

Nationality, Migration and Statelessness in West Africa

A study for UNHCR and IOM

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A digital contact banner for UNHCR West Africa. The background is orange. On the left, there are social media icons for email, Twitter, Facebook, and Instagram, followed by their respective handles: Statelessnessinfo@unhcr.org, @UNHCRWestAfrica, @StatelessWA, #statelessness #ibelong, UNHCR West Africa, and UNRefugees. On the right, there are several website URLs in white and blue text: unhcr.org/ecowas2015, data.unhcr.org/ecowas2015, unhcr.org/statelessness, ibelong.unhcr.org, and KORA.unhcr.org.

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This report was prepared on the basis of field and other research during 2014. It was presented by the author at a Ministerial Conference on Statelessness in the ECOWAS region, held in Abidjan, Côte d'Ivoire, 23 to 25 February 2015 and subsequently circulated to ECOWAS Member States and other stakeholders for comment. This final version integrates the comments made by states and others who were consulted for the report. The tables and other information in the report have been updated to the end of 2014.

This report may be quoted, cited, uploaded to other websites and copied, provided that the source is acknowledged. The views expressed here are those of the author and do not necessarily reflect the official position of UNHCR or IOM. All names have been changed for the personal stories in boxes.

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The fifteen ECOWAS Member States



Methodology and acknowledgements

This report was written by a consultant, Bronwen Manby, jointly commissioned by UNHCR and IOM to prepare a comparative review of migration, nationality and statelessness in the 15 ECOWAS countries. Field visits were undertaken to five countries from May to July 2014 — Côte d'Ivoire, Guinea, Niger, Nigeria and Senegal — in which the author interviewed representatives of different branches of government involved in nationality administration, national refugee commissions, staff of international agencies and national non-governmental organisations, and members of communities who have had difficulties with documentation and nationality. The report was otherwise written on the basis of desk top study and the author's existing knowledge. The purpose of the report is to inform an ECOWAS ministerial meeting to discuss the issues, and the best means of resolving them at the regional and national levels. The author would like to thank all those who met with her and shared their information, insights and stories; the UNHCR offices in each of the five countries visited for this research, who assisted in setting up meetings; and especially Emmanuelle Mitte and Alioune Seck of the statelessness unit in the UNHCR regional office in Dakar. In addition, field work was greatly assisted by Amadou Tine and other members of RADDHO in Senegal; by Albarka Saliha of Timidria in Niger; and by Fode Keita and Firmin Coker of the *Commission nationale pour l'integration et le suivi des refugiés* in Guinea. Particular thanks are due to Mirna Adjami, as well as to Anne Althaus (IOM), Kavita Brahmhatt, Ibrahima Kane (Open Society Foundations), Laura Lungarotti (IOM), Emmanuelle Mitte (UNHCR), and Alice Sironi (IOM), as well as to Paul Koreki (technical adviser to the Minister of Justice, Human Rights and Civil Liberties in Côte d'Ivoire), for their comments on the draft of this text.

Acronyms

AOF	<i>Afrique occidentale française</i> (French West Africa)
ECOWAS	Economic Community of West African States
IOM	International Organisation for Migration
UEMOA	<i>Union économique et monétaire ouest-africaine</i> (West African Economic and Monetary Union)
UNDP	UN Development Programme
UNHCHR	UN High Commissioner for Human Rights
UNHCR	UN High Commissioner for Refugees
UNICEF	UN Children's Fund

French-English vocabulary list

French	English
<i>audience foraine</i>	court hearing away from usual seat
<i>attestation de réfugié</i>	refugee identity document
<i>autochtone</i>	indigenous (note that indigenous does not have the pejorative connotation of <i>indigène</i> in French, while autochthonous is rarely used in English)
<i>casier judiciaire</i>	criminal record (proof of)
<i>certificat de nationalité</i>	nationality certificate
<i>extrait (d'acte) de naissance</i>	birth certificate
<i>jugement supplétif</i>	court judgement on late birth registration
<i>laissez passer (titre de voyage)</i>	laissez passer (one way travel document)
<i>nationalité d'origine</i>	citizenship/nationality from birth
<i>ordonnance de garde</i>	guardianship order
<i>permis de séjour</i>	residence permit
<i>possession d'état</i>	legal presumption established by the appearance of the facts
<i>refoulement</i>	forcible return of a person to a place where they have a well-founded fear of persecution
<i>sauf conduit</i>	safe conduct pass (for children)

A note on terminology: “nationality” and “citizenship”

In international law, nationality and citizenship are now used as synonyms, to describe the legal relationship between the state and the individual; the terms can — and will in this text — be used interchangeably. Neither term has any connotation of ethnic or racial content, but is simply the status that gives a person rights and obligations in relation to a particular state.

Other disciplines, such as political science or sociology, have different ways of using the terms in other contexts. And even in law, different languages have different nuances, and different legal traditions have different usages at national level. In national law, “citizenship” is the term used by lawyers in the Commonwealth tradition to describe this legal bond, and the rules adopted at country level by which it is decided whether a person does or does not have the right to legal membership of that state and the status of a person who is a member. Nationality can be used in the same sense, but tends to be more restricted to international law contexts. In the French civil law tradition, meanwhile, *nationalité* is the term used at both international and national levels to describe the legal bond between a person and a political entity, and the rules for membership of the community. Where a Commonwealth state has a national citizenship act, a member of the Francophonie has a *code de la nationalité*. *Citoyenneté* is not used in this context.

In the English text of this report the term “nationality of origin” is used as a direct translation from the French *nationalité d’origine* to mean nationality that a person has from birth as of right. In many Commonwealth countries, the term used in national laws for this concept is “citizenship by birth”; however, the original meaning of citizenship by birth — citizenship attributed simply on the basis of birth in the country (by contrast with citizenship by descent, for those born outside the country of a citizen parent) — is no longer in force in any of the Commonwealth countries of West Africa, and the phrase tends to create confusion.

1. Summary

Statelessness is a problem of significant but unknown magnitude in West Africa. It is not possible to say how many people are stateless in the sub-region; but it is certain that many hundreds of thousands of people are at risk of statelessness. That is, there is a possibility or probability that they are “not considered as a national by any state under the operation of its law”. This study seeks to show why this is important, both for the rights of the individuals affected and for the stability and effectiveness of the states where they live; to provide a comparative analysis of nationality law in the region and highlight the gaps that allow statelessness; to identify the populations at risk of statelessness and the reasons why statelessness is so prevalent, in particular the links between statelessness and migration; and to make recommendations for the remedies that may address the problem both at national and regional level. These recommendations are directed to actions that may be taken by the institutions of the Economic Community of West African States (ECOWAS) and by Member States acting within the ECOWAS framework of agreements on free movement, as well as by UN, IOM, and other international agencies.

A person whose legal identity is secure and who has access to the nationally and internationally recognised documents needed to show entitlement to the protection of and benefits granted by nationality of a state finds it hard to understand what it means to be denied a national identity card, a passport, a vote, an opportunity to stand for public office, a job, the opportunity to go to school, or any number of other entitlements that depend on recognition of nationality. If a person remains entirely in the informal sector, documentation may not be essential; but even a peasant farmer in a remote area, or a nomad moving seasonally with the cattle, will interact with the modern state at some point. At that point, a document will be needed to show who the person is and, in most cases, to which state or states he or she belongs. Untold numbers of people are blocked in their lives — at the minimum, subjected to regular extortion by immigration officials or police — because they cannot obtain a document recognising their right to belong to at least one state.

Among the causes of statelessness in West Africa are gaps in nationality laws and policies that leave some people without recognition of the nationality of any country. These gaps include racial, ethnic, religious and gender discrimination, especially in law but also in practice; the very weak rights attached in law to birth and residence in the country in many states, even for children who cannot obtain the nationality of their parents; the almost complete inaccessibility of naturalisation procedures (especially to other West Africans); the maladaptation of existing laws and procedures for those persons following a nomadic lifestyle; and the absence of national and regional procedures for the identification and protection of stateless persons. In addition, the failure to acknowledge significant colonial-era population transfers and to grant nationality systematically to the populations resident in West African countries at the time of transition to independence still has consequences today; while more recent transfers of territory following adjustments to borders have failed to take sufficient account of the people living in those zones. Nationality laws and administration in the region do not effectively provide the possibility of integration as nationals of a new country to migrants and their descendants — despite the very large numbers of people who benefit from the regime of free movement within the West African region.

The populations most at risk of statelessness in West Africa thus fall into three main groups: migrants – historical or contemporary -- and their descendants, including refugees and former refugees, as well as those “returned” to a country of origin where they have few current links; border populations, including nomadic and pastoralist ethnic groups who regularly cross borders, as well as those affected by transfers of territory; and orphans and other vulnerable children, including those trafficked for various purposes.

Underlying these problems is the weakness of civil registration systems. In the West Africa region, five of fifteen countries have a birth registration rate of less than 50 percent; only Cape Verde, with its population of half a million people, achieves a more than 90 percent registration rate. A birth certificate does not grant nationality, but it is evidence of the elements that must be proved to show that a person is entitled to nationality. Without registration at birth, a person will need to provide witnesses and other evidence of his or her situation, and undergo much more onerous bureaucratic procedures before proof of nationality is issued. The mere fact of not possessing a birth certificate does not render an individual stateless: a person who lives in the same place as his ancestors on both sides of the family for several generations is unlikely to face any problems with obtaining nationality documentation (other than difficulties of accessing government services that may apply to anyone) — even later in life, and even if he or she is completely undocumented up to that point. However, civil registration systems become the more important as population mobility increases; and those most at risk of not being registered — the poor and marginalised, the nomadic, members of minority ethnic groups living in remote areas, migrants and refugees — are those most in need of proof of the facts of their birth so that they can establish a legal identity and nationality.

ECOWAS has significant potential advantages as a region in seeking to address these problems. Among the eight regional economic communities that form the “building blocks” of the African Union, it has progressed furthest in achieving regional integration and freedom of movement, residence, work and establishment. There is even a protocol discussing the concept of ECOWAS citizenship. However, as ECOWAS and its Member States have themselves noted, implementation has not been as effective as desired. Current efforts to improve implementation and to strengthen regional integration, by measures such as the adoption of a common biometric ECOWAS national identity card and the abolition of the requirement to obtain a residence permit, provide an opportunity to address at the same time the issues raised in this report.

Section 2 of this report sets out the history of nationality law in West Africa from pre-colonial times to the present day, especially the trends since independence, the comparative provisions of nationality law today, and the gaps in the law that contribute to the risk of statelessness. Section 3 looks at nationality administration in practice today, and identifies some of the major blockages. Section 4 discusses the populations most at risk of statelessness, above all among migrants and their descendants. Section 5 describes the ECOWAS treaty regime relating to free movement and migration in the West Africa region, and the challenges in implementing these commitments. A summary of high-level conclusions from the research for this report is elaborated in section 6; and a comprehensive set of recommendations is provided in section 7. Annexes provide extracts of documents adopted by the African Union human rights bodies on the right to a nationality, the current state of ratifications by West African countries of the UN treaties on statelessness, a list of nationality laws currently in force and a bibliography.

