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REPORT ON CITIZENSHIP LAW: MALI

AUTHORED BY
HEATHER ALEXANDER

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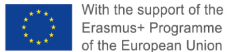
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Report on Citizenship Law

Mali

Heather Alexander

1. Introduction¹

Mali has a relatively liberal nationality² regime, but its turbulent political history has greatly impacted its ability to implement its nationality laws. In particular, historical divisions between what are now northern Mali, central Mali, and southern Mali have led to armed conflict and impacted the ability of Mali to implement its laws and register its citizens.³ Like many countries in the region, Mali suffers from low rates of civil registration, which impacts its ability to apply its laws.⁴

Mali's nationality law is a product of its colonial history. The region now known as Mali was once dominated by large kingdoms with their own systems of belonging based on allegiance. Following a period of instability and fragmentation, the arrival of the French marked a new phase. Like many West African countries, Mali's nationality laws have been influenced by the tension between the norms of Islamic and customary law and those of European and international law.

Mali is a country in West Africa encompassing 1,240,000 square km, with a population of approximately 18.5-19 million people, though gaps in the census make this an approximation. Mali is very diverse, containing over 40 languages and multiple ethnic groups. Over 90% of the population is Muslim. The vast majority of the population live in large cities and in southern Mali.⁵ Mali is a member of the Economic Community of West African States (ECOWAS) and participates in the free movement of people under the Protocol on Free Movement of Persons, Right of Residence and Establishment.

The history of Malian nationality law since the territory was first delineated within its current borders may be divided into four key periods: (1) the period from 1946 and the passage

¹ Special thanks to Michael Offermann, author of « Les risques d'apatridie au Mali et pour les Maliens vivant à l'étranger en application des législations et pratiques relatives à la nationalité, au Mali et dans les pays d'accueil de Maliens » (unpublished UNHCR draft report).

² Note that the term 'nationality' is used throughout in place of 'citizenship' for consistency and clarity; since it is the term used in Mali's domestic legislation. 'Citizenship' is used in relation to the French colonial period, as the term in French law for a person with civil and political rights.

³ All of Mali's laws, guidelines and procedures relating to nationality are contained in the *Journaux officiels du Mali*, available online from the Malian Government at: <http://sgg-mali.ml/1/60/fr/journal-officiel/le-journal-officiel.html?page=0&row=60&lang=fr>.

⁴ B. Manby, 'Nationality, Migration and Statelessness in West Africa: A study for UNHCR and IOM' (June 2015).

⁵ Facts about Mali are taken from the United States Central Intelligence Agency World Fact Book at <https://www.cia.gov/library/publications/the-world-factbook/geos/ml.html> (accessed 12/20/19).

of the new French Constitution creating a *Union française*⁶ to 1962, when the first Malian nationality code came into effect after independence; (2) the period from 1962 to 1995, when the Code was amended as part of democratic reforms;⁷ (3) the period of democracy from 1995 until the enactment of *Le Code des personnes et de la famille* in 2011;⁸ and (4) the period since 2011 marked by increasing conflict and regional tension, lasting until the present day.

Malian nationality law has been heavily influenced by French law, though Islamic legal principles have also played a role. Questions of gender equality, ethnicity, religion and the role of traditional practices in civil affairs have all been factors in the drafting of Mali's nationality laws and their implementation. As well, successive Malian governments have struggled with conflict over the territorial integrity of Mali, and armed conflict has impeded Mali's ability to implement its laws.

Throughout Mali's history, attempts at legal reform have followed conflict between Mali's southern-controlled government and its northern provinces; in particular in relation to the status of the nomadic Tuareg, who speak a dialect of the Berber language and whose territory encompasses parts of Mali, Niger, Algeria and Mauritania.⁹ These conflicts, which are fuelled by ongoing, unresolved questions over Mali's territorial integrity, regional diversity and colonial-era borders, inevitably influenced both the substance of Malian nationality law and how the law has been implemented. Mali's nationality law has also been influenced by ongoing attempts to reconcile western law with Islamic principles and tensions between various schools of Islam.¹⁰

Mali, like many African states, suffers from low rates of birth registration, particularly in rural areas, complicating efforts to document Malian nationality. Ongoing conflict over decentralisation, separatism and the legitimacy of the government in Bamako have greatly inhibited the ability of the Malian government to implement its nationality laws or improve the *état civil* (civil registration system) in rural and northern regions.

This report begins with a summary of the history of Mali's nationality law, alongside important events which have influenced the law. It then analyses Mali's current nationality regime and ends with a summary of current political debates around Malian nationality law and proposed reforms.

⁶ The *Union française* for the first time granted a degree of autonomy and limited citizenship rights to the French overseas territories. Persons under this legal regime were already French nationals, but now received some civil rights. Art. 80 of the Constitution read: 'All 'ressortissants' of the overseas territories have the quality of citizen, on the same basis as French nationals, of the metropole or of the overseas territories. Specific laws will establish the conditions under which they will exercise their rights as citizens.'

⁷ Loi No. 95-070 portant modification code de la nationalité, *Journal Officiel de la République du Mali* (J.O.R.M.) No. 18 (30 Sept. 1995) p. 689-690.

⁸ Loi n° 11-080/AN-RM portant code des personnes et de la famille, Loi No. 11-080/AN-RM, 2 Décembre 2011.

⁹ For a recent overview of the conflict, see United Nations Security Council, Report of the Secretary-General on the situation in Mali 28 December 2018. For more on the political situation in northern Mali, see Pierre Boilley, *Les Touaregs Kel Adagh: Indépendances et révoltes: du français au Mali contemporain* (Karthala 1999), Baz Lecocq, *That Desert is Our Country: Tuareg Rebellions and Competing Nationalisms in Contemporary Mali (1946-1996)* (PhD thesis, Amsterdam Institute for Social Science Research (AISSR) 2002) 82, Jeremy Keenan, 'The Lesser Gods of the Sahara: Social Change and Contested Terrain amongst the Tuareg of Algeria' (Routledge 2004), Jeremy Keenan, 'Resisting Imperialism: Tuareg Threaten US, Chinese and Other Foreign Interests' in Anja Fischer and Ines Kohl 'Tuareg Society within a Globalised World: Saharan Life in Transition' (Tauris 2010) (and other works by Jeremy Keenan), Andre Bourgeot, *Les sociétés touarègues; Nomadisme, identité, résistances* (Karthala 1995).

¹⁰ Andrew Lebovich, 'Sacred Struggles: How Islam shapes politics in Mali' *European Council on Foreign Relations Policy Brief* (1 November 2019).

2. Historical Background

The territory that is now Mali was once home to the ancient kingdoms of Mali and Songhai.¹¹ The northern part of the territory was conquered by the Sultan of Morocco in the late 1500s, beginning a long period of northern African influence in the region under the nominal control of the Sultan. During this period, belonging in West African society was based on allegiance.¹² By the end of the 19th century, however, the Sultan's holdings in the Sahel fractured into small, warring caliphates. During this period of conflict, the French military gained a footing in Timbuktu and other important urban centres. France would continue its military expansion and solidify its holdings in the Sahel over the next few decades. Mali became a French Protectorate in 1890 following the Conference of Berlin,¹³ though Timbuktu did not come under French military control until 1894.¹⁴

2.1 The French colonial period

Under French rule, Mali was known as French Sudan (*Soudan Français*) and was part of French West Africa, *Afrique occidentale française* (AOF). Laws governing French citizenship, including voting rights, were slowly enacted during the colonial period by the French government, with some input from African politicians.¹⁵

Borders between the various AOF colonies were not very important to ordinary people, even though beginning in the 1920s, the French began to impose movement restrictions.¹⁶ This would change during decolonisation, when colonial administrative boundaries became more formalised borders, often dividing existing communities into separate states, a common problem in the region.

Under French law, prior to 1946, most residents of *Soudan Français* who were of African origin were considered to be French 'subjects';¹⁷ whereas those of European descent

¹¹ The Kingdom of Mali existed from approximately 1230 to the 1500s and encompassed a region stretching from the coast of what is now Senegal to the region around Timbuktu, often known as the Niger Bend. The Songhai Empire existed from the 1400s to 1600, when it fell to Moroccan invasion, and, at its height, covered much of the same region. For more information on this period, see Attilio Gaudio, *Le Mali* (Karthala 2nd ed. Paris 1988); Michal Tymowski, *The Origins and Structures of Political Institutions in Pre-Colonial Black Africa; Dynastic Monarchy, Taxes and Tributes, War and Slavery, Kinship and Territory* (Edwin Mellen Press 2009).

