a Hong Kong Special Administrative Region Passport and the Identification Department of the Macau Government is in charge of issuing a Macau Special Administrative Region Passport. The 1996 HKSAR Nationality Interpretation and 1998 Macau SAR Nationality Interpretation are Chinese laws, but its interpretation and implementation lie in the enforcement agencies. It has been reported that, from 1997 to 2012, the Hong Kong Administration has approved more than 12,000 people to receive Hong Kong citizenship.<sup>17</sup> Applicants are primarily from Pakistan, Indonesia, India, Vietnam and the Philippines. It is also reported that 73% of non-Chinese applicants in Hong Kong (4,201 passports in total granted from January 2012 to November 2015) received their Hong Kong passports since 2012.<sup>18</sup> Although there is no statistical data on the number of the Macau SAR passports issued to non-Chinese, the sample of cases on the official website of the identification department of Macau demonstrates that the naturalisation process in Macau is more open and easier than in mainland China.<sup>19</sup>

In both regions, therefore, the Chinese government accepts as valid the grant of nationality by naturalisation at a much higher rate than is available in mainland China.

### **Decentralisation to some special provinces or cities in mainland China?**

If we take the Chinese government's acceptance of higher rates of access to Chinese nationality through naturalisation in Hong Kong or Macau, does this legal recognition create a precedent that could be applied to other 'special regions' of China?

There are two separate questions. First, is it possible to expand the decentralisation approach to access to citizenship to other provinces in mainland China? Second, would it increase access to naturalisation if it were decentralised?

If Hong Kong and Macau demonstrate some decentralisation of nationality law from the viewpoint of Beijing, would it be possible to expand this approach to another province or city in the mainland? From the perspectives of history and constitutional law, no other province in mainland China has a legal status similar to Hong Kong and Macau (let us leave Taiwan out of discussion as it triggers other issues). However, it is easier to say 'no' than to think creatively and deeply. What about Shanghai or Hainan? Many new policies on treatment of foreigners anyway originated from Shanghai. Hainan was not even a province until 1988 and has then gained some special policy and treatment from the central government, including becoming one of five special economic zones. What about the other four special economic zones: Shenzhen, Zhuhai, Xiamen and Shantou? Special Economic Zones were a creative idea back 1978 in China and have proven to be a successful way to test new ideas and systems. Then why not special zones in terms of decentralised nationality management? Selecting a city or province to

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<sup>15</sup> Vassiliou, J. 'Briefing: Hong Kong and British National (Overseas) Status.' Free Movement, 7 July 2020, <https://www.freemovement.org.uk/briefing-hong-kong-and-british-national-overseas-status/>.

<sup>16</sup> Hurun Beport (胡润百富), 'Why is Naturalization in China "the World's Most Difficult"?', [https://www.sohu.com/a/195479686\\_247181](https://www.sohu.com/a/195479686_247181).

<sup>17</sup> Ibid.

<sup>18</sup> '73% Of Non-Chinese Applicants in HK Granted Chinese Nationality'. Ejinsight, 12 Jan. 2016, [www.ejinsight.com/eji/article/id/1220192/20160112-73pc-non-chinese-applicants-hk-granted-chinese-nationality](http://www.ejinsight.com/eji/article/id/1220192/20160112-73pc-non-chinese-applicants-hk-granted-chinese-nationality).

<sup>19</sup> 'Nationality Application'. Macau SAR Identification Department, [http://www.dsi.gov.mo/example\\_e.jsp](http://www.dsi.gov.mo/example_e.jsp).



test or try a new policy or idea is a common practice in China, so it is possible to expand the decentralisation idea to mainland China if China's government decides to do so.

The answer to the question whether the decentralisation approach would increase access to naturalisation would depend on what policies we are talking about. If it means local management of the naturalisation application process, that is already the case in China. Under the current procedural requirements, an application for naturalisation in mainland China should be submitted to the local Bureau of Public Security and then the Ministry of Public Security will decide whether to approve the application (see official website of the China Government).<sup>20</sup> The issuing of passports and other matters in relation to exit or entry to China have always been part of the duties of the Bureau of Public Security. The newly established National Immigration Administration is also a bureau under the Ministry of Public Security.<sup>21</sup> This may reflect the perception of naturalisation in China as a security-related issue. The practice in Switzerland discussed by Barbara von Rütte of delegating the approval power of naturalisation to municipal or even provincial level may not look like a good idea as it can increase discrimination. China is a rather homogenous society as regards the vast majority of its population, and therefore it seems to make sense to have a unified process to decide who can or cannot become a Chinese national in order to avoid different practices in different provinces. On the other hand, different practice in different regions, provinces or cities might reflect different needs. For example, it might be justifiable to require an investment of RMB10 million in Shanghai in order for an applicant to obtain a business permanent residency, but not so much in a regional or rural area of a western or central province such as my hometown in Shanxi Province. In Australia where I live and work, a permanent business Subclass 132 visa is subject to different investment requirements from different states (with some minimum threshold across all states) and state nomination is crucial.

In the end, the path to having wider access to Chinese nationality may not lie in a decentralisation process but in promoting first the idea that China should open its doors more widely to foreign or stateless people. The criticisms from the general public of the 2020 draft *Regulations on Permanent Residence of Foreign Nationals* to some extent demonstrate that Chinese society itself might not be ready to embrace the idea of becoming a more migration-friendly country like the USA and Australia. In my opinion, the biggest flaw of the new draft Regulations was that it did not clearly include the situation of refugees and stateless people (such as stateless children born to trafficked North Korean women), which means that these people are very unlikely to obtain permanent residency in China and so it leaves them with extremely limited pathways to Chinese nationality.<sup>22</sup>

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<sup>20</sup> PRC Central People's Government, 'Application for Nationalisation to Chinese Nationality,' [http://www.gov.cn/fuwu/2015-11/17/content\\_5013456.htm](http://www.gov.cn/fuwu/2015-11/17/content_5013456.htm).

<sup>21</sup> National Immigration Administration, 'Basic Profile Information,' <https://www.nia.gov.cn/n741430/n741506/index.html>.

<sup>22</sup> Batha, M. 'China urged to recognise stateless children of trafficked N Koreans.' Reuters, 9 Dec. 2015, <https://news.trust.org/item/20151209175130-j7qa1/>.