In order to strengthen nationality systems and address the risk of statelessness caused by historical and contemporary migration, the priorities for action by ECOWAS and its Member States should be:

- The removal of provisions in the law and requirements in administrative procedures that discriminate on the grounds of gender, race, religion or ethnicity.
- Accession to the international conventions to prevent and reduce statelessness and protect stateless persons, and the implementation of the safeguards against statelessness contained in these treaties into their national laws, especially the attribution of the nationality of the country of birth to a child who is otherwise stateless.
- The further reform of nationality laws to create in all states at least some basic rights to nationality that derive from birth and residence as a child in that country: that is, to create a way in which the children of migrants may be integrated into the national community (even if the parents are not naturalised).
- The reform of naturalisation procedures to make them accessible to a far wider number of people, and in particular to the nationals of other ECOWAS states, including refugees and former refugees.
- The establishment of procedures within countries and in collaboration between countries to determine the nationality of individuals where their status is in doubt; and, in those cases where no existing nationality can be determined, to provide a status of “stateless person”, and the facilitation of naturalisation for those who are stateless.

Minimum standards for the content of nationality laws are already established by the UN human rights treaties, including the Convention on the Rights of the Child, as well as the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. UNHCR has provided a set of Guidelines on Statelessness that provide authoritative interpretation of the obligations under these treaties.¹ In addition, the African Charter on the Rights and Welfare of the Child provides in its Article 6 for every child to have the right to a name, to be registered at birth and to a nationality; the Committee of Experts responsible for the treaty has recently adopted a General Comment on states’ obligations under this article. The African Commission on Human and Peoples’ Rights has also initiated a process to draft a protocol on the right to a nationality in Africa. ECOWAS and its Member States have the opportunity to be leaders in these processes both by participating in the African Union processes, and by developing their own norms and best practices within the sub-region.

Currently, the approach of those involved in identity management systems and their reform is usually to focus on preventing the fraudulent acquisition of documents by those who are not entitled to them. This is important. However successful measures to end statelessness will depend on the reconceptualisation of the problem to focus equally on ensuring that every person has a nationality and effective access to proof of that nationality. This will require efforts to create an integrated nationality system, in which investments in civil registration, electoral registration, national identity cards, border management and other related initiatives are seen as linked parts of the same whole. Achieving such an integrated system will require not only coordination within and among ECOWAS Member States, but also among the region’s international partners, including UN agencies and the IOM.

¹ Available with many other resources at the REFWORLD website thematic page on statelessness: <http://www.refworld.org/statelessness.html>.

Reform of nationality law and practice is not just a technical problem, as the history of nationality law reforms in West Africa (and Africa, and the rest of the world) show. Changes to the laws since independence have responded both to fears of dominance by immigrants, when rights based on birth in the territory have been removed; and also to activism from women's rights advocates and national diasporas as gender discrimination has been reduced and dual nationality been increasingly allowed. Providing access to nationality to those who do not currently have recognition of the right can be criticised by some as creating access to power and resources (especially land) for those who should not have the right to do so. However, failing to provide effective systems by which migrants and their descendants can obtain the nationality of the country where they now live has long term negative consequences, not just for the individuals concerned, but also for peace and security in the region. In the most extreme cases, those who cannot obtain recognition of their nationality in the country where they were born and brought up and where they have the centre of their life have taken to arms to defend their right to belong, or to create a state where they will belong. Each country and region must find its own balance; but international norms on the avoidance of statelessness should frame these debates. Ensuring the right to a nationality does not only provide the most basic guarantee of other rights due to a national; but also provides the foundation of the security of the state itself. The ECOWAS region, with its strong traditions of inter-state cooperation in regulation of migration and promotion of free movement, is well placed to take a lead in resolving these issues among its Member States.

2. West African nationality laws

Both law and administrative practice are important for effective nationality administration, and both contribute to the problem of statelessness in West Africa. Even in those countries where the application of the law is weak, the law creates the framework within which practice operates, as well as shaping the limits for application of the rules by civil servants and broader popular understanding. If the law is deficient, an individual can buy a document here or there, but in the end will need proof according to the criteria set by the law; and the greater the degree of participation in the formal economy or in politics, and the more strictly enforced its terms are in practice, the more important the provisions of the law become.

2.1. The principles of nationality law

Both the common law and the civil law models of nationality that came to be applied in Africa combine the two basic concepts known in Latin as *jus soli* (literally, law or right of the soil), whereby an individual obtains nationality because he or she was born in a particular country; and *jus sanguinis* (law or right of blood), where nationality is based on descent from parents who themselves are citizens. In general, a law based on *jus sanguinis* will tend to exclude from nationality residents of a country who are descended from individuals who have migrated from one place to another. An exclusive *jus soli* rule, on the other hand, would prevent individuals from claiming the nationality of their parents if they had moved away from their “historical” home, but is more inclusive of the actual residents of a particular territory. Many (but not all) African countries of civil law heritage have a system known as double *jus soli*, where a child born on the territory of one parent also born there automatically becomes a national at birth. All African nationality laws include a *jus sanguinis* element, providing for automatic nationality for the children of fathers who are nationals (and usually mothers also – see below, section 2.6.1); most also include a *jus soli* element, providing different degrees of access to nationality based on the circumstances of birth of the person or his or her parents in the territory. Among West African laws, the *jus soli* element is strongest, giving automatic rights to those born in the country, in Benin, Burkina Faso, Cape Verde and Guinea, as well as in Liberia (though on a racially discriminatory basis).

Another distinction important in nationality law is that between nationality from birth (termed “nationality of origin” in the civil law countries) and nationality by acquisition. Nationality from birth/of origin may be based either on descent (*jus sanguinis*) or on birth in the country (*jus soli*), but implies that a child has a nationality from the moment of birth without having to undergo any further procedures to acquire it (in practice of course, there will be a need to complete some paperwork to obtain documentation of that nationality). Nationality by acquisition relates to those who have become citizens later in life, as a result of naturalisation based on long-term residence, or other less discretionary procedures (usually known as registration or option) based on marriage, adoption or other criteria.²

² Note that the terminology is not consistent across legal systems. In countries using English as the official language, the law usually refers to citizenship “by birth” to mean “from birth”; but, confusingly, in some cases citizenship “by birth” is used to mean citizenship based on birth in the country (*jus soli*), based on the terminology used in Britain at the date of independence. Similarly, naturalisation is usually the term used (in English and in French and Portuguese) for acquisition of citizenship after long term residence; registration or option may be the term used for acquisition of citizenship based on marriage or other connection, under a

In many countries, the rights of those who are citizens from birth or by acquisition are the same; but others apply distinctions, especially in relation to the holding of public office. In addition, and very importantly, nationality by acquisition may often be far more easily withdrawn.

2.2. Pre-colonial and colonial periods

Africa's pre-colonial political and territorial entities had of course highly variable systems for determining who was or was not a member of each polity. As in other parts of the world, these questions were less urgent in an era of lower population densities and much less migration; but, again as in other parts of the world, there were systems for welcoming and managing travellers passing through a territory, or for integrating those who wished to stay. In the densely forested areas of central Africa, communities tended to be small enough that membership was effectively determined by family linkages rather than political, ethnic or religious affiliations. In larger communities, even in quite similar geographical zones, political structures varied widely, and membership systems accordingly: for example in the case of the Yoruba kingdoms, compared to the decentralised polities in the Igbo territories, both in the southern part of today's Nigeria; or the empires — Ghana, Mali, Songhai, Kanem-Bornu — that succeeded each other across the Sahel. Membership of a political unit might be decided on the basis of male or (less commonly) female-line descent, with entry-points for strangers through initiation into membership of secret societies or age-grade structures, as well as payment of tribute as an indication of allegiance to a particular monarch, admission by a chief, or approval by an assembly of existing members. As in other continents, different levels of rights to membership and participation were common, between those of higher and lower status, and, of course, between men and women.³ Very often, belonging and membership was related to the grant of usage rights over land for farming or grazing, with "first-comers" assuming authority to grant "late-comers" such rights (the distinction being one of sequence of arrival in a location rather than ethnicity or other difference) — in the system today known as the *tutorat* in Côte d'Ivoire, or regulation through the *chefs de terre* or "earth priests" in Burkina Faso or elsewhere. In time, and depending on political circumstances, late-comers could be integrated into the community and themselves become "autochthonous" or "indigenous"; though an autonomous status could also be maintained indefinitely.⁴

The concept of nationality as we know it today in Africa came into being, however, with the creation of the European empires in Africa towards the end of the 19th century. Indeed, the laws of nationality developed internationally during the same period, as global migration greatly increased under the impact of the European expansion, and issues of identity and belonging became less

procedure that gives less discretion to the state. However, again, terminology is not consistent and rights may vary in national laws.

³ See, for example, George B.N. Ayittey, *Indigenous African institutions*, Ardsley-on-Hudson, NY: Transnational Publishers, 1991; Said Adejumobi, "Identity, Citizenship and Conflict: The African Experience", in W. Alade Fawole and Charles Ukeje, *The Crisis of the State and Regionalism in West Africa: Identity, Citizenship and Conflict*, Dakar: CODESRIA, 2005; Martin Uzochukwu Gasiokwu, *ECOWAS : Problems of citizenship and free movement*, Jos, Nigeria: Mono Expressions, 1998, pp.47-54; Ralph Austen, *Trans-Saharan Africa in World History*, OUP, 2011, pp.49-77.

⁴ Jean-Claude Willame, *Banyarwanda et Banyamulenge: Violences ethniques et gestion de l'identitaire au Kivu*, Bruxelles : Institut africain, *Cahiers africains No.25* / Paris : L'Harmattan, 1997 ; Jean-Pierre Chauveau, "Question foncière et construction nationale en Côte d'Ivoire", *Politique africaine*, No.78, 2000, pp.94-126, and other works by the same author, including the chapter (and contributions by other authors) in Richard Kuba and Carola Lentz (eds.), *Land and the Politics of Belonging in West Africa*, Leiden/Boston: Brill, 2006.

closely connected with the simple fact of location of birth or membership of a linguistic or cultural group. Residents of territory annexed by a European state were considered under international law to become nationals of that state. Each colonial power then had almost total discretion to determine the rules by which nationality was granted within the territories it controlled.⁵

The West African countries now members of ECOWAS, with the exception of Liberia, were prior to independence governed by the nationality laws of three colonial powers: France, Great Britain, and Portugal. Germany had been the original colonial power in Togo, but with the defeat of Germany in the First World War, the territory was “mandated” to French and British control by the League of Nations (after the Second World War its “mandated” status transformed into that of a “trust territory” under the United Nations); British-administered Togo was administered from the Gold Coast and, following a referendum on its status, became part of Ghana at the time of Ghana’s independence in 1957.