¹² Joseph Ki-Zerbo, *À quand l'Afrique : entretien avec René Holenstein*, Éditions de l'Aube (2003) p. 79, cited in 'The Right to Nationality in Africa, African Commission on Human and Peoples Rights (2015) p. 8

¹³ Décret du 18 avril 1890, cited in P. Decheix, « Le Code de La Nationalité Malienne » 697 *Penant* 300 (1963).

¹⁴ Andre Bourgeot, *Les sociétés touarègues : Nomadisme, identité, resistances* (Karthala 1995) 276. T. Benetti, *Entwicklung des Verhältnisses zwischen Tuareg und staatlichen Strukturen in Mali* (University of Vienna 2008) 43.

¹⁵ For example, Senegalese politicians Blaise Diagne and Lamine Guèye and Ivoirian politician Félix Houphouët-Boigny were deeply involved in some of the biggest advances in colonial law governing citizenship rights in French West Africa: the *loi Blaise Diagne*, the *loi Lamine Guèye* of 1946 and the *loi-cadre Defferre* of 1956.

¹⁶ For example, under the decree of 24 April 1928, indigenous persons in the AOF could not leave their colonies without an identity document. Marie Rodet, *Les migrantes ignorées du Haut-Sénégal: 1900-1946*, (Karthala 2009) 196-198. Rodet writes that these laws did not have much effect.

¹⁷ Coquery-Vidrovitch explains that this was in recognition of the French policy of *association* and the creation of a distinction between French subjects and French citizens. Coquery-Vidrovitch 285. Note that the use of the

were French ‘citizens’ (or were recognized with another European nationality). French subjects were governed by the *Code de l’indigénat* (‘code for natives’), codified from 1881, and had few rights. Persons under this system had no political rights and were subjected to forced labour, arbitrary imprisonment and special courts. They also had no rights or obligations under the French Civil Code. The vast majority of people in the AOF lived under this system, with the exception of a small group of so-called *évolués* who became French citizens and were governed under the French Civil Code.¹⁸

In May 1946, all inhabitants of the AOF were declared to be citizens of France.¹⁹ In October, 1946, following the end of World War II, the new French Constitution created the French Union, with expanded rights for persons living in the colonies, their symbolic representation in the French General Assembly, and the repeal of the *Code de l’indigénat*.²⁰ In 1956, the *Loi Cadre Defferre* gave limited voting rights, in theory, to the inhabitants of France’s overseas colonies.²¹

Registration of civil status, the *état civil*, was extremely incomplete in much of the AOF, including *Soudan Français*, particularly in rural areas.²² Events such as births and marriages were recorded only for persons who had adopted the French Civil Code, and the vast majority of marriages were celebrated according to Islamic or customary law. As a result, few persons could prove their place of birth, descent, or residence under French law. While the government pushed to expand voter registration, with separate lists for those with full French civil status and for those without, this was done separately from other forms of civil registration.²³ Voter registration favoured urban, educated persons, reflected in the election to the National Assembly of writer and influential politician Fily Dabo Sissoko and his *Parti Progressiste Soudanais (PSP)* on a traditional, conservative and pro-French platform. Improvements in registration greatly expanded the electorate following the *Loi Cadre*, but voting rates remained lower in rural areas. A broader African electorate brought a new group of more radical African politicians to the National Assembly, like Soudanese socialist Modibo Keïta.²⁴

The French Union failed to provide solutions to the problems of belonging and political representation in the French Empire. In 1958, a new Constitution created the French

word ‘subject’ in French law should not be confused with its use in the term ‘British subject’, which was the highest nationality status under British law.

¹⁸ Bakari Kamian, « La dynamique des intégrations, de la période coloniale à nos jours » in Lydie Moudileno « *Les États-nations face à l’intégration régionale en Afrique de l’Ouest - Le cas du Mali* » (Karthala 2007). This system of laws was different for the *Originaires* of the *quatre communes* of Senegal. For an explanation of nationality in the *quatre communes*, see Catherine Coquery-Vidrovitch, « Nationalité et Citoyenneté en Afrique Occidentale Française : Originaires et Citoyens Dans Le Sénégal Colonial » 42 *Journal of African History* 285 (2001).

¹⁹ *Loi n° 46-940 du 7 mai 1946, tendant à proclamer citoyens tous les ressortissants des territoires d’outre-mer.*

²⁰ Frederick Cooper, *Nationality between Empire and Nation, Remaking France and French Africa 1945-1960* (Princeton UP 2014).

²¹ *Loi Cadre Defferre*, Loi n. 56-619 du 23 juin 1956.

²² Ruth Dickens, *Defining French Citizenship Policy in West Africa* (doctoral thesis, Emory U. 2001).

²³ Some French administrators proposed that voting itself should be used as proof of nationality, but this approach was not employed on the ground. Cooper 155.

²⁴ In the first election of 1946, 800,000 people registered out of an approximate population of 15 million. In 1951, 3 million had registered, and by 1956, 6 million had registered. Following the *Loi Cadre* in 1956, ten million people registered to vote in the AOF, over half the population. Actual voting also increased. In the January 1956 elections for the Assembly National, before the *Loi Cadre*, 3.3 million people in West Africa voted out of the 6 million who were registered. In the first elections after the *Loi Cadre* passed, for territorial assemblies in March 1957, 4.8 million voted out of the ten million who registered. These statistics are taken from Cooper 61-62.

Community, a type of federation, but retaining a single nationality.²⁵ French Sudan joined the Community as part of a federation with Senegal.

Meanwhile, some Tuareg leaders were demanding political independence²⁶ or to be included with Algeria.²⁷ In the end, these attempts at federation, community and northern independence would all fail, and French Sudan became independent in 1960, first as the Federation of Mali (with Senegal), and later the same year as the Republic of Mali.

2.2 Transition to independence

French Sudan declared its independence in 1960 as the *Fédération du Mali*,²⁸ and shortly after became the *République du Mali*.²⁹ Modibo Keita was elected the first president on a socialist platform. As expert Ruth Donner notes, nationality was not transferred by treaty provisions and thus followed the transitional laws enacted by Mali and general principles of law.³⁰

In this context, Mali's new government enacted transitional provisions in order to establish Mali's nationals.³¹ As an initial measure, a transitional law attributed Malian nationality to all *ressortissants* (a term usually used as a synonym for 'national') of Mali, subject to the provisions of the future nationality code, unless they had affirmatively opted for the French Civil Code.³² As well, certain classes of persons who had been granted full French citizenship under various colonial-era laws and the 1946 Constitution of the *Union Française* were now Malian nationals unless they refused. The law also allowed the government to grant Malian nationality on an individual basis to persons who had resided in Mali for at least two years.

²⁵ Keith Panter-Brick, 'Independence, French Style' in Gifford and Louis, *Decolonisation and African Independence* (Yale 1988). 'The 1958 Constitution stated that there was only one nationality of the Community. According to most French jurists, the colonies did not have their own nationality, only French nationality.' Cooper 349.

²⁶ Since 1951, the French had considered creating a new colony, *Afrique Saharienne française*, which would have included what is now Mali. Later, many Tuareg leaders would advocate for the creation of the *Organisation Commune des Régions Sahariennes (OCRS)*, which eventually became an economic organisation, which Mali left in 1963. Baz Lecocq, *That Desert is Our Country: Tuareg Rebellions and Competing Nationalisms in Contemporary Mali (1946-1996)* (PhD thesis, Amsterdam Institute for Social Science Research (AISSR) 2002) 41 and sub.

²⁷ Marnham 6.

²⁸ Loi n. 60-14 du 20 juin 1960 'proclamant solennellement l'indépendance nationale de la fédération du Mali' *Journal Officiel de la Fédération du Mali*, 22 juin 1960 p. 383.

²⁹ Loi n. 60-35 du 22 septembre 1960 « portant proclamation de la République indépendante du Mali » J. O. R. M. 15 Décembre 1960.

³⁰ R. Donner, *The Regulation of Nationality in International Law, Second Edition* (Transnational Pub. 1994) 281.