The territories of the British empire in Africa belonged to one of two main categories. First established were the “colonies” (which in West Africa included the Gambia, the Gold Coast, Lagos and Sierra Leone/Freetown). The remaining territories, including all those added in the late 19th century “Scramble for Africa”, were designated “protectorates”. Colonies and dominions were “within the crown’s dominion”; while “protectorates”, including most other British-controlled territories in Africa, were nominally foreign territory managed by local government structures established under British protection. Until 1948, the single status of “British subject” was applied to all those born within the crown’s dominion (including the United Kingdom itself).⁶ However, rights of British subjects within any particular territory could vary; in particular, there were distinctions between “natives” (defined in various statutes applying to particular territories) and others. During the 19th century, the term “British protected person” emerged to cover the people indigenous to a protectorate. British protected persons and other “natives” were in general governed by customary law, as modified by statute and British interpretation. The term British protected person was used also for the residents of British mandated territories, though they had a separate legal status.⁷

The British Nationality Act of 1948, the first comprehensive attempt to organise nationality law by statute, established the new status of “citizen of the United Kingdom and colonies” (a status abolished in 1981). Citizenship of the UK and colonies continued to be granted on a *jus soli* basis to all those born in the UK or in one of the colonies. The status of “British protected person” was codified by the new law, and continued to apply to persons born in a protectorate who were not citizens of the UK and colonies.

French territories in West Africa formed part of the collectivity known as *Afrique occidentale française* (AOF). From the late nineteenth century, France divided nationals of its overseas territories into two categories: French citizens (*citoyens français*), who were of European stock or (in some circumstances) of mixed race; and French subjects (*sujets français*), who included black Africans and other natives (*indigènes*) of French-controlled territories. The *Code de l’indigénat*, a

⁵ See Paul Weis *Nationality and Statelessness in International Law* (2nd Ed.), Kluwer, 1979.

⁶ The British Nationality and Status of Aliens Act 1914 was the first statute intended to apply throughout the empire, and retained the principal nationality category of “British subject status” previously developed through common law and a patchwork of other statutes.

⁷ See Laurie Fransman, *Fransman’s British Nationality Law, Third Edition*, Bloomsbury Professional, 2011, for a chronology of British nationality law and exhaustive discussion of the very complex distinctions.

collection of legal provisions added to the Penal Code in 1881 and initially applied to Algeria only, established an inferior legal status for French subjects compared to French citizens, and provided for the application of local customary law as interpreted by executive-dominated colonial tribunals to French subjects, while French citizens were governed by the French civil code. Although the French imperial system did not employ the British concept of indirect rule under customary law, there was in practice a very similar distinction between *indigènes* and those of French civil status — that is to say mostly those of European descent. The exception to this rule was the French civil status given to the inhabitants (black African as well as white) of four *communes* in Senegal — Dakar, Saint Louis, Gorée and Rufisque — who had enjoyed special privileges since the 1830s, including the option to access the courts under the civil code and, from 1848, the right to elect a deputy to the French parliament.⁸ French mandated territories also had their own status, but a similar administrative system in practice.

In the final years of colonial rule, there was an effort in the French territories, not paralleled in the British protectorates, to extend citizenship more widely⁹; however, the rights promised were never granted in full, especially in relation to political rights, and did not satisfy the demands for equality and independence from French control. From 1958, the new constitution of the French 5th Republic created a *Communauté française* in which the territories of AOF had much greater autonomy than before, though foreign relations and thus nationality remained within French jurisdiction. Only Guinea rejected the terms of the short-lived *Communauté*, attaining independence from France in 1958 under the radical leadership of Sekou Touré, two years earlier than most other AOF territories.

Portugal drew similar distinctions between “European” and “native” in its five colonies in Africa, including Cape Verde, Guinea Bissau and São Tomé and Príncipe in West Africa. Two categories of citizenship were introduced in 1899, the *indígena* (native) and the *não-indígena* (non-native). The *não-indígenas*, European-born Portuguese and white-skinned foreigners, were full Portuguese citizens subject to metropolitan laws, whereas the *indígenas* were administered by African law, that is the “customary” laws of each territory. The *indigenato* code, applied in all Portuguese colonies except Cape Verde and São Tomé and Príncipe, was applied administratively, without possible appeal to any court of law.¹⁰ Formal legal equality in the colonies was established by the Portuguese only in 1961, in the midst of liberation wars in Africa, when any African could formally choose to become a Portuguese citizen and the worst kinds of forced labour were abolished.¹¹

Liberia had its own very particular history with regard to citizenship, starting from its foundation in 1822 by American Colonization Society. The 1839 Constitution adopted by the board of directors of the Society clearly established the colonists as legally separate from the “several African tribes”,

⁸ See Christian Bruschi, “La nationalité dans le droit colonial,” *Procès: Cahiers d’analyse politique et juridique*, 1987-1988, special issue on “Le droit colonial”, pp. 29-83.

⁹ In particular, the famous *Loi Lamine Guèye*, named after a Senegalese delegate to the Constituent Assembly drafting the constitution of the French Fourth Republic, which provided that “A partir du 1er juin 1946, tous les ressortissants des territoires d’Outre-Mer ont la qualité de citoyen, au même titre que les nationaux français de la métropole et des territoires d’Outre-Mer. Des lois particulières établiront les conditions dans lesquelles ils exerceront leurs droits de citoyens. » Loi 46-940 du 7 mai 1946 tendant à proclamer citoyens tous les ressortissants des territoires d’outre-mer.

¹⁰ Peter Karibe Mendy, “Portugal’s Civilizing Mission in Colonial Guinea-Bissau: Rhetoric and Reality,” *The International Journal of African Historical Studies*, 2003, vol. 36, no. 1, p. 44.

¹¹ Bridget O’Laughlin, “Class and the customary: the ambiguous legacy of the *Indigenato* in Mozambique”, *African Affairs*, Vol.99, No.394, 2000, pp. 5-42.

from whom the purchase of land had been arranged.¹² The first constitution of an independent Liberia, freed from the control of the Society in 1847, described “the people of the Republic of Liberia” as “originally the inhabitants of the United States of North America”, distinguishing themselves from “the natives of the country”.¹³ With a view to that history, it was also provided that: “The great object of forming these Colonies, being to provide a home for the dispersed and oppressed children of Africa, and to regenerate and enlighten this benighted continent, none but persons of color shall be eligible to citizenship in this Republic”.¹⁴ But only in 1947 did the Tubman Administration extend the legal provisions for citizenship eligibility to members of indigenous ethnic groups; the “Hinterland Regulations” adopted the next year continued to exclude the indigenous population from meaningful participation in political power.¹⁵

2.3. Transition to independence

The nationality laws adopted by the new states at independence were to a large extent based on models from the power that had colonised them; these were mostly included in the independence constitutions in the Commonwealth countries, which took great care (at least on paper) to avoid statelessness at the moment of transition; whereas they were left to legislation in the civil law countries (leaving gaps that are still important in the determination of nationality of some populations resident on the territory at independence). The rules that governed nationality on state succession remain very significant today in determining which persons are regarded as “natives” of each State and have unquestioned access to nationality.

In all four new states that were formerly British territories in West Africa (Gambia, Ghana, Nigeria and Sierra Leone), the transitional provisions stated that a citizen of the UK and colonies or a British protected person born and resident in the country automatically became a citizen at independence if at least one parent or grandparent was also born in the country. In the case of Gambia, Nigeria and Sierra Leone (but not Ghana), those persons born in the country whose parents and grandparents were all born outside the country were entitled to citizenship by way of registration (a non-discretionary process), as were other “citizens of the UK and colonies” or “British protected persons” who were ordinarily resident in the country. Ghana, the first British territory to obtain independence, followed a slightly different model. Whereas transitional citizenship provisions were included in the independence constitutions for the other countries, for Ghana the constitution delegated citizenship provisions to law, and the initial terms on which a person became Ghanaian were set out in the Ghana Nationality and Citizenship Act, No.1 of 1957. Although those born in the country of one parent also born there became citizens as of right at the date of independence, as in the other former British colonies, those without a parent also born in Ghana had to naturalise on the basis of residence and conditions set for all other aliens; though provision was made for easier access to citizenship for nationals of other Commonwealth countries, both in the transitional measures and on an ongoing basis. In all four countries, the initial framework for those born after

¹² Constitution of the Commonwealth of Liberia, 1838, Article 9.

¹³ Constitution of Liberia 1847, preamble.

¹⁴ Constitution of Liberia 1847, Article V(15). In a 1955 revision to the constitution the phrase “persons of color” was replaced by “Negroes or persons of Negro descent”.

¹⁵ Stephen Lubkemann, Deborah H. Isser and Philip A.Z. Banks III, “Constraint of Customary Justice in Post-Conflict Liberia”, in Deborah Isser (ed.) *Customary Justice and the Rule of Law in War-torn Societies*, Washington DC: US Institute of Peace, 2011; Augustine Konneh, “Citizenship at the Margins: Status, Ambiguity, and the Mandingo of Liberia”, *African Studies Review*, Vol. 39, No. 2, 1996, pp. 141-154.

independence was for *jus soli* automatic attribution of nationality based on birth on the territory, (unless the father was a diplomat and the mother was not a citizen). None of these laws was gender neutral, and provisions relating to married women made them dependent on their husband's status; while the rights of women to pass nationality to their children (born outside the country) were limited.¹⁶

The practice in the French colonies was different: after the adoption of the 1958 constitution of the French Community (for all but Togo and Guinea), relations with metropolitan France were governed by individual treaties, but the regulation of nationality was left to the new members of the Community, or to the fully independent states after the short-lived period of the Community came to an end. According to French law, nationality in the context of the state successions was based on the criterion of domicile, a requirement based on residence (though with more particular definition in French law): the principle established to govern the succession of states was that French nationals with local civil status domiciled in the newly independent states lost French nationality on the day of transfer of sovereignty. If domicile was not clear, the person concerned must clarify it, and the courts could ultimately decide on this point. A law of 28 July 1960 then permitted French citizens (including those who had been citizens of the "four communes") to keep their French nationality even if they acquired the nationality of the new state, and persons originating from the new states to retain their French nationality by option, under certain conditions (for example, based on service in the French army).¹⁷

There were important variations among the former French territories, though in sub-Saharan francophone Africa, the new nationality codes and provisions on state succession mostly followed a pattern modelled on the French nationality code of 1945. This included the adoption of provisions on double *jus soli* and the automatic right to citizenship for those born in the country and still resident there at majority. In addition, the AOF countries often included transitional provisions that provided easier access to citizenship for natives of other former AOF colonies (and other French colonies in general), based on option within a limited period after independence, though ongoing access was more rarely included.

In Senegal, for example, the *code de la nationalité* adopted in 1961 (and still in force, as amended) provides in its first article that any person born on territory is Senegalese if one parent is also born there; in addition the article creates a presumption that this is the case if the person is in practice treated as a Senegalese by others (that is, the person has *possession d'état de national*). As a transitional provision, a right to opt for Senegalese nationality was also given to all persons from the former AOF and AEF territories, Togo, Cameroon and Madagascar, as well as persons married to Senegalese and persons from neighbouring countries, if they were resident in Senegal at the date of

¹⁶ *Fransman's British Nationality Law*, Chapter 3 and catalogue entries on Commonwealth countries; see also "Second Report on State Succession and its impact on the nationality of natural and legal persons, by Mr. Vaclav Mikulka, Special Rapporteur", A/CN.4/474 and Corr.1 and 2. Extract from the Yearbook of the International Law Commission, 1996 Vol.II(1).