³¹ *Ordonnance n. 55 du 24 novembre 1960 « relative à l'attribution de la nationalité malienne à tous les ressortissants de la République du Mali » Journal Officiel de la République du Mali (J.O.R.M.) 15 Décembre 1960 p. 986. Decheix 302.*

³² *Ordonnance n. 55 du 24 novembre 1960 « relative à l'attribution de la nationalité malienne à tous les ressortissants de la République du Mali » Journal Officiel de la République du Mali (J.O.R.M.) 15 Décembre 1960 p. 986. Alexandre Zatzepine, « Droit de la nationalité des Républiques Francophones d'Afrique et de Madagascar » (Paris 1963) ; Paul Decheix, « Le Code de la nationalité Malienne » 697 *Penant* 300 (1963). Provisions in French law for retaining French nationality may be found in *Loi n. 60-752 du 28 juillet 1960 portant modification de certaines dispositions du code de la nationalité.**

While this law should have resulted in the automatic transfer of French nationality to Malian nationality for the vast majority of persons living in Mali, the lack of robust civil registration, particularly in rural areas, meant that many individuals could not prove their residence in Mali. It appears that fewer than 4,000 births were registered in 1960-1961, though the methodology for collecting this information was not clear.³³ As a result, many Malians began the independence period with no identity documents to prove their nationality. While in theory they were now Malian nationals, the lack of documents left many in a grey zone of legal status. Meanwhile, under French law, all persons resident in the AOF who did not qualify and opt for French nationality based on domicile automatically lost their French nationality.³⁴

Following independence, Mali faced a series of questions over its national identity and borders. Influential leaders in West Africa like Léopold Sédar Senghor introduced the concept of an African ‘*patrie*,’ or identity, that was founded around ethnic villages and communities at the local level within a larger, national structure.³⁵ Yet, the idea of Mali as a nation was practically non-existent, and few people identified with the new state in which they lived, prompting the Malian government to take measures to construct a Malian national identity following decolonisation.³⁶

At independence, one of the first demographic surveys in Mali put the total population at around 4 million people.³⁷ Among other things, the survey showed that at least 30% of the population had been born in a location other than where they now lived, pointing at significant migration within Mali.³⁸

This survey did not reach further north than Timbuktu for reasons that are unclear. It counted eight of Mali’s ethnic groups, with the Bambara ethnic group making up a majority or near-majority in most rural areas surveyed in this study, followed by the Sarakollé, the Senufo at between 0% and 30% of the population depending on the region, and Peul/Fulani nomads at between 3% and 15%.³⁹ Neither the Tuareg nor the Moor/Arab nomadic groups were counted as separate ethnicities in this study, but may have been included in the ‘other’ category. (Today, the Tuareg and Moor/Arabs make up less than 5% of the population and they are minority groups even in northern Mali.)

Mali entered the post-colonial period with unsettled borders and the ongoing question of Tuareg independence. Questions persisted over its northern border, where some influential

³³ Mali – *Enquête démographique 1960-1961*, Service de la Statistique, République du Mali, Rapport généré le : August 12 2019.

³⁴ Loi n. 60-752 du 28 juillet 1960 portant modification de certaines dispositions du code de la nationalité. See Donner 281-281.

³⁵ Frederick Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945-1960* (Princeton UP 2014) 349.

³⁶ As Lecocq puts it, the outcome of independence; ‘...was not a Malian state, but a state harbouring at least two nascent national ideas, if not more: the Malian nation and the Tamasheq nation.’ Baz Lecocq, *Disputed Desert: Decolonisation, Competing Nationalisms and Tuareg Rebellions in Northern Mali* (Brill 2010) 29. ‘Mali, like many young states in Africa, has a weak sense of national unity and national identity. Geography ...undermines (its) national unity...(p)olitical and economic power is strongly centred on the urban elites in (the) south of the country.’ Stewart 23, 25-26.

³⁷ Mali – *Enquête démographique 1960-1961*, Service de la Statistique, République du Mali. A copy of the survey may be found at https://www.odsef.fss.ulaval.ca/sites/odsef.fss.ulaval.ca/files/fonds_gp/c-doc_048_odsef.pdf.

³⁸ According to an analysis of the results found in the journal *Population*, « *Enquête démographique au Mali, 1960-1961*, » *Population* (1970) 1302-1303.

³⁹ Mali – *Enquête démographique 1960-1961*. The ethnic group known as Fula or Fulani in English are known as Peul in French.

Tuareg continued to call for a separate, Tuareg state.⁴⁰ As stated above, Mali briefly federated with what would become Senegal, but this ended in acrimony after two months with the withdrawal of Senegal. The status of Senegalese living in Mali would remain sensitive.⁴¹ Across the new nation, linguistic, religious and ethnic diversity called into question the unity of a state dominated by the Bambara ethnic group.

Socialist policy in the early 1960s favoured rapid agricultural development, the nationalisation of industry and the abolition of traditional class structures, including slavery. Diby Sillas Diarra, Mali's administrator in the north during this period, is quoted by French historian Pierre Boilley as saying, 'sedentarisation of the nomad is our objective (in the north).'⁴² Schools were an important assimilation tool of the Keita regime, where minority languages were banned and children were taught songs and stories that focused exclusively on southern Malian culture.⁴³ Mali also issued its own currency, a move which caused significant financial problems for the new state and arguably worsened poverty in the north.⁴⁴

Only two years after independence, in 1962, civil war broke out in northern Mali between members of the Tuareg ethnic group and the government. As a result, northern Mali was governed as a military zone, which would affect the registration of the northern population and leave open the question of Tuareg nationality. Many Tuareg would leave the country as refugees, spending many years living in camps.⁴⁵ Questions of national identity and Tuareg separatism would continue to impact Mali's nationality law and complicate its implementation.

2.3 The 1962 Nationality Code

In 1962, the government enacted a permanent nationality law, the *Code de la nationalité Malienne*,⁴⁶ accompanied by a *Circulaire d'application* on its detailed implementation.⁴⁷ The code, drafted with the assistance of international experts, reflected the government of Mali's priorities, while adopting many provisions from the French nationality code of 1945.⁴⁸ For example, Article 2, in keeping with French law, asserted the primacy of treaties over the Malian code.⁴⁹

The code adhered to the basic structure of French nationality, including distinctions between automatic nationality at birth (*nationalité d'origine*), nationality acquired later in life by the non-discretionary processes of declaration or option, and discretionary naturalisation.⁵⁰ The code also adopted the French principle of double-birth (automatic attribution to the second generation born in the territory, also known as double *jus soli*) for persons 'of African origin'

⁴⁰ André Bourgeot « Sahara : espace géostratégique et enjeux politiques » in *Afrique noire et monde arabe : continuités et ruptures*, Jean Schmitz, ed. (IRD éditions 2000) 33-35.

⁴¹ Paul Decheix, « Le Code de la nationalité Malienne » 697 *Penant* 300 (1963) 303.

⁴² Boilley 360.

⁴³ Lecocq 157-158.

⁴⁴ Cheich O. Diarra, *Vers La IIIe République Du Mali* (L'Harmattan 1991) 39-42, 47-48.

⁴⁵ A. Bourgeot, *Les sociétés Touarègues : nomadisme, identité, résistances* (Karthala 1995) 267.

⁴⁶ Le Code de la nationalité Malienne, Loi N. 62-18 AN-RM du 3 Février 1962, *J.O.R.M. No. 112* (1 Mars 1962) p. 168 (1962 Code).

⁴⁷ Circulaire d'application n. 331 sur l'application du Code de la Nationalité Malienne, *Journal Officiel de la République du Mali, J.O.R.M. No. 114* (1 April 1962) p. 272

⁴⁸ Decheix 300, 314. See also Alexandre Zatzepine, *Le Droit de la nationalité des Républiques Francophones d'Afrique et de Madagascar* (Paris 1963).

⁴⁹ Under the French Constitution of 1958, Art. 55, treaties took primacy over acts of the French parliament.

⁵⁰ Manby 44.

in Article 12. In addition to double-birth, the law adopted another principle from French law, providing for some persons of foreign parentage born in Mali, and resident there for five years, to obtain Malian nationality by declaration. The Code also provided for the automatic acquisition of nationality for the children of naturalised parents under certain circumstances. Finally, it adopted the principle of *possession d'état de national* for a person having the 'apparent status' of a national;⁵¹ though it was unclear what this principle would mean in a state that had just emerged from a much larger territorial empire.

Article 68 of the 1962 Code contained a further transitional clause stating that all persons resident in Mali at the time of the enactment of the code were presumed to be nationals of Mali unless proven otherwise.⁵² Proof of residence could be established by a certificate of residence from the *chef d'arrondissement*, the mayor, or another government official. In his book on francophone African nationality laws, Alexandre Zatzepine argues that 'residence' in Article 68 meant habitual residence.⁵³

This centralised, administrative structure had been created by the French⁵⁴ and would run parallel to more traditional customs still practiced in much of Mali, including traditional marriages, and to the traditional authorities in many Malian communities, such as the *Amanokal* of the Tuareg.⁵⁵ Establishing Malian nationality under the law followed the French system, with its focus on official documents, including most importantly the certificate of nationality. Birth certificates remained critical evidence of nationality needed to establish parentage or place of birth.⁵⁶ Many individuals continued to lack the proofs needed to prove or establish their nationality under the law or were confused or ill-informed about the necessary procedures.

Following these transitional provisions, Articles 8, 9 and 10 of the 1962 code provided for *jus sanguinis* attribution of nationality at birth, primarily through the father, for those born both within Mali and abroad. These articles were in keeping with the laws of many countries in the former AOF, as well as both Islamic law and French law. The 1962 code also contained several instances of gender discrimination. A child born to Malian mothers and foreign fathers would not automatically obtain Malian nationality if the child acquired his or her father's nationality and/or the father's family played a role in the child's upbringing or education.⁵⁷

Under both French law and Islamic law, it was also common to distinguish between children born in and out of wedlock, a distinction reflected in the 1962 law. Parentage had to

⁵¹ B. Manby 'Trends in Citizenship Law and Politics in Africa Since the Colonial Era' in E. F. Isin and Peter Nyers (eds), *Routledge Handbook of Global Citizenship Studies* (Routledge 2014) 174.

⁵² Circulaire d'application n. 331 sur l'application du Code de la Nationalité Malienne, *Journal Officiel de la République du Mali*, J.O.R.M. No. 114 (1 April 1962) p. 272. According to the *Circulaire*, a *Certificat de Nationalité*, the main document proving Malian nationality, must be issued by a judge or consular officer, if abroad.

⁵³ Zatzepine 20-21.

⁵⁴ See generally the descriptions of French administrative goals in Edmond Bemus, Pierre Boilley, Jean Clauzel, Jean-Louis Triaud, eds, *Nomades et commandants: administration et sociétés nomades dans l'ancienne A.O.F.* (Karthala 1993) 24.

⁵⁵ The *Amanokal* is the head of the Tuareg federations in northern Mali. For an overview of Tuareg political organisation, see Baz Lecocq, *Disputed Desert: Decolonisation, Competing Nationalisms and Tuareg Rebellions in Northern Mali* (Brill 2010) and Pierre Boilley, *Les Touaregs Kel Adagh: Indépendances et révoltes: du français au Mali contemporain* (Karthala 1999).

⁵⁶ Title V of the 1962 Code dealt with the issuance of Certificates of Nationality. Title VI dealt with the procedures for adjudicating nationality in the courts. The issuance of Malian ID cards was granted under *Décret n°014/PG- RM du 09 janvier 1988 portant institution et réglementation de la délivrance de la carte d'identité et de la carte consulaire*.

⁵⁷ 1962 Code Art. 8(3). Articles 8(5)-10, 16-17 establish further rules for the attribution of Malian nationality to out-of-wedlock children under certain circumstances.

be established for children born out-of-wedlock to obtain Malian nationality. Children born out-of-wedlock to a foreign parent whose parentage was later established (usually the father) had the right to refuse Malian nationality within six months of majority.⁵⁸ Nationality at birth in the 1962 Code therefore reflected both gender discrimination and discrimination against those born out of wedlock common at the time.⁵⁹

Gender discrimination can be found in other parts of the 1962 Code. Nationality via adoption was available only to children adopted by Malian fathers.⁶⁰ For the children of foreign fathers and women who had previously obtained Malian nationality through marriage, Article 22 allowed for Malian nationality to pass to such children only if the foreign father was dead and the child resided in Mali.⁶¹ Nationality by marriage was automatic for women, unless declined, declared null, or opposed by the government. Nationality by marriage, however, was not possible for men without going through a naturalisation procedure (discussed below).⁶²

Article 12 of the 1962 Code provided for nationality of origin to be automatically attributed on the basis of double-birth (double *jus soli*) to a child born in the territory of a parent who was also born there. However, unlike the similar provisions in neighbouring former French territories, there was an element of racial discrimination contained in Mali's provision on double-birth. In reflection of the pan-Africanism of the day, double-birth was limited to persons born to parents 'of African origin,' a clause which was not defined but which may have referred to persons of African racial descent.⁶³

Article 27 provided for persons born in Mali to foreign parents to acquire Malian nationality if, by the age of majority, they had had their habitual residence in Mali for a minimum of five years. For the purposes of this article, habitual residence included, under Article 35, persons residing in other African Union states and residence abroad while serving in the Malian military.

The law contained several important protections against statelessness. These included protections for foundlings and the children of unknown parents in Art. 11. In line with the usual provisions in former French territories, a foundling or child of unknown parents could lose Malian nationality if its parentage was later established and the person obtained the nationality of that parent.⁶⁴ Article 8 of the code also contained express protections against statelessness for the children of one Malian parent and a stateless parent.⁶⁵

The grounds and procedures for naturalisation were provided for in Articles 28-32 of the code and its *Circulaire d'application*. Naturalisation required five years of residence in Mali; two years for men married to Malian women or who had performed 'outstanding service' to Mali.⁶⁶ Articles 30-32 laid out certain conditions of naturalisation, excluding categories of persons, such as those having committed a serious crime or who were not of good character.

⁵⁸ 1962 Code Art. 10(1).

⁵⁹ B. Manby, 'Citizenship Law in Africa: A Comparative Study' *Open Society Foundation*, 3rd edition, 2016, 41, 63. See also Ousmane Koné, « La controverse autour du code des personnes et de la famille au Mali : enjeux et stratégies des acteurs » *Phd dissertation, Université de Montréal* (Septembre 2015) 134-137.

⁶⁰ 1962 Code Arts. 20 & 21.

⁶¹ 1962 Code Art. 22.

⁶² 1962 Code Arts. 23-26.

⁶³ 1962 Code Art. 12.

⁶⁴ 1962 Code Art. 11.

⁶⁵ 1962 Code Arts. 8 & 11.

⁶⁶ « ...des services exceptionnels. » 1962 Code Art. 29.

The procedures for acquiring or losing nationality by declaration or decree were laid out in Articles 35, 45-52.

The 1962 Code provided for the loss of Malian nationality in Article 38 for persons voluntarily acquiring a foreign nationality. The loss of Malian nationality, however, was not automatic for women marrying foreigners.⁶⁷ Nationality could be deprived by decree under Articles 42-44 for persons with certain ties to foreign states, persons serving in international organisations without permission, or persons having been convicted of serious crimes.

Article 19 of the Code prohibited the renunciation of Malian nationality for persons who had not obtained a foreign nationality or who had not satisfied the military requirements of that foreign nationality, where applicable.⁶⁸ Articles 23-26, however, raised the possibility of statelessness for foreign women married to Malian men whose marriages were later declared void. Such women would automatically acquire Malian nationality upon marriage, possibly triggering the loss of their nationality of birth, but the 1962 Code provided for the subsequent loss of Malian nationality should the marriage later become void.

2.4 The 1995 reforms

Widespread economic decline and political unrest led to a coup in 1968. General Moussa Traoré ruled Mali as a military dictatorship until 1991. Few legal reforms were made during this time. During this period, however, Mali acceded to the International Covenant on Civil and Political Rights, which guarantees the right of every child to acquire a nationality.⁶⁹

Devastating drought hit Mali in the late 1970s, driving an exodus of refugees, particularly from northern Mali and including many Tuareg. Conflict reignited between the Tuareg and the government in the early 1990s, this time with support from Algeria and Tuareg living abroad.⁷⁰ In January 1991, the government, represented by Ousmane Coulibaly, army chief of staff, and members of the Tuareg separatist movement signed the Tamanrasset Accords, which were supposed to lead to decentralisation and a power-sharing government in the north.⁷¹ The ceasefire failed to hold, and, unable to respond effectively to the crisis, Traoré was overthrown by popular protests in March 1991. A civilian government was elected in 1992, led by Alpha Oumar Konaré of the Alliance for Democracy in Mali (ADEMA).