¹⁷ Loi n° 60-752 du 28 juillet 1960 portant modification de certaines dispositions du code de la nationalité française ; see Ruth Donner, *The Regulation of Nationality in International Law*, 2nd Ed, Transnational Publishers, Inc., 1994, Chapter V "Nationality and State Succession", section 3.2.2.

entry into force of nationality code. The option had to be exercised within three months of the entry into force of the new code.¹⁸

Whereas most AOF territories thus provided for relatively liberal grant of nationality at independence, Côte d'Ivoire, the most highly developed economy of AOF and the recipient of the greatest number of migrant workers to the new cocoa and coffee plantations, adopted rules that made it difficult for these migrants to be recognised as Ivorian. Although there were transitional provisions allowing those resident in the country to acquire nationality, the Ivorian nationality code did not incorporate the double *jus soli* rule for those born after independence; and although the law allowed children under eighteen born in Côte d'Ivoire of foreign parents to acquire Ivorian nationality "by declaration" if they had lived in Côte d'Ivoire for more than five years, this right was little used and was suppressed in 1972. Nationality of origin was attributed only to persons with one parent who was a national, rather than including any *jus soli* element.¹⁹ (See also the box in section 4.1.)

Guinea was also a partial exception to the general rules, thanks to its earlier exit from French nationality, when it rejected membership of the *Communauté française* in 1958. The transitional provisions did not establish explicit rules relating to those who became Guinean at independence; and even the date of entry into force of the new nationality code was not clear.²⁰ However, the new national law was largely based on the French model, and had a strong emphasis on rights derived from birth in the territory. As a UN trust territory, Togo was already recognised as having its own nationality at the time of the creation of the *Communauté française*; however, it only adopted a law regulating nationality more than a year after the dissolution of the French community.²¹ The law followed the French model quite closely, as in the case of Guinea emphasising a *jus soli* attribution of nationality.²²

In the former Portuguese colonies, most of the new national constitutions and political regimes were given a socialist content when independence was attained following the 1974 collapse of the *Estado Novo* in Portugal. Nonetheless, the lusophone countries kept Portugal's civil law system, maintaining much of Portuguese colonial legislation, including the framework of the provisions on nationality that had been applied in the metropolitan territories. Some countries also voted for rules favouring the grant of nationality to those who had fought against the Portuguese and penalising those who had collaborated with the colonial regime. For example, in Guinea Bissau the law provided that any person who had fought for the liberation of the republic became a national on the date of independence.²³

Though gender discrimination was a common feature of the laws adopted at the time of independence in West Africa — as it was in the 1950s and 1960s in most European states — formal equality between races and ethnic groups was the norm. In some cases, however, new laws reversed the system of discrimination, excluding members of certain ethnic groups. In West Africa, this remains the case in Liberia and Sierra Leone; while in Mali preferential treatment is given to

¹⁸ Code de la nationalité sénégalaise, articles 1, 29 and 30.

¹⁹ Articles 6, 7, 17-23 and 105 of the Code de la nationalité 1961.

²⁰ Decottignies and de Biéville *Les nationalités africaines*, entry on Guinea, p.153.

²¹ Loi No.61-18 du 25 juillet 1961.

²² Decottignies and de Biéville *Les nationalités africaines*, entries on Cameroon and Togo.

²³ Guiné Bissau, Lei da nacionalidade 1976, art.1(c).

persons of African origin; and in Nigeria the constitutional provisions on membership of an “indigenous community” create a strong element of ethnic discrimination (see further below, section 2.6.3).

2.4. Trends since independence

West Africa, in common with the rest of the continent, and indeed the rest of the world, has seen two particularly strong trends in modifications to nationality laws since independence: these are a reduction or removal of gender discrimination, so that it is increasingly common for a woman to be able to pass her nationality to her children and spouse on equal terms with men; and acceptance of dual nationality. A trend that goes against the more common direction of law reform globally has been the increasing emphasis on nationality based on descent rather than birth in the country.

Gender discrimination was removed for the transmission of nationality to children in Nigeria in 1974; in Guinea in 1983; in Burkina Faso in 1989; in Niger in 1999; and in Senegal in 2013. It was reduced in Mali in 1995 (women were given some rights to transmit their nationality, but not equally with men); and for children born in Sierra Leone in 2006 (though retained for children born outside the country). Discrimination in relation to acquisition of nationality by marriage was also reduced through some of the same laws, though it is retained in more countries. (See sections 2.6.1 and 2.6.4.)

Laws were adopted permitting or extending rights to dual nationality in Cape Verde in 1992, in Nigeria in 1999, in Ghana in 2000; in Gambia in 2001 (for citizens by birth only), in Sierra Leone in 2006, and in Niger in 2014. In 2010, Guinea Bissau adopted amendments to its law that (among other things) clarified that dual nationality was allowed in all cases. (See section 2.6.6.)

Nigeria, Gambia, Ghana and Sierra Leone have followed a trend across Commonwealth countries in Africa, and removed the right to nationality based purely on birth in the territory that was included in the independence constitutions; in most cases to remove any rights at all based on birth in the country, even if the child is otherwise stateless. Sierra Leone applies a double *jus soli* rule in the case of a child born in the country of one parent also there, but it depends on being “of negro-African descent”.

This restriction of rights based on birth in the country was also reflected in some of the civil law countries, including Côte d’Ivoire and Niger, which (in 1972 and 1973 respectively) both removed the right to opt for nationality at majority for those born in the country of foreign parents, though Niger retained its double *jus soli* rule.²⁴ In Côte d’Ivoire, the same amending act even removed the right to nationality for an abandoned infant found in Côte d’Ivoire. Since the original law had not provided for double *jus soli*, birth in the country now provided no rights to nationality in any circumstances.

2.5. Constitutional and legislative guarantees of the right to a nationality

All ECOWAS states are parties to treaties that provide for the right to a nationality, including in particular the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, as well as the International Covenant on Civil and Political Rights, and the non-discrimination treaties which include specific prohibitions on discrimination in relation to

²⁴ Cote d’Ivoire Loi no. 72-852 du 21 décembre 1972; Niger Loi no. 73-10 du 27 Février 1973.

nationality.²⁵ In the civil law countries, these treaties have direct effect, and the nationality codes frequently repeat the statement that the provisions of treaties to which the State is a party will prevail over national law.

In West Africa, only Guinea Bissau provides in its constitution that every person has the right to a nationality.²⁶ However, Benin, Burkina Faso, Côte d'Ivoire, Mali and Niger specifically provide in their nationality codes that the terms of treaties on nationality to which the State is a party apply even if they are contradicted by national law.²⁷

A number of other countries in West Africa have adopted new children's laws in recent years that specifically provide for the right to a nationality — in line with their obligations under the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child:

- Gambia's Children's Act states that every child has a right to acquire a nationality.²⁸
- Guinea's Code de l'enfant provides for every child to have the right to a nationality.²⁹
- Mali Code de protection de l'enfant provides that every child has the right to an identity, which includes the right to a nationality.³⁰
- Togo's Code de l'enfant includes a number of provisions on nationality, including that a child has the right to the nationality of either parent, in line with the country's constitution (though these provisions are not reflected in the (older) nationality code).³¹
- Ghana's Children's Act and Sierra Leone's Child Rights Act both provide, rather ambiguously, that "No person shall deprive a child of the right from birth to a name, the right to acquire a nationality or the right as far as possible to know his natural parents and extended family."³²

The Liberian Children's Law adopted in 2011, however, does not contain specific guarantees on the right to a nationality, though other provisions are relevant; similarly the Nigerian Child Rights Act 2003 provides only for the right to a name, and not a nationality.³³ A draft children's code for Niger prepared in 2005 by the *Ministère de la Promotion de la Femme et de la Protection de l'Enfant* in collaboration with children's rights organisations has not yet been adopted; Burkina Faso and Cape Verde also have similar texts under discussion.³⁴

²⁵ Including the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities.

²⁶ Guinée Bissau Constitution 1984, as amended to 1996, article 44.

²⁷ Benin Code de la nationalité, Art 2 ; Burkina Faso Code des personnes et de la famille 1989, art 135; Cote d'Ivoire Code de la nationalité Art 3 ; Mali Code de la nationalité 1962 (as amended to 1995), Art 2 ; Niger Code de la nationalité 1984, Art 3.

²⁸ Gambia Children's Act No.5 of 2005, section 8.

²⁹ Guinea Loi L/2008/011/AN du 19 aout 2008 portant Code de l'enfant Guinéen, art.1.

³⁰ Mali Ordonnance N°02-062/P-RM du 5 juin 2002 portant code de protection de l'enfant, art 4.

³¹ Togo Loi no.2007-017 du 6 juillet 2007 portant code de l'enfant, arts.17-24

³² Sierra Leone Child Rights Act (No.7 of 2007), section 24. Ghana Children's Act 1998 (no.560), section 4. The obligations placed on the state by this section are not very clear, and appear not to include granting nationality to stateless children.

³³ Liberia Children's Act 2011, section 4(2) ; Nigeria Child Rights Act 2003, section 5.

³⁴ « Le comité des droits de l'enfant examine le rapport du Niger », UN Committee on the Rights of the Child, 4 Jun 2009 ; « Le Comité des droits de l'enfant examine les rapports du Burkina Faso sur l'application des deux Protocoles à la Convention », UN Committee on the Rights of the Child, 21 January 2013; « Projecto da

In the civil law countries, including those that do not have comprehensive legislation on child rights such as Benin and Senegal, the family codes contain many important provisions relating to the status of children that are important for nationality (such as rules on the establishment of descent, the procedures for adoption etc); though not all contain specific provisions on the right to a nationality.³⁵

2.6. Comparative analysis of nationality legislation

It is perhaps even more important that the provisions of the nationality law ensure that statelessness is avoided than that an explicit right to a nationality is included in the constitution or other laws: it is the provisions of nationality law that are applied in daily practice. In West Africa there are a number of countries that not only do not state that every child has the right to a nationality but also have very weak protections against statelessness in their law generally. These problems are exacerbated where there is any form of impermissible discrimination. As noted in tables 1 and 2 and in the description below, the countries in West Africa with the weakest protection against statelessness in their legal provisions are Côte d'Ivoire (since the amendments to the law in 1972)³⁶, Gambia, Ghana, Liberia, Nigeria and Sierra Leone. Many nationality laws are very difficult to interpret, even for a lawyer; a situation that is made more complicated by conflicting provisions in the constitution and legislation, such as in Gambia, Liberia and Togo.

2.6.1. Children of citizens

All West African countries provide for nationality to be transmitted on the basis of descent. In the case of Burkina Faso, Cape Verde, Ghana, Guinea Bissau, Nigeria and Senegal, the child of a father or mother who is a citizen, born in or out of the country, in or out of wedlock, has an equal right to nationality.³⁷ However, several countries still discriminate to different degrees in the right of a mother to transmit her nationality to her children, including Benin, Guinea, Liberia, Mali, Sierra Leone and Togo. The laws are often written in terms that are quite hard to understand, especially where there have been cumulative amendments and a consolidated text is hard to obtain. Table 1 shows some of the complexities but cannot capture them all.

Proposta de Lei do Estatuto da Criança e Adolescente é conhecido hoje », Cape Verde Ministry of Justice, 7 August 2012.