Under the new civilian government, Mali ratified a number of international treaties relevant to the right to a nationality, including the UN Convention on the Rights of the Child⁷² and the African Charter on the Rights and Welfare of the Child,⁷³ both of which guaranteed the right of all children to be registered at birth and to acquire a nationality. The new government introduced a host of changes to Malian law, the main purpose of which was to devolve power

⁶⁷ 1962 Code Art. 41.

⁶⁸ 1962 Code Art. 19.

⁶⁹ *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, acceded to by Mali 16 July 1972.

⁷⁰ Pierre Boilley, *Les Touaregs Kel Adagh: Indépendances et révoltes: du français au Mali contemporain* (Karthala 1999); Alessandra Giuffrida, 'Tuareg Networks: An Integrated Approach to Mobility and Stasis' in Ines Kohl and Anja Fischer, (eds.) *Tuareg Society within a Globalized World: Saharan Life in Transition* (Tauris 2010); D. J. Stewart, 'What's next for Mali? The Roots of Conflict and Challenges to Stability' (*US Army War College, Strategic Studies Institute* 2013).

⁷¹ Cheich O. Diarra, *Vers La IIIe République Du Mali* (L'Harmattan 1991)

⁷² Ratified 20 September 1990.

⁷³ Ratified 3 June 1998.

to the northern regions of Mali.⁷⁴ In 1995, during this period of reform, the 1962 Nationality Code was amended.

Most of the 1995 amendments were relatively minor rewordings of confusing passages in the 1962 Code. In a major change from the 1962 law, however, the 1995 amendments allowed for dual nationality for persons voluntarily acquiring another nationality.⁷⁵ The 1995 amendments also reduced gendered restrictions on the ability of women to pass on their nationality to their children, a development that was welcomed by the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁷⁶ These reforms were limited in practical effect by the failure to reform the rights of inheritance and difficulties in proving marriage and descent under the 1962 family code.⁷⁷ The amendments to the nationality code also gave extra protections against statelessness for foundlings and the children of unknown parents.⁷⁸ Another change was the addition of Article 43(bis), which provided that persons serving in foreign armies engaged in hostilities against Mali could lose their Malian nationality by decree.⁷⁹

During the 2000s, legal reforms continued. In 2001, Mali enacted a pastoral charter, recognizing the rights of herder and nomadic communities, including freedom of movement, in order to respond to some of the concerns of the Tuareg and other nomadic communities.⁸⁰

In 2002, a new code for the protection of children provided for the right to an identity and a nationality under Malian law.⁸¹ In 2006, the government made birth registration in Mali free and, in Article 12, created more flexibility for nomadic populations in registration, though the system for registration remained based around the colonial administrative structure of circles and communes.⁸² The Committee on the Rights of the Child urged the Malian government to go further in nomadic regions by setting up mobile registration clinics.⁸³ Mali also ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in 2005.

In 2011, conflict broke out again in northern Mali, this time with support from Malian Tuareg who had been members of the Libyan Islamic Legion, who left Libya following the overthrow of Gadhafi.⁸⁴ During this renewed conflict, the Malian Tuareg separatist movement was taken over by foreign, Islamist fighters and other foreign actors, leading to an international intervention led by the French government.

Renewed conflict contributed to another coup in 2012. Following the international intervention led by France, a peace agreement facilitated by Algeria to end the northern

⁷⁴ Décret No 92-121/p-CTSP2, *Pacte National, Comité de Transition pour le Salut du Peuple et les Mouvements et Fronts unifiés de l'Azawad* (11 Avril 1992).

⁷⁵ Loi No. 95-070 portant modification du code de la nationalité, *Journal Officiel de la République du Mali (J.O.R.M.)* No. 18 (30 Sept. 1995), Arts. 38, 39, 41 (1995 Amendments).

⁷⁶ 1995 Amendments, Arts. 8, 10, p. 689. Committee on the Elimination of Discrimination against Women, concluding observations on the combined sixth and seventh periodic reports of Mali, Adopted by the Committee at its sixty-fourth session (4-22 July 2016), 2.

⁷⁷ Code du mariage et de la tutelle, loi n. 62-17 AN-RM 3 Février 1962.

⁷⁸ 1995 Amendments, Art. 11, 689.

⁷⁹ 1995 Amendments Art. 43(bis), 690.

⁸⁰ *Charte Pastorale du Mali*, Loi N. 01-004 of 27 Feb. 2001.

⁸¹ Mali Ordonnance N°02-062/P-RM du 5 juin 2002 portant code de protection de l'enfant, Art 4.

⁸² Loi n° 06-024, régissant l'Etat Civil, J.O.R.M. No. 24 (31 Aout 2006) p. 926.

⁸³ *Committee on the Rights of the Child*, Consideration of the Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations: Mali, CRC/C/MLI/CO/2 3 May 2007.

⁸⁴ Tuareg originating in Mali had been granted Libyan residence permits, and in some cases, nationality in exchange for military service.

rebellion was signed in 2015.⁸⁵ The presidential election scheduled for that year was delayed until 2013; fresh elections took place in 2018, in accordance with the constitution, re-electing President Ibrahim Boubacar Keïta. Parliamentary elections took place in March and April 2020, but turnout was low and the vote was marred by violence. Northern Mali, however, remains disputed territory, particularly the Kidal region, while central Mali is becoming increasingly unstable, despite the presence of a UN peacekeeping mission, MINUSMA.⁸⁶

The near total collapse of a functioning administration in northern Mali has effectively brought to a halt civil registration in that region, while registration in rural areas throughout the rest of Mali remains low. Most marriages continue to be performed according to customary and Islamic procedures and are not registered with the state.⁸⁷

3. The Current Nationality Regime

In 2009, the government of Mali began a long and controversial programme⁸⁸ to redraft both Mali's nationality law and its family code. Women's groups in Mali were pushing for reforms to the family code that would remove gender discrimination, while Islamic groups voiced concerns about such changes.⁸⁹ A proposed new version of the Family Code was scrapped over concerns by some religious leaders.⁹⁰ These changes would have affected the laws of marriage, the status of children born out of wedlock, and the rights of women and girls. The struggle between Islamic law and international law, particularly in regards to gender discrimination, is a common theme in the debate over nationality law throughout West Africa.

In 2011, Mali finally adopted the new *Code des personnes et de la famille*, which contains the current nationality law of Mali alongside provisions relating to civil registration and to family law, brought together into a single legal code.⁹¹ Specific provisions on nationality are contained in Title V, but many other parts of the Code are relevant to nationality, including most importantly Title IV on civil registration.

The 2011 Code preserved many aspects of the 1962 Code, including nationality by origin in Article 224, based both on *jus sanguinis* and the principle of double birth (automatic

⁸⁵ Agreement for Peace and Reconciliation in Mali emanating from the Algiers Process, Bamako (20 June 2015).

⁸⁶ The United Nations Multidimensional Integrated Stabilisation Mission in Mali.

⁸⁷ *Committee on the Elimination of Discrimination against Women*, concluding observations on the combined sixth and seventh periodic reports of Mali, Adopted by the Committee at its sixty-fourth session (4-22 July 2016), 2.

⁸⁸ For an overview of the controversies surrounding the redrafting of Mali's nationality and family law, see Association for Women's Rights in Development, 'The new Family Code of Mali and Why its Promulgation Has Been Delayed' (26 April 2011.)

⁸⁹ Ousmane Koné, « La controverse autour du code des personnes et de la famille au Mali : enjeux et stratégies des acteurs » *Phd dissertation, Université de Montréal* (September 2015).

⁹⁰ Andrew Lebovich, 'Sacred Struggles: How Islam shapes politics in Mali' *European Council on Foreign Relations Policy Brief* (1 Nov. 2019). See also Association for Women's Rights in Development, 'The new Family Code of Mali and Why its Promulgation Has Been Delayed' (26 April 2011).