³⁵ Benin Loi N° 2002 – 07 portant Code des personnes et de la famille; Senegal Loi n°72-61 du 12 juin 1972 portant code de la famille modifiée par les lois no.74-37 du 18 juillet 1974 et 89-01 du 17 janvier 1989.

³⁶ Côte d'Ivoire adopted special temporary naturalisation procedures in 2013 which provide access to nationality for some of those excluded by the 1972 amendments; these are not reflected in the tables below, which relate only to permanent provisions of the law.

³⁷ Burkina Faso Code des personnes et de la famille 1989 art 140 ; Cape Verde Decreto-Lei No 53/93 Art 5; Côte d'Ivoire Code de la nationalité 1961 (amended 2013) Art7 ; Gambia Constitution 1996 (amended 2001) Arts 9-10; Ghana Constitution 1992 Art6(2) and Citizenship Act 2000 Art 7; Guinea Bissau Lei da nacionalidade 1992(amended 2010) Art 5; Nigeria Constitution 1999, art 25 ; Senegal Code de la nationalité 1961 (amended 2013), art 5.

Table 1: Right to nationality by descent

Country	Born in country				Born abroad				Legal Provision
	In wedlock + Father (F) &/or Mother (M) is citizen		Out of wedlock + Father (F) &/or Mother (M) is citizen		In wedlock + Father (F) &/or Mother (M) is citizen		Out of wedlock + Father (F) &/or Mother (M) is citizen		
	F	M	F	M	F	M	F	M	
Benin	R	R	R	R	R	(R)	R	(R)	L1965Arts12&13
Burkina Faso	R	R	R	R	(R)	(R)	(R)	(R)	L1989Art140
Cape Verde	R^	R^	R^	R^	C	C	C	C	L1993Art5
Côte d'Ivoire	R	R	R	R	R	R	C	C	L1961(2013)Art7
Gambia	R	R	R	R	Rx1	Rx1	Rx1	Rx1	C1996(2001)Arts9-10
Ghana	R^	R^	R^	R^	R^	R^	R^	R^	C1992Art6(2) L2000Art7
Guinea	R	R	C	C	R	(R)	C(R)	C(R)	L1988Art30-32,
G, Bissau	R	R	R	R	C	C	C	C	L1992(2010)Art5
Liberia !!	-	-	-	-	R	R	R	R	C1986Art28 L1973Arts20.1 &21.31
Mali	R†	R†	C†	C†	R†	R†	C†	C†	L2011Art224
Niger	R	R	C	C	R	R	C	C	L1984(2014)Art11
Nigeria	R^	R^	R^	R^	R	R	R	R	C1999Art25
Senegal	R	R	R	R	R	R	R	R	L1961(2013)Art5
Sierra Leone	-	-	-	-	R	-	R	-	L1973(2006)Art5
Togo !!	R	C*	R	C*	R	C*	R	C*	C1992Art32 L1978Art3 / L2007Arts17-24

- no rights (for Sierra Leone and Liberia, descent is only relevant for those born outside the country)

!! legislation conflicts with the constitution or other legislation—the provisions in the nationality law are noted here (unless the detailed rules are in the constitution)

R: child is citizen from birth as of right

(R): child has citizenship from birth but can repudiate at majority (for Burkina Faso does not apply if both parents citizens)

Rx1: child is citizen from birth as of right only if one parent both a citizen and born in country

~ racial, religious or ethnic discrimination in citizenship law: specified groups listed for preferential treatment

C: can claim citizenship following an administrative process (including to establish parentage or declare to consular authorities but excluding birth registration)

C* mother (or father) passes citizenship only if father (or mother) of unknown nationality or stateless or if father does not claim

^ Rights to citizenship from grandparents: if born in the country & one grandparent is a citizen (Ghana & Nigeria); if born in or outside the country & one grandparent is a citizen (Cape Verde). In the case of Sierra Leone, a citizen parent does not transmit nationality to a child born in the country unless the parent or grandparent was also born in Sierra Leone and of negro-African descent.

NB. There is simplification of complex provisions

In Togo, the nationality law does not attribute nationality to the child of a Togolese woman unless the father is stateless or unknown. This is despite the fact that the constitution and the *Code de l'enfant* adopted in 2007 both give men and women equal rights to pass nationality to their children: in practice, documents of the father are required to prove entitlement to nationality.³⁸ In Benin, Guinea and Mali, the children of mothers who are nationals and foreign fathers have the right to their mother's nationality; however, the law implies a lesser connection by giving the (superfluous) explicit right to repudiate that nationality on majority if the child is born outside the country.³⁹ In Liberia, the constitution provides for transmission of nationality from either father or mother whether born in or out of the country; but in the nationality law those born outside the country (citizenship is granted on a *jus soli* basis to any "negro" born in the country) only acquire citizenship from a father who was born a citizen of Liberia and has resided in the country himself; while the child will lose nationality if he or she does not take an oath of allegiance before the age of 23. The child of a citizen mother and alien father born outside the country can only naturalise like any other alien.⁴⁰ Despite amendments to the Sierra Leonean Citizenship Act in 2006, a woman does not have the right to pass her nationality to a child born outside of the country.⁴¹

Countries providing unequal rights for men and women in relation to nationality usually also discriminate on the basis of whether a child is born in or out of wedlock; the provisions generally provide no rights to the mother to transmit nationality if the child is born in wedlock, but stronger, though not absolute, rights if a child is born out of wedlock. Discrimination on the grounds of birth in or outside marriage creates additional risks of statelessness, by providing one further condition of establishing descent before nationality can be claimed. Thus it creates potential confusion over the rights of parents to transmit their nationality. In Côte d'Ivoire and Niger the nationality law has equalised the rights of men and women, but kept discrimination in relation to children born in or out of wedlock, requiring a process to establish descent from either father or mother.⁴² (However, the family codes in many civil law countries would effectively require a similar procedure, by providing generally for procedures to establish parentage).

Gender discrimination is one of the commonest causes of statelessness, for children who cannot obtain their mother's nationality because of gender discrimination and who cannot otherwise acquire the nationality of the state of their birth or of their father (for example, because the child was born out of wedlock, the inadequacy of civil registration procedures or other challenges). Administrative practices may also create problems of discrimination that are not written into the law. Even where there is no discrimination in the legal provisions, children of mixed nationality relationships, especially those born outside marriage to a father who does not have the nationality

³⁸ Togo Constitution 1992 Art 32, Code de la nationalité 1978 Art 3, Code de l'enfant 2007, Arts 17-24 ; Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité, Lomé, 12-16 septembre 2011.

³⁹ Benin Code de la nationalité 1965, arts 7-8 and 12-13 (the right to repudiate applies both to a child born outside the country to a Beninoise mother, but also to the double *jus soli* right if the parent born in the country is the mother); Guinea Code civil 1983, Art 32 ; Mali Code de la nationalité 1962 (modifié 1995), arts 8-10.

⁴⁰ Liberia Constitution Article 28; Aliens and Nationality Law, 1973, Art 20.1 and 21.31.

⁴¹ Sierra Leone Citizenship Act 1973, art. 5.

⁴² Niger Code de la nationalité 1984 (modifié 1999), art 11 ; Cote d'Ivoire Code de la nationalité 1961, modifié 2013, arts 6 & 7.

of the state of birth, may find that they cannot obtain recognition of either nationality, even if the law of both or either country is on the face of it gender neutral.

The most recent of the countries to remove gender discrimination in nationality law is Senegal, which in 2013 adopted modifications to the nationality law to remove gender discrimination.⁴³ Since then, many women have come forward to obtain nationality certificates for their children who had not previously been able to do so; or their spouses have been able to opt for nationality without going through the cumbersome procedure of naturalisation. Central statistics are not available, but the *Tribunal départemental de Dakar* reported in May 2014 that since the amendments were adopted in July 2013, it had provided somewhere between one thousand and fifteen hundred nationality certificates to the children of Senegalese women and foreign fathers.⁴⁴ Removal of gender discrimination in most laws in the region has opened up access to a large number of children who were previously excluded.

In Liberia, the nationality law does not provide for citizenship by descent for those born in the country, since the basis of nationality in that case is *jus soli*; and even though the constitution provides that any person born of a Liberian citizen is a Liberian, those born outside the country are subjected to additional procedures by the nationality law (which discriminate on the basis of the sex of the parent: see above). Citizenship is restricted to those who are “Negroes or of Negro descent”.⁴⁵ Sierra Leone has an anomaly relating to the removal of *jus soli* citizenship rights after independence: even though birth in the territory no longer grants automatic citizenship (one parent or grandparent must also have been born there), the act follows the *jus soli* drafting model and provides for citizenship by descent only for those born outside the country. Thus, theoretically the child of a citizen born in Sierra Leone of a Sierra Leonean parent (provided he or she was of “negro- African descent”), but neither of them nor any grandparent also born in Sierra Leone, would not be a citizen.⁴⁶

A number of countries in Africa, including Gambia in West Africa, restrict the transmission of nationality to those born outside the country to one generation. Some other countries create requirements for descent to be established for a child born outside the territory, or for the birth of the child and its parent’s nationality to be declared to the consular authorities.

2.6.2. Birth in the country

Among ECOWAS countries, Cape Verde provides perhaps the strongest protection in law against statelessness for children born in the territory, by providing for a *jus soli* right to nationality for all children born there, provided that “the birth certificate does not include any indication to the contrary”. The law also provides for children who would otherwise be stateless to acquire Cape Verdean nationality, as well as children whose parents are stateless or unknown, or whose nationality is unknown, and children of foreign parents who have been habitually resident in Cape Verde for five years.⁴⁷ Although Liberia has a *jus soli* right in its nationality law, it applies only to “Negroes”; while the constitution only provides for nationality on the basis of descent from a father

⁴³ Loi 2013-05 du 8 juillet 2013 portant modification de la loi no 61-10 du 7 mars 1961 déterminant la nationalité sénégalaise.

⁴⁴ UNHCR interview, May 2014.

⁴⁵ Constitution Articles 27 and 28; Aliens and Nationality Law, 1973, Article 20.1.

⁴⁶ Sierra Leone Citizenship Act 1973 (amended 2006) Arts 2-5.

⁴⁷ Decreto-Lei No 53/93 de 30 de Agosto de 1993 Arts 1, 3, 4, and 6.

or mother who is Liberian. In practice, those who have a foreign father may be treated as foreign themselves, even if born in the country of a Liberian mother.⁴⁸

A number of other West African countries create more limited rights based on birth in the country. Benin, Burkina Faso and Guinea all provide that a child born in the country of foreign parents who is still resident there at majority acquires nationality of origin automatically on reaching majority. Guinea's Code civil also states that a child born in the country can opt for nationality after five years. In Mali and Togo a child born in the country of foreign parents may acquire nationality at majority on application. Benin, Burkina Faso, Guinea, Mali, Niger and Senegal apply the double *jus soli* rule that a child born in the country of one parent also born there is a national from birth (though in Mali, the parent must be of "African origin", and in Benin and Guinea the child may repudiate this nationality at majority if it is the mother who was also born in the country). Sierra Leone provides that a child with a parent *or* grandparent born in the country is Sierra Leonean provided the ancestor was "of negro-African descent".⁴⁹

Several of the francophone countries include a provision in their nationality law that a person who is in *possession d'état de national* – who has always been treated as a national – can apply to court for a certificate of nationality to confirm the presumption. In principle, such a system should provide an important safeguard against statelessness in countries where birth registration is low. However, in practice, the provisions on *possession d'état* are often conflated with other rules: for example, in Senegal the usual interpretation is that *possession d'état de sénégalais* is coterminous with the provision in the same article of the nationality code for a person born in Senegal of one parent also born there to be Senegalese.⁵⁰ In Togo, the nationality code itself makes the concept additional rather than alternative, by providing that a child born in the country is Togolese if both parents were also born there and the child is habitually resident there *and* is in *possession d'état de togolais*.⁵¹

A number of states provide for children whose parents are stateless to acquire the nationality of their country of birth, including Benin, Cape Verde, Guinea Bissau and Togo; however, only Burkina Faso, Cape Verde, Guinea Bissau and Togo in West Africa provide (in line with the African Charter on the Rights and Welfare of the Child) for children who cannot obtain the nationality of their parents (which may be the case even the parents themselves have a nationality) to obtain the nationality of their country of birth.⁵²

More common are provisions relating to abandoned children. Benin, Burkina Faso, Ghana, Guinea, Guinea-Bissau, Mali, Niger and Senegal provide a right for foundlings (abandoned newborn children, *l'enfant nouveau-né trouvé*) to be presumed nationals; in the case of Benin, Burkina Faso, Cape Verde, Ghana, Guinea, Guinea-Bissau, Mali, Niger and Togo (but not Senegal) this right is extended

⁴⁸ Aliens and Nationality Law, 1973, Article 20.1(a); Constitution, Article 28; *Study on Nationality and Statelessness in Liberia : Analysis of the Legal and Administrative Framework*, UNHCR forthcoming.

⁴⁹ Sierra Leone Citizenship Act 1973 Arts 2 and 3; until the law was amended in 2006 it was only through the birth on the territory of the father and grandfather that there was access to nationality.

⁵⁰ Article 1, Code de la nationalité sénégalaise ; interviews, tribunal presidents, Senegal, June 2014.

⁵¹ Benin Code de la nationalité 1965, Arts 7-11, 24 & 28 ; Burkina Faso, Code des personnes et de la famille 1989, Arts 141-144 & 155-161 ; Guinea Code civil 1983, Arts 34-37 and 56 ; Liberia Aliens and Nationality Law 1973, Art 20.1; Mali Code de la nationalité 1962 (amended 1995) , Arts 8,11-12 and 27 ; Niger Code de la nationalité 1984 (amended 1999) Arts 8 and 10 ; Senegal Code de la nationalité 1961 (amended 2013) Arts 1 and 3 ; Togo Code de la nationalité 1978 Arts 1 and 8.

⁵² Togo Code de la nationalité art 2

to children of unknown parents, a less restrictive provision.⁵³ The weakest protections against statelessness in law for those born in the country are found in Côte d'Ivoire, Gambia, Liberia, Nigeria, and Sierra Leone, which do not even provide rights for foundlings.

Box 1: The story of Mme Diallo

Mme. Diallo is Senegalese and holds a Senegalese passport. She works as an economist within a state structure and previously had her own consultancy.

Mme Diallo lived and studied in Grenoble, France, from 1991 until the mid-2000s. She is the mother of two sons, both of whom were born in France, of a Congolese father to whom she was not married. She is now separated from the father, and has no further contact with him.

A child born in France to foreign parents does not acquire French nationality unless he or she resides in France until the age of 16.⁵⁴ While in theory the children could have travelled to the Democratic Republic of Congo to acquire nationality papers on the basis of their father's nationality, their existing lack of documentation and the insecurity and administrative disarray in that country made this option unviable.

Prior to a 2013 amendment to the law, Mme Diallo's children had no right to Senegalese nationality. Article 5 of the Senegalese nationality code provided that a person was Senegalese if born in wedlock to a Senegalese father, or to a Senegalese mother and a father with no nationality or of unknown nationality; or if born out of wedlock to a Senegalese person who was the first parent with whom descent was established, or to a Senegalese person who was the second parent with whom descent was established, if the other parent was without nationality or of unknown nationality. Since none of these four situations applied to Mme. Diallo's children, all she could do was declare the births at the Senegalese consulate in France. However, they remained with no recognised nationality.

In 2001, Mme. Diallo and her sons travelled to Senegal under her Senegalese passport. The trip was intended to be a short family visit. However, when time came to return to France, her children were denied entry. Consequently, Mme Diallo was forced to leave her sons in the care of her mother in Senegal while she returned to France to complete her studies. While their French birth certificates permitted her sons to enrol in private schools in Senegal, entry to public examinations was always complicated by their lack of Senegalese documents.

Only in 2013, when amendments were made to the Senegalese nationality code to remove gender discrimination, were Mme Diallo's sons finally able to acquire Senegalese nationality and cease being stateless.⁵⁵

⁵³ The provisions are somewhat more complex than this; in the case of Ghana, for example, the provision applies to any child found in Ghana of not more than seven years of age; in the francophone countries, there are two provisions, one on new-born infants, and another on a child of unknown parents, which requires the child to have been born in the country – difficult to prove in such circumstances. UNHCR recommends that “At minimum, the safeguard for Contracting States [to the 1961 Convention] to grant nationality to foundlings is to apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth”: *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, 21 December 2012, paragraph 58.

⁵⁴ Art. 21-7 of the French Civil Code.

⁵⁵ Interview conducted by Kavita Brahmhatt, UNHCR, June 2014.

Table 2: Right to a nationality based on birth in the country

Country	Birth in country	Birth & one parent also born	Birth & residence	Otherwise stateless	Parents stateless (s) or unknown (u)	Foundlings	Relevant legal provision
Benin		JS/2*	(JS+)(JS)		s + u	x	L1965Arts7-11,24&28
Burkina Faso		JS/2	(JS+)	x	u	x	L1989Arts141-144 &155-161
Cape Verde	JS*			x	s + u		L1993Arts3,4,6
Côte d'Ivoire							L1961(2013)Art6
Gambia							-
Ghana					u		L2000Art8
Guinea		JS/2*	(JS+)		u	x	L1988Arts34-37,56
G. Bissau	C			x	s + u	x	C1984(1996)Art44 L1992(2010)Art5
Liberia !!	JS~						C1986Art27 L1973Art20.1
Mali		JS/2~	(JS)		u	x	L2011Arts225-227&237
Niger		JS/2			u	x	L1984(2014)Art8,10
Nigeria							-
Senegal		JS/2				x	L1961(2013)Arts1&3
S. Leone		JS/2^~					L1973(2006)Art3
Togo !!		JS/2x2	(JS)	x			L1978Arts1,2&8 L2007Art19

!! legislation conflicts with the constitution or other legislation—the provisions in the nationality law are noted here (unless the detailed rules are in the constitution)

C: right to nationality provided for in constitution

(x): grant is discretionary

JS: right to nationality based on birth in country alone (with exclusions for children of diplomats & some other categories)

JS*: child born in country of parents who are legal residents has right to citizenship

(JS): child born in country of non-citizens is eligible to apply for citizenship at majority and/or after residence period

(JS+): child born in country of non-citizens acquires citizenship automatically at majority and/or after residence period

JS/2: child born in country of one parent also born in the country has right to citizenship;

JS/2*: In Benin and Guinea a child of a mother born in the country has the right to repudiate 6 months before majority

JS/2^ parent or grandparent also born in the country

JS/2x2: both parents must be born in the country

~ racial, ethnic or religious discrimination in law impacts on jus soli rights: in Sierra Leone and Liberia must be “negro African”, in Mali “of African origin”

Countries indicated in bold have particularly weak legal protections against statelessness

2.6.3. Racial and ethnic discrimination

Half a dozen countries in Africa limit nationality from birth to members of ethnic groups whose ancestral origins are within the particular state or within the African continent. In West Africa Liberia and Sierra Leone, both founded by freed slaves, take the position that only those of “Negro” (Liberia) or “Negro-African” descent may be citizens from birth. In Liberia, “non-Negroes” may not even be citizens by naturalisation.⁵⁶ In Mali, though the law does not discriminate in the rules it applies for children with citizen parents, the provision on double *jus soli* restricts access to nationality to children born in Mali of a mother or father “of African origin” who was also born in the country.⁵⁷ Such racial discrimination leaves those who are not perceived to be “African” at risk of statelessness if they do not have access to another nationality.

Nigeria’s 1979 constitution introduced an ethnic dimension to the criteria for citizenship for the first time. The revision was argued to be necessary to take account of the fact that many communities in Nigeria are separated from their ethnic kin by arbitrary colonial borders; but at the same time it completely removed any element of *jus soli* citizenship, granting no right of any kind to access nationality based on birth in the country. These provisions were repeated in the 1999 constitution currently in force, which provides for citizenship by birth to be acquired by “every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria”.⁵⁸ Although this provision only refers to persons born before independence, the emphasis on belonging to a “community indigenous to Nigeria” ensures that recognition of citizenship at the moment of succession of states is based on ethnicity, and continues in practice in the recognition of nationality of those born since then (see further below, section 3.2).

Discrimination on the grounds of ethnicity is much more commonly asserted in practice: in Liberia, for example, against those of Fula or Mandingo ethnicity.

2.6.4. Acquisition of nationality by a spouse

Achieving gender equality in the right of a woman to pass nationality to her husband has proved more difficult than reforms to ensure nationality for children on a gender neutral basis. More than two dozen countries in Africa today still do not allow women to pass nationality to their non-national spouses, or apply discriminatory qualifications to foreign men married to national women. However, ten out of the fifteen ECOWAS countries now provide equal rights for men and women to transmit their nationality to a spouse; the exceptions are Benin, Guinea, Nigeria, Sierra Leone, and Togo, where in each case a woman who marries a national acquires nationality automatically on marriage, while a man who marries a national does not do so (though the period required for

⁵⁶ Liberia Constitution Article 27; Aliens and Nationality Act 1973, Art 20.1 ; Sierra Leone Citizenship Act 1973 Art 2.

⁵⁷ Code de la nationalité malienne, Loi n° 62-18 AN-RM du 3 février 1962, as amended by Loi n° 95-70 du 25 août 1995, article 12.

⁵⁸ Article 25(1): “The following persons are citizens of Nigeria by birth, namely: (a) every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria; Provided that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents nor any of his grandparents was born in Nigeria; (b) every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and (c) every person born outside Nigeria either of whose parents is a citizen of Nigeria.”

naturalisation may be reduced).⁵⁹ These provisions are particularly problematic when a husband is stateless or at risk of statelessness.⁶⁰

The automatic acquisition of nationality by a woman derives from the provisions current in nationality laws at the date of independence and is no longer in line with international norms. Burkina Faso (since 1989) and Côte d'Ivoire since 2013) have equalised the rights of men and women, but still provide for automatic acquisition of nationality on marriage, which is also out of line with the right of the individual to make such decisions on a voluntary basis.⁶¹ Togo, in an unusual provision that conflicts with long-standing provisions of international law, also states that a foreign woman who had acquired Togolese nationality by marriage loses it on divorce.⁶²

Liberia is highly unusual in providing no rights at all for either spouse based on marriage.