20 April 2011 for an overview of the politics surrounding the family code in Mali.

⁹¹ Loi n° 11-080 portant code des personnes et de la famille, *Journal Officiel de la République du Mali (J.O.R.M.) Spécial* (31 Jan 2012) Titres IV, V (2011 Code).

acquisition for the second generation born in the country), though it removed racialised language from the provision on double birth. It also removed several instances of gender discrimination from the nationality law. First, it removed the remaining gender discrimination for nationality acquired automatically at birth and deleted what had been a confusing sequence of articles laying out special rules for the children of Malian mothers.⁹² It also removed gender discrimination for nationality by marriage and for the loss of nationality by declaration;⁹³ and from the article providing for Malian nationality upon adoption, making it possible for both adoptive fathers and mothers to transmit their Malian nationality to their adoptive children.⁹⁴ However, it preserved distinctions between children born in and out of wedlock.

Such changes have in principle increased access to Malian nationality for some classes of persons and protected against the loss of Malian nationality for others, but have left some gaps as well. The 2011 Code is in some respects not in conformity with the requirements of the UN statelessness conventions and international human rights law. Several articles in the 2011 Code make reference to foreign parents, but not to stateless parents, raising the possibility that the children of stateless parents may be excluded.

In the end, while the Code did not contain all the improvements to family law many reformers wished, it removed instances of gender discrimination and racial discrimination that were present in the 1962 Code.⁹⁵ Other sections of the Code not directly related to nationality and which were pushed for by Islamic groups, however, such as the age limit for marriage for girls, were later found to be violations of regional law by the African Court on Human and Peoples' Rights.⁹⁶ These changes reducing gender discrimination are in keeping with the trend towards liberalisation in the region.⁹⁷

Article 219 reaffirmed that international treaties related to nationality apply in Mali if ratified and published, which remains the standard in civil law countries.

3.1 Attribution of nationality at birth

3.1.1 Based on descent

The 2011 Code made several important changes that have made it easier for some persons to acquire Malian nationality. Changes to Malian nationality by origin as a result of the 2011 Code are retroactively applied to minors. In Article 224 the Code preserved, however, distinctions between children born in wedlock and those born out of wedlock in the automatic acquisition of nationality at birth, continuing to require the legal establishment of a parental relationship (*filiation*) for those born out of wedlock.⁹⁸ Under Art. 229, the establishment of the parental

⁹² 2011 Code Art. 224.

⁹³ 2011 Code Arts. 233, 249.

⁹⁴ 2011 Code Art. 230.

⁹⁵ Ousmane Koné, « La controverse autour du code des personnes et de la famille au Mali : enjeux et stratégies des acteurs » *Phd dissertation, Université de Montréal* (September 2015).

⁹⁶ African Court on Human and Peoples' Rights, *APDF and IHRDA v. Republic of Mali*, App. No. 046/2016, Judgment of 11 May 2018; Fédération internationale pour les droits humains, « Le nouveau Code de la famille malien : droits fondamentaux bafoués, discriminations consacrées » 8 Déc. 2011 at <https://www.fidh.org/fr/regions/afrique/mali/Le-nouveau-Code-de-la-famille>.

⁹⁷ For an overview of laws in the region, see Manby 63-72.

⁹⁸ 2011 Code Arts. 224, 231.

relationship must take place during the child's minority, raising the risk of statelessness for some children born out-of-wedlock.

3.1.2 Based on two generations born in the territory

The 2011 law changed the requirement for double-birth, replacing the requirement that a child be born in Mali to parents 'of African origin' with the requirement that a child be born to parents whose nationality of origin was 'in an African state.'⁹⁹ This change removed potentially racially discriminatory language from the Code while preserving an element of pan-Africanism. This change, however, removed a possible protective clause for stateless persons and injecting discrimination based on nationality, rather than race.

3.1.3 Presumption for children of unknown parents

The 2011 Code made important changes to the presumption of nationality for children born in Mali of unknown parents. Article 225 removed the previous caveat that such a child would lose nationality if the parents were later found and the child's entitlement to their nationality was established. The law now provides that they retain Malian nationality even if parentage is later established. Article 226 retained the provision that a new-born infant is presumed born in Mali.

3.2 Acquisition of nationality after birth

3.2.1 Adoption

The 2011 Code provides for the automatic acquisition of nationality for children adopted by both Malian women and men (Article 230), a change from the previous law.

3.2.2 Acquisition by parents of Malian children

The 2011 Code added a means of acquiring Malian nationality in Article 232 for the parents of Malian children, where the parents had resided in Mali for at least one year. However, for parents acquiring Malian nationality from their children under Art. 232, only foreign parents, not stateless parents, qualify.

3.2.3 Declaration based on birth and residence

Article 237 confirms the existing possibility for a child born in Mali of foreign parents to acquire nationality 'by declaration', during the six months preceding majority, if he or she has been resident in Mali for at least five years at that time.

3.2.4 Acquisition based on marriage

⁹⁹ 2011 Code Art. 227.

The 2011 Code allowed for foreign nationals or stateless persons of either gender to automatically obtain Malian nationality via marriage, rectifying the discrimination in the 1962 Code, even as amended in 1995.¹⁰⁰

3.2.5 *Naturalisation based on long residence*

The 2011 Code makes naturalisation more difficult by imposing a ten-year residency requirement, in place of the five-year residency requirement in the 1962 law. This change is in line with the general trend in African laws to require a longer period of residence for naturalisation,¹⁰¹ making it harder for persons to qualify for naturalisation. Only five years of residency are, however, required for persons who rendered exceptional service to Mali and children born in Mali to foreign parents. Naturalisation remains entirely at the discretion of the state. As well, the procedures are not clear by which residence in Mali is to be established. Article 231 provides that the minor children of adults who naturalise acquire nationality automatically at the time the parent or parents are naturalised.

3.3 Limitations on political rights for naturalised persons

Article 247 stipulates the limitations on persons who have been naturalised. Naturalised persons cannot hold public office until five years after being naturalised. They cannot vote for two years after being naturalised. Finally, they cannot be appointed to public functions paid by the state, practice law as a member of the bar, or be appointed to a Ministerial Office for a period of two years after the naturalisation decree. In exceptional cases, these delays may be shortened or removed. As naturalisation is quite uncommon in Mali, however, these limitations likely do not impact many people.

3.4 Loss and deprivation of nationality

The 2011 Code continued to allow for dual nationality for those with nationality of origin who acquired a foreign nationality. A Malian by origin who acquires another nationality does not lose Malian nationality (Article 249), nor does a person naturalising have to renounce an existing nationality (Article 241). Naturalised persons may lose their naturalisation under certain conditions, including committing certain crimes, unless loss of Malian nationality would result in statelessness (Art. 253).

¹⁰⁰ 2011 Code Art. 233

¹⁰¹ See Manby, *Citizenship Law in Africa*, chapter 5

4. Nationality Administration

The 2011 Code contains important and detailed rules for the implementation of civil registration along the French model, including strict requirements for the registration of births, marriages and deaths. In a country suffering from low rates of civil registration, however, these rules may be unnecessarily difficult to implement and/or run contrary to cultural practices.

Title IV of the 2011 Code deals with civil registration, the *état civil*. Chapter II, Articles 114 through 156 deals with the registration of nationality and issuance of documents, including registration via *jugements supplétifs*, a form of late registration ordered by a judge in cases where an event falling under the 2011 Code has not been registered within the time limits prescribed. Rules for the legitimation of children may be found in Chapter III, Section III. Rules for registering a marriage may be found in Chapter III, Section IV. The Code outlined the rules for declarations of nationality in Articles 225-262 and the rules for certificates of nationality in Articles 263-265. Article 266 establishes the *juridiction civile de droit commun* as the court system with the authority to hear disputes related to nationality.

4.1 Naturalisation

Applications for nationality by declaration and naturalisation are processed by the *Direction Nationale des Affaires Judiciaires et du Sceau*. Identity documents and proofs required include birth certificates, marriage certificates, the certificate of nationality of the Malian citizen, in cases where the application is based on a family relationship and, where necessary, an attestation of good character from the police. As stated above, the means by which an applicant is to prove residence are not clear.¹⁰²

4.2 Birth registration

Articles 157-162 establish the specific rules for birth registration, the key document for establishing the right to nationality. Birth registration requires one of the parents to present a birth certificate and either an identity card or a certificate of nationality. Importantly, both mothers and fathers can register their children at birth, but registration must be made within thirty days of the birth, an unfortunate limitation which might impede registration for many families. In particular, the short time periods may conflict with certain cultural practices such as naming ceremonies, which may take place over a week, or longer, after the birth,¹⁰³ and according to UNHCR, may contribute to statelessness.¹⁰⁴ It should also be noted that these rules favour urban areas and mothers who give birth in hospitals.