Table 3: Right to pass nationality to a spouse

Country	Nationality by marriage	Res. period (if any)*	Marriage period (if any)	Govt can oppose	Relevant legal provision(s)
Benin	w (aut.)			x	L1965Arts18-23
Burkina Faso	= (aut.)			x	L1989Art151-154
Cape Verde	=				L1993Art7
Côte d'Ivoire	= (aut.)			x	L1961(2013)Arts12-16
Gambia	=	7 yrs			C1996(2001)Art11
Ghana	=				C1992Art7(1) L2000Art10(2)
Guinea	w (aut.)				L1988Art49
G. Bissau	=	1 yr	3 yrs		L1992(2010)Art8
Liberia	-				L1973Art21.30
Mali	=			x	L2011Arts233-236
Niger	=	3 yrs			L1984(2014)Art14
Nigeria	w				C1999Art26
Senegal	=		5 yrs	x	L1961(2013)Art7
Sierra Leone	w				L1973(2006)Art7
Togo	w (aut.)				L1978Art5,23

* If residence period noted then residence is after marriage
 = Equal rights for men and women to pass citizenship
 aut. Spouse acquires citizenship automatically, without further procedures (unless chooses to refuse)
 w Only women can acquire by marriage
 - No additional rights in case of marriage

2.6.5. Acquisition of nationality by naturalisation

All ECOWAS States provide in their law for the acquisition of nationality as an adult on application, based on long residence in the country, a process known as naturalisation. The most common length of residence required is 5 years, though Benin requires only three years' residence, while Nigeria and Sierra Leone require 15 years. Other criteria usually apply, relating to good conduct and a clean criminal record, and integration into the national community (see Table 4). Importantly,

⁵⁹ Benin Code de la nationalité 1965, Guinea Code civil 1983; Mali Code de la nationalité 1962 (modifié 1995) ; Nigeria Constitution 1999; and Togo Code de la nationalité 1978.

⁶⁰ For example, a person who is a naturalised citizen of another state may lose that nationality if he resides outside the country for a number of years, under a provision common to many nationality laws.

⁶¹ Burkina Faso Code des personnes et de la famille 1989, Arts 151-154 ; Côte d'Ivoire Loi No 2013-654 du 13 Septembre 2013.

⁶² Togo Code de la nationalité 1978 art 23(3).

naturalisation is a discretionary process, not one that an individual fulfilling the criteria can claim as a matter of right (which can create problems in practice: see section 3.3). In 2013, Côte d'Ivoire established a time-limited special naturalization program in an attempt to provide access to nationality for a large number of people born in the country who had previously been excluded (this is not reflected in table 4, but see box in section 4.1).

In Liberia, only “negroes” may be citizens of any kind, including by naturalisation.⁶³ This was also the case in Sierra Leone, where those without a parent of negro-African descent did not have a right to naturalise between 1961 (one year after independence) and 1977; non-“negro-Africans” are still subject to a residence period of fifteen years in Sierra Leone rather than eight years for “negro-Africans” (and non-“negro-Africans” cannot be citizens from birth).⁶⁴

Some countries also provide for an easier process of acquisition known as option or registration (though the terminology is not consistent), in the case of those who acquire on the basis of marriage (see above) or, for example, where gender discrimination applies but the child of a national mother may choose to obtain nationality even if nationality is not automatically attributed.⁶⁵

The international conventions call for states to facilitate the naturalisation of refugee and stateless persons.⁶⁶ The laws of most West African countries in principle allow for the naturalisation of refugees and stateless persons on the same or similar terms as other foreigners, through the usual procedures; and a few provide in general terms that refugees who qualify may be assisted to obtain naturalisation.⁶⁷ Only the law of Guinea Bissau specifically provides for naturalisation of refugees to be facilitated; though that of Sierra Leone generally endorses the provisions of international conventions relating to local integration.⁶⁸ Few countries globally, and none in West Africa, have adopted legislation to facilitate naturalisation specifically for stateless persons.

⁶³ Constitution of Liberia 1984, Article 27(b).

⁶⁴ “Every person of full age and capacity, neither of whose parents is a person of negro African descent who is resident in Sierra Leone and has been continuously so resident for a period of not less than fifteen years may on application being made by him in the manner prescribed, be granted a certificate of naturalisation if he satisfies the Minister that he is qualified for naturalisation under the provisions set for the in the Third Schedule”. Sierra Leone Citizenship Amendment Act, No. 13 of 1976, amending section 8(3) of the principal act. The third schedule and section 9 of the act set out requirements related to a clean criminal record, knowledge of an indigenous Sierra Leonean language, oath of allegiance, and payment of fees.

⁶⁵ This was the case in Senegal before gender discrimination was removed in 2013.

⁶⁶ Convention relating to the Status of Refugees, 1951, Article 34; Convention relating to the Status of Stateless Persons, 1954, Article 32; Convention on the Reduction of Statelessness, 1961, Articles 1-4.

⁶⁷ For example, Nigeria’s National Commission For Refugees, etc. Act, 1989, Article 17 states that: “Subject to the provisions of relevant laws and regulations relating to naturalisation, the Federal Commissioner shall use his best endeavours to assist a refugee, who has satisfied the criteria relating to the acquisition of Nigerian nationality, to acquire the status of naturalisation under such relevant laws and regulations.” Ghana has a provision that “Subject to the relevant laws and regulations relating to naturalisation, the Board may assist a refugee who has satisfied the conditions applicable to the acquisition of Ghanaian nationality to acquire Ghanaian nationality.” Ghana Refugee Law, 1992 (PNDCL 305D), section 14.

⁶⁸ The law reduces the period of residence required for naturalisation in Guinea Bissau from 10 years to 7 years. Lei No.6/2008, Estatudo do Refugiado, Article 34. Sierra Leone Refugee Protection Act, 2007, Article 23.

Table 4: Right to acquire citizenship as an adult by naturalisation

Country	Residence period	Language / cultural requirements	Character	Renounce other nationalities	Other *	Legal provision
Benin	3 yrs none for husband or if born in Benin	"sufficient knowledge" of Beninois language or French; assimilation into Beninois community	Good conduct and morals; no convictions of more than a year of imprisonment.		Good physical and mental health; no conditions if important services or interest for Benin	L1965Arts33-36, 56
Burkina Faso	10 yrs / 2 yrs if born in BF	-	Good conduct and morals; no convictions for more than one year of imprisonment		Good mental health; period reduced to 2 years if important services, or none if exceptional circumstances	L1989Arts165-170, 195-196
Cape Verde	5 yrs	-	of good moral and civic repute (<i>idoneidade</i>): produce police report		Show means of subsistence; no period of residence if sizable investment	L1990Art12 L1993Art12-13, 21-25
Côte d'Ivoire	5 yrs / 2 yrs if born in CI	-	Good conduct and morals.		Good physical and mental health; period reduced to 2 yrs if important services; immediate if "exceptional services"	L1961(2013)Arts25-32, Art 68, 72
Gambia !!	15 yrs		Good character	Yes	Capable of supporting self and dependents	C1996(2001)Art12
Ghana	6 yrs	Speak and understand an indigenous language; Assimilated into Ghanaian way of life	Good character attested by two Ghanaian lawyers, senior office holders or notaries public; no convictions		"Capable of making a substantial contribution to progress or advancement in any area of national activity."	C1992Art9 L2000Art14
Guinea	5 yrs / 2 yrs for husband or if born in Guinea	-	Good conduct and morals; no convictions		Good physical and mental health; period reduced to 2 years if born in Guinea or "important services" rendered; immediate if exceptional services or interest.	L1988Arts62,72,73,74, 78,79
Guinea Bissau	10 yrs	Basic knowledge of and identification with Guinea-Bissau's culture	Good conduct and civic probity	Yes	immediate if services rendered to the Guinean people before or after the liberation struggle or for Guinea's development	L1992Art9
Liberia ~	2 yrs	"No person shall be naturalised unless he is a Negro or of Negro descent"	Good moral character and attached to principles of Liberian	Yes	Residence period may be waived by president	L1973Art21.1

			constitution; must "state that he does not believe in anarchy"			
Mali	10 yrs	Assimilation into the Malian community	Good conduct and morals; no convictions	No	Sound mind; period reduced to 5 years for a person who has provided "exceptional services" to the state or for child born in country of foreign parents;	L2011Arts231,238-244&247-8
Niger	10	-	Good conduct and morals; no convictions		Period waived if exceptional services	L1984(2014)Art24
Nigeria	15 yrs	Acceptable to and assimilated into the way of life of the local community in which he is to live permanently	Good character	Only of other non-birth nationalities	Capable of making a contribution to the advancement, progress and well-being of Nigeria	C1999Art27
Senegal	10 yrs	-	Good morality; no convictions	Yes	Good physical and mental health; residence period may be reduced if the person has provided important services to Senegal	L1961(2013)Arts12, 16bis
Sierra Leone ~	15 yrs	Adequate knowledge of indigenous language	Good character		Residence period 8 yrs for a person "of Negro African descent."	L1973(2006)Art12
Togo	5 yrs/ imm. for husband	Assimilation to the Togolese community, including sufficient knowledge of a Togolese language	Good conduct and morals; no convictions	Yes	Good mental and physical health. No residence period if "exceptional services"	L1978Art11

!! legislation conflicts with the constitution; constitutional provisions noted here (for Gambia)

imm. Immediate

~ racial, ethnic or religious discrimination applies

* Most countries require the person to be habitually resident and to intend to remain so if they wish to naturalise; this provision is not included here

NB. There is simplification of complex provisions, including those relating to residence periods

2.6.6. Dual nationality

The laws on dual nationality are often hard to interpret; so long as this is the case, there is a risk of manipulation. Among the fifteen ECOWAS States, only in Cape Verde, Ghana, Guinea Bissau, Sierra Leone and Niger (since November 2014) is it positively stated that dual nationality is generally permitted. In other cases, the rules are derived from the provisions of the law relating to loss of nationality or conditions for naturalisation; so that in some cases a national of origin loses nationality on acquiring another, and in others a person naturalising must renounce their other nationality. Reading these rules, five countries prohibit dual nationality in some circumstances: either only for a person naturalising as a citizen (Gambia); or only for citizens from birth who voluntarily acquire another nationality, for whom loss is automatic (Côte d'Ivoire and Guinea, and Niger until November 2014). Senegal's law appears to fall in the same category of loss of nationality on acquiring another, but official policy is to permit dual nationality. In Benin, the law follows a formulation used in some other francophone countries (for example, Algeria) in providing that a person loses nationality if they voluntarily acquire another *and* are authorised to do so: that is, the provision is rather a protection against statelessness than a prohibition on dual nationality.⁶⁹ Another three countries are silent on the matter, or allow dual nationality in almost all circumstances (Burkina Faso⁷⁰, Mali⁷¹ and Nigeria⁷²). Togo appears to forbid dual nationality both for naturalised citizens and for citizens from birth; but the interpretation is that a national of origin has to request permission to renounce nationality, so dual nationality is only truly forbidden for those who naturalise and have to renounce their other nationality.⁷³ Liberia has one of the strictest bans on dual nationality anywhere in Africa, permitting it in no circumstances, and establishing a range of behaviours that create a presumption of dual nationality and automatic revocation of Liberian nationality (including voting in another country).⁷⁴ Overall, there are therefore nine countries that, on the face of the law, permit dual nationality in almost all circumstances; another five that permit it in some circumstances; and one that prohibits it completely.