Articles 133 and 134 deal with the process by which events such as births and deaths may be established after the registration deadline. This system of registration, which is used in

¹⁰² For a discussion of residence in the context of Malian nationality law, see Zatzepine 20-21.

¹⁰³ Pat I. Ndukwe, *Fulani: Cameroon, Mali, Nigeria* (Rosen 1995) 45, on Fulani naming ceremonies.

¹⁰⁴ UNHCR, 'Good Practices Paper, Action 7, Ensuring Birth Registration for the Prevention of Statelessness' (2014).

other West African states, requires a court procedure to obtain a *jugement supplétif* to rectify the failure to register in time.

Article 84 guarantees that birth registration is free, an important fact in a country with a high poverty rate. Birth registration centres are located in hospitals and, for nomads, the local government is empowered to create special registration centres under Art. 84. Articles 85-90 lay out the specific rules for where civil registration may take place. Articles 91-100 establish the rules for the government agents that may engage in civil registration. Articles 101-113 establish the procedures for civil registration via the courts.

4.3 Marriage registration and legitimisation of children

Articles 173-184 deal with the issuances of marriage certificates. However, the vast majority of marriages performed in Mali are performed according to custom and/or Islamic law. As a result, civil marriages registered with the state are rare, complicating the application of Malian nationality law and, in particular, the rules on birth in or out of wedlock.

Articles 163-172 contain the rules for the recognition and legitimation of children, which are important due to the fact that the nationality code contains different rules for out-of-wedlock children. There are limits on the recognition of children who result from adultery or incest. Children born out of wedlock may later be legitimated by their parents' marriage.

4.4 Consular registration

Articles 191-202 establish the rules for civil registration abroad for births, marriages and deaths at embassies and consulates. Under Art. 203, the registration of births and deaths at a consulate or embassy is obligatory.

4.5 Certificates of nationality

The certificate of nationality is the foundation of Malian nationality documentation and is proof of nationality (Arts. 263-265). Under Article 263, the president of a court of first instance (*tribunal de première instance*) and a justice of the peace are the two authorities who can grant certificates of nationality. In case of refusal, a person can appeal to the minister of justice (Art. 265). For Malians abroad, the competent authorities are Malian embassies and consulates.

4.6 National identity cards

As a matter of daily use, the identity card, the *Carte Nationale d'Identité (CNI)*, issued pursuant to a decree in 1988, is usually sufficient to establish nationality. Either a CNI, or a *carte consulaire* if abroad, is obligatory.¹⁰⁵ Mali is in the process of introducing biometric ID cards

¹⁰⁵ Décret N° 55-014/PG-RM du 9 Janvier 1988.

and identity numbers, called the ‘*carte NINA*.’¹⁰⁶ In 2016, the government launched the roll-out of this biometric ID card, in line with the commitment of ECOWAS to facilitate freedom of movement through a common-form identity card.¹⁰⁷ To date, over 14 million Malians have been registered under this system and 85% of those eligible have been registered to vote.¹⁰⁸

It should be noted that the NINA card does not establish nationality and is therefore best viewed as a form of identity establishment, rather than as proof of nationality, which is only conferred by the certificate of nationality.

4.7 Challenges with birth registration and identification

According to a recent study, 80% of the population is now registered in the government’s civil registration database *Recensement Administratif à Vocation d’État Civil (RAVEC)*.¹⁰⁹ There remains, however, considerable regional variation in birth registration, with less than 60% of births registered in the north, while 98% of births are registered in Bamako, the capital.¹¹⁰ According to the government, fewer than 1,500 registration centres in Mali remain operational as of 2004 and some government officials have called for an expedited process in conflict-affected regions.¹¹¹

Many Malians born outside of Mali are not registered with either Malian embassies or consulates. As well, it is unclear to what extent children enrolled in Koranic schools, known as *talibé*, are registered. Access to civil registration is impeded in the north by the distance and mistrust between nomads and the authorities.

Mali has been in the process of strengthening civil registration and identification as part of programmes to combat cross-border criminality and terrorism, two systemic problems in northern Mali related to the civil war in that part of the country, which now involve both the Tuareg and Fulani minority groups. The introduction of biometric ID cards is part of this effort. To assist with the administration of justice in conflict regions such as Mopti, MINUSMA (the United Nations peacekeeping mission in Mali) has organised several *audiences foraines* (mobile court sessions, that can in principle issue *jugements supplétifs* to order late registration

¹⁰⁶ Gouvernement du Mali, « Rapport sur la situation de l’enregistrement des faits d’état civil et de l’établissement des statistiques » (2012). Loi n°06-040 du 11 août 2006 portant institution du numéro d’identification national des personnes physiques et morales, complétée par Décret n° 06 - 442/ P - RM du 18 octobre 2006 fixant les modalités d’application de la loi portant institution du Numéro d’Identification National des personnes physiques et morales.

¹⁰⁷ On ECOWAS free movement see, Nfaly Sanoh, Chargé de Programme Principal Immigration/CEDEAO « Libre Circulation des Personnes dans les Processus d’intégration Régionale: cas de la CEDEAO », June 2007 and Nfaly Sanoh, « Libre circulation des personnes dans les processus d’intégration régionale : Cas de la CEDEAO, » presentation available at ; http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/free_movement_of_persons_18190607/presentation_sanoh.pdf.

¹⁰⁸ Gouvernement du Mali, « Rapport sur la situation de l’enregistrement des faits d’état civil et de l’établissement des statistiques » (2012).

¹⁰⁹ S. P. Berthé, M. Chajes, « Modernisation du système d’état civil au Mali » *5th Annual Meeting of the ID4Africa Movement* (18-20 June 2019).

¹¹⁰ Gouvernement du Mali, « Rapport sur la situation de l’enregistrement des faits d’état civil et de l’établissement des statistiques » (2012). Institut National de la Statistique (INSTAT), Mali, Cellule de Planification et de Statistique Secteur Santé-Développement Social et Promotion de la Famille CPS/SS-DS-PF et ICF (2019).

¹¹¹ Gouvernement du Mali, « Rapport sur la situation de l’enregistrement des faits d’état civil et de l’établissement des statistiques » (2012).

of birth), which have been useful in other countries in resolving the status of unregistered persons, though it is not clear if these audiences have been used for purposes beyond criminal proceedings in Mali.¹¹²

5. Current Political Debates and Reforms

In April 2019, Mali's Prime Minister and his entire government resigned over the inability of the government to control spiralling violence following a vote of no confidence. Trust in the government has fallen from 2013, when almost half of eligible voters participated in elections, to around 30% in the 2018 presidential election. A draft constitution was approved by the National Assembly in 2017 but has not yet been enacted. The proposed constitution would create new regions in northern Mali in line with the Algiers Accord. To date, however, even the limited decentralisation proposed by the Accord has not been enacted.

Current political debates in Mali include: (1) the impact of armed conflict on Mali's nationality administration, (2) the extent of decentralisation in northern Mali, (3) the impact of migration on Mali's nationality law and (4) the role of Islamic law in Mali's nationality law.

5.1 The impact of armed conflict on Mali's administration of nationality law

The biggest impediment to the implementation of Mali's laws remains armed conflict, which has only gotten worse in recent years. In March 2019, the Armed Conflict Location & Event Data Project (ACLED) reported a massive spike in violence across the Sahel, including in Mali.¹¹³ While Islamic groups and organised crime continue to control much of northern Mali, central Mali has entered a new and disturbing phase of violence between herders and farmer militias. Recently, there has been an increase in violence in central Mali, with the addition of a new conflict between the Malian government and the Fulani. This emerging conflict reflects a regional growth in tension between Fulani pastoralists and various West African governments. Mali is also a regional transit country for migration and smuggling. These security challenges impact the implementation of Mali's nationality law.

Mali's conflicts, while often presented as problems of security, land use and terrorism, are also deeply related to questions of the integration of nomadic minorities into the nation-state structure and, in particular, Mali's highly centralised and urban-based government system. As well, questions over the parallel systems of belonging that exist in many traditional communities, including nomadic communities, continue to create tension between written Malian nationality law and the ways in which many Malians live.

As a practical matter, the conflicts have greatly impeded civil registration and led to the destruction of many registries. There may be as many as a quarter of a million people displaced within Mali, a fact which complicates efforts to register births. With northern Mali under rebel control, normal government functions like the registration of births have been seriously

¹¹² Mission Multidimensionnelle Intégrée des Nations Unies Pour la Stabilisation au Mali, « Audiences Foraines Dans la Région de Mopti » 15 juin 2015 <https://minusma.unmissions.org/audiences-foraines-dans-la-r%C3%A9gion-de-mopti>

¹¹³ ACLED, 'Press Release: Political Violence Skyrockets in the Sahel According to Latest ACLED data' (2019).

impeded, while large populations remain displaced from their homes or refugees in other countries, also impeding registration despite the efforts of international aid agencies and the relative success of the NINA card in refugee camps.¹¹⁴

Hundreds of thousands of Malians remain abroad as refugees, their lack of documentation compounded by the failure to register births in many refugee camps.¹¹⁵ Throughout Mali's history, as in most countries, voting is limited to nationals.¹¹⁶ As well, while civil registration and issuance of the NINA card in refugee camps has been successful, it is not clear that these efforts have reached the Tuareg community.

Political decentralisation and the rights of minority groups, particularly nomads, continue to dominate the question of Malian nationality. The politics of Mali present serious challenges to registration and inclusion for many Malians, particularly members of rural, nomadic and minority groups.

Despite ECOWAS, border checks between West African states are common. Meanwhile, Mali's worst conflict is along its northern border with Algeria and Libya, who are not ECOWAS members. Though less so than neighbouring Niger, Mali is now a transit country for people smuggling to Europe and increasingly, a conduit for drug smuggling.

5.2 Decentralisation in northern Mali – The Algiers Accord

The current debate over the future of northern Mali revolves around the status of northern Mali, the territory claimed for the Tuareg state of 'Azawad'. Over the past fifteen years, the government of Mali has proposed decentralisation as an answer. The question of decentralisation in northern Mali, however, raises the question of what decentralisation would look like. In particular, it raises the question of whether it might include changes to the nationality code.

In 2014, Mali and certain rebel groups signed the Agreement for Peace and Reconciliation in Mali Resulting from the Algiers Process, a road map for decentralisation.¹¹⁷ The Algiers Accord recognised the special culture and national identity of northern Mali, while also affirming the territorial integrity of Mali. The agreement envisioned the devolution of some powers to regional and local assemblies and the creation of new regions in the north. The agreement, however, does not provide for any separate authorities on the granting of nationality, the issuance of ID or the creation of an internal border between northern and southern Mali. The current agreement, therefore, does not appear as though it will impact Malian nationality law in any substantive way.

In common with other post-colonial states, Mali remains a unitary country with a single, centralised nationality regime, despite the challenges of diversity and demands for decentralised political control. There is no move towards any segmented citizenship rights,

¹¹⁴ UN High Commissioner for Refugees (UNHCR), 'Mali Situation: UNHCR Regional Update, December 2015-February 2016', February 2016.

¹¹⁵ UNHCR, 'MALI: Refugees, Internationally Displaced Persons and Returnees as of 30 November 2019'.

¹¹⁶ Malian electoral law (Law No. 02-007 of 12 February 2002).

¹¹⁷ Agreement for Peace and Reconciliation in Mali emanating from the Algiers Process, Bamako (20 June 2015).

such as exists in some other states with significant minority, indigenous or aboriginal populations,¹¹⁸ nor towards a federal system.

5.3 Islamic law and Malian nationality law

Questions over the role of Islamic law in Mali continue to be important to both Mali's nationality laws and their implementation. Secularism and the role of women under the law continue to be contentious issues. Though the 1992 Constitution enshrines secularism as central to Mali's law, Islamic leaders and their scholarship and influence continue to play an important role.¹¹⁹ The nationality code remains ill-suited for harmonisation with parallel systems of identity and authority based on Islamic principles and traditional practices, such as naming ceremonies, or the role of the Amanokal in Tuareg society. As a result, there remains considerable tension between the written nationality code and local practices.

5.4 Efforts to address statelessness

Following the ratification of the two UN statelessness conventions, Mali has created an inter-ministerial commission on statelessness and enacted a National plan of action to end statelessness. Considerable gaps remain, such as the lack of a procedure for facilitated naturalisation for stateless persons under Art. 32 of the 1954 Convention.¹²⁰ At the High-Level Segment on Statelessness in October 2019, the Malian government made a number of crucial pledges to end statelessness, including on stateless migrants, data collection, birth registration and foundlings.¹²¹

6. Conclusion

Today, Mali has a relatively liberal nationality law, which has been improved through reforms in 1995 and 2011. Problems with the 1962 law, such as gender and racial discrimination, have been mostly removed. The current law, however, continues to contain aspects of gender discrimination and discrimination against children born out-of-wedlock. As well, Mali lacks key protections against statelessness, such as a clause ensuring that children born in Mali who would otherwise be stateless receive Malian nationality. Some aspects of Mali's registration

¹¹⁸ UN Office of the High Commissioner for Human Rights (OHCHR), *The United Nations Declaration on the Rights of Indigenous Peoples*, August 2013, HR/PUB/13/2. For an example, see the recognition of aboriginal peoples in Malaysia, including the Orang Asli at <http://minorityrights.org/minorities/orang-asli/>.

¹¹⁹ Andrew Lebovich, 'Sacred Struggles: How Islam shapes politics in Mali' *European Council on Foreign Relations Policy Brief* (1 Nov. 2019).

¹²⁰ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360; UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175; UNHCR, 'Implementation of the Banjul Action Plan, Newsletter #14', July – September 2017

¹²¹ UNHCR, 'Results of the High-Level Segment on Statelessness' October 2020.

system conflict with cultural practices, traditional authority or the ways in which minority groups, such as nomads, live.

Upon independence under the transitional laws that were enacted, residents of Mali should have automatically obtained Malian nationality. Most, however, were not registered or issued with identity documents. This left some Malians, particularly minority groups and those living in rural areas or northern Mali, at risk of discrimination.

War broke out in northern Mali in 1962, the same year as Mali passed its first nationality code. Conflict would greatly impede the implementation of Malian nationality law. Civil war drove thousands of Tuareg and others abroad where many would remain unregistered in refugee camps, something that would later impede their ability to return. Drought would cause further thousands to leave northern Mali. Mali's socialist government was replaced with a military dictatorship in 1968. During this time, legal reform was not possible.

The 1990s brought a return of multi-party democracy and legal reform to Mali, including small reforms to the nationality law, though not the sweeping changes to ensure gender equality that some activists wanted. Islamic leaders continued to oppose the secularisation of Malian nationality law. Armed conflict in the north would continue to plague Mali, however, and impede the implementation of nationality. New conflict in central Mali only added to its instability.

The place of nomadic communities in the nation-state would emerge as a serious challenge to Mali's legal system, including its nationality law. There remained a serious question of nomad belonging given the existence of parallel, traditional power structures in nomadic communities and a mis-match between pastoralism and the requirements of the state. For all Malian communities, particularly in rural areas, the question of the role of customary law in determining Malian nationality remains unaddressed.

In 2011, Mali drafted a new nationality law that modernised and updated many aspects of the law, while retaining conservative, Islamic principles in other areas of family and personal law. This period also saw the renewal of armed conflict in northern Mali, this time prompting a coup and the collapse of government functions in the north. Following a French military intervention, northern Mali remains highly unstable and mostly under military or rebel control. Further attempts at reform and decentralisation, such as via a new constitution, have stalled.

Today, Mali faces the worst security challenges of its post-independence history, a situation that greatly impedes further legal reforms and the implementation of the rule of law. Without a true commitment to peace and decentralisation, it is unlikely that Mali will be able to implement fully its nationality regime in the near future. Questions over the place of nomads in the centralised state, the role of customary law and the place of Islam in government will remain serious challenges to Malian nationality law well into the future.

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