The most confusion surrounds the common wording in the francophone countries that a person who voluntarily acquires another nationality loses his or her nationality of origin; but that this loss is subject to permission of the relevant ministry.⁷⁵ These provisions were drafted during a time when

⁶⁹ « Perd la nationalité dahoméenne (1) Le Dahoméen majeur qui acquiert volontairement une nationalité étrangère si, antérieurement et en vue de cette acquisition, il a été autorisé sur sa demande par le gouvernement à perdre la qualité de Dahoméen ». Code de la nationalité 1965, Article 46(1).

⁷⁰ In Burkina Faso, the law is silent on the issue, neither providing for loss of nationality on acquisition of another nor for a person applying for naturalisation to have to renounce their previous nationality, so the presumption is that dual nationality is allowed. However, interpretation in practice may vary, in light of this silence.

⁷¹ Mali amended its rules on loss of nationality in 1995 to state that a person acquiring another nationality only loses Malian nationality if expressly renounced. Art 38 amended by Loi No.95-70.

⁷² Nigeria does not permit a person to naturalise as Nigerian while also holding another nationality by naturalisation – however, a Nigerian may acquire another nationality without losing it, and a person with another nationality of origin may acquire Nigerian nationality without renouncing their other nationality. Constitution, 1999, Art 26.

⁷³ Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité, Lomé, 12-16 septembre 2011.

⁷⁴ Aliens and Nationality Law, 1973, Arts. 21.2; 21.50-59 and 22.1-22.4.

⁷⁵ For example, Article 18 of the Senegalese nationality code states:

« Perd la nationalité sénégalaise, le Sénégalais majeur qui acquiert volontairement une nationalité étrangère.

it was presumed that most countries would not allow dual nationality; thus, in order to acquire another nationality a person would necessarily have to renounce the nationality of origin; but at the same time, states wished to ensure that a person could not change nationality simply to avoid obligations such as military service. However, the wording only applies to those who “voluntarily acquire” another nationality; and therefore does not affect those who are born with two nationalities.⁷⁶ In practice, official interpretation and application of these laws varies widely: as noted above, in Senegal, language which is almost identical to that in Côte d’Ivoire and Guinea (and previously in Niger), and which also includes a statement that a naturalised person should not hold another allegiance, is interpreted to mean that dual nationality is permitted.⁷⁷ In Guinea and Niger, it is well known that many have acquired another nationality, including senior officials and government ministers, but no action has been taken to deprive the person formally of their nationality of origin. Only in Côte d’Ivoire is there a real effort to enforce the rules on loss of nationality in case of acquisition of another – and the process there is highly politicised, rather than a matter of neutral administrative or judicial action; even the right of a person to two nationalities of origin has been contested.⁷⁸ The regulations and *décrets* that provide detailed rules for application of the laws, as well as the internal directives of government departments, may in practice be at least as important as the law itself in shaping the understanding of the law by the government officials responsible for issue of identity and other documentation, and thus access to proof of nationality in practice.

Toutefois, jusqu’à l’expiration d’un délai de quinze ans à partir soit de l’incorporation dans l’armée active soit de l’inscription sur les tableaux de recensement en cas de dispense du service actif la perte de la nationalité sénégalaise est subordonnée à l’autorisation du Gouvernement. Cette autorisation est accordée par décret.

Ne sont pas astreints à solliciter cette autorisation: 1°) Les exemptés du service militaire; 2°) Les titulaires d’une réforme définitive; 3°) Tous les hommes, même insoumis, après l’âge où ils sont totalement dégagés des obligations du service militaire, conformément à la loi sur le recrutement de l’armée. »

⁷⁶ Many of the Commonwealth countries dealt with this situation through standard provisions allowing dual nationality among children, who then had to opt between the age of 18 and 21.

⁷⁷ Interview with Bienvenu Moussa Habib Dione, Senegalese Ministry of Justice, May 2014; and document provided by the ministry for the then Minister of Justice in advance of Senegalese nationality law reform, 2012, on file with author.

⁷⁸ A memo on this point, noting that dual nationality of origin is permitted under Ivorian law, and that a person does not lose nationality unless he or she requests to do so and is authorised by decree, was published by Me. François Guei, a member of the Conseil Constitutionnel of Côte d’Ivoire, in May 2010 (copy on file with author).

Table 5: Rules on dual nationality

Country	Is dual nationality permitted?			Relevant legal provision
	Always	Sometimes	Never	
Benin	x			L1965Art46-49
Burkina Faso	x			[no provision to prohibit]
Cape Verde	x			C1999Art5 & 39 L1992bArt2 DL1993Art18
Côte d'Ivoire		x †		L1961(2013)Arts48-52
Gambia		x ‡		C1996(2001)Art12A&13
Ghana	x			C1992(1996)Art8 L2000Art16
Guinea		x †		L1983(1996)Art95
Guinea Bissau	x			L1992(2010)Art10
Liberia			x	L1973Arts21.2&22.1
Mali	x			L2011Art249
Niger	x			L1984(2014)Arts19&34
Nigeria	x ^a			C1999Art28(1)
Senegal		x ^b		L1961(2013)Arts1,6bis,18,20
Sierra Leone	x			L1973(2006)Art10
Togo		x ‡		L1978Arts11&23

† dual nationality prohibited only for those who voluntarily acquire another nationality (excluding automatic acquisition by marriage) / permitted for those who naturalise
‡ dual nationality prohibited only for those who naturalise as citizens / permitted for nationals of origin
^a Nigeria states that a naturalized citizen who acquires a third nationality loses Nigerian nationality – but this will be a rare circumstance
^b Senegal's legal provisions are almost the same as those in Benin, Guinea, Niger and Cote d'Ivoire in relation to nationality of origin, and also include a statement that nationality by decision of the public authority cannot be held together with another allegiance – however, thanks some ambiguities in the law, they are interpreted to mean that dual nationality is permitted in all circumstances (except if the other country prohibits it). Senegal has been included in the central column because of the uncertainties in the law.

2.6.7. Loss and deprivation of nationality

West African states' provisions for loss of nationality also follow patterns mainly set by colonial examples. Gambia, Ghana, Nigeria and Sierra Leone all provide that nationality from birth may not be deprived; in this they are joined by Burkina Faso among the states of civil law heritage. Other civil law countries provide for grave crimes against the state to lead to deprivation of nationality of origin. A much wider set of criteria apply to deprivation of nationality that has been acquired by naturalisation as an adult, including fraud, conviction of a crime punishable by imprisonment, behaviour that is "disloyal" or "incompatible with being a national", and, in the case of Guinea, Liberia and Sierra Leone, prolonged residence outside the country. Only Cape Verde and Mali provide for a specific prohibition on depriving someone of nationality who would thereby become stateless.

Table 6: Criteria for loss of nationality

Country	Dual nat.	Nat. from birth		Naturalised person					protection vs statelessness	Relevant legal provisions
	Acquires another citizenship	Work for / act like national of another state	vs crime state	Fraud	vs crime state	ordinary crime	/ disloyal incompatible behaviour	res. out of country		
Benin		x		x	x	x	x			L1965Art46,50 51
Burkina Faso						x	x			L1989Art188-189,
Cape Verde		x	x			x			x	C1999Art39 L1990Art14-16
Côte d'Ivoire	x	x		x	x	x	x			L1961(2013)Arts48-56
Gambia				x		x	x			C1996(2001)Art13
Ghana				x	x		x			C1992 Art 9 L2000Art18
Guinea	x	x		x	x	x	x	x		L1988Art95, 103, 104,105,106
Guinea Bissau	x	x	x	x	x					L1992Art9
Liberia	x	x		x			x	x		L1973Art21.50-54& Art22.1-4
Mali			x	x	x	x	x		x	L2011Arts249-254
Niger	x	x	x		x	x	x			L1984(2014)Art34-36
Nigeria	(x)				x	x	x			C1999Art28
Senegal					x	x	x			L1961(2013)Arts18&20
Sierra Leone					x	x	x	x		L1973(2006)Arts16-18
Togo	x	x		x	x	x	x			L1978Art23,26,27,28

n/a not available

(x) permission of government required for dual citizenship

x^{MS} permission required during period in which military service obligations apply or if person concerned is a national of an enemy country

Gambia and Ghana provide that the courts must hear an application from the government for a citizen (by naturalisation only) to be denationalised rather than simply reviewing a decision made by the executive.⁷⁹ In Liberia, also, the attorney-general must apply to court to make the case for nationality to be taken away; although loss of birth nationality on acquisition of another, or performance of various acts implying acquisition of another (such as voting) applies automatically, with no further procedures, not even an administrative act.⁸⁰ In Nigeria the president may deprive a naturalised citizen of nationality if “he is satisfied” of certain conditions, including disloyalty⁸¹; in Sierra Leone the law provides simply that “the minister may, by order, deprive” a naturalised citizen of citizenship on certain conditions.⁸² In the civil law countries, these decisions are made by the executive, but the administrative tribunals are charged with oversight of executive decision-making in the area of nationality as in other decisions.

All West African States provide that a person may renounce his or her nationality, though in some cases this is subject to permission if military service or other obligations apply. Most provide that nationality may not be renounced unless the person has confirmation of another nationality; but not in all cases. In Liberia, for example, the nationality law provides for a person to be able to renounce nationality without any requirement to hold the nationality of another country.⁸³

2.6.8. Non-existent systems for the protection of stateless persons

Many West African states have recently ratified the UN Convention Relating to the Status of Stateless Persons (see annex 8.3); however, no West African country has any procedures in place to identify and provide a status for stateless persons (not even Guinea and Liberia, which ratified the treaty in the 1960s). While such a status should be a last resort for those without documentation – the first option should be to recognise the individual’s right to the nationality of a particular country, ideally the country where he or she has the closest links – it is important to have in place a process to regularise the legal status of those who fall into the gaps between different systems of law and facilitate their acquisition of a nationality through naturalisation.

⁷⁹ Gambia Constitution, article 13; Ghana Constitution 1992, article 8. This is by contrast with the situation in the common law countries of Southern Africa of which many give much more discretion to the executive. See Bronwen Manby, *Statelessness in Southern Africa*, Briefing paper for UNHCR Regional Conference on Statelessness in Southern Africa Mbombela (Nelspruit), South Africa 1-3 November 2011, UN High Commissioner for Refugees, 2012.

⁸⁰ Liberia Aliens and Nationality Law 1973 Art 22.1 and 22.2.

⁸¹ Nigeria Constitution 1999, article 30.

⁸² Sierra Leone Citizenship Act, 1973, Section 17.

⁸³ Liberia Aliens and Nationality Law 1973 Art 22.1.

Box 2: Gaps in the law contributing to statelessness

- **Gender discrimination**

Where women cannot transmit their nationality to their children, those who have children with a father of another nationality (or who is stateless or of unknown nationality), who have children out of wedlock or with a father who abandons a child or who dies without leaving nationality documentation or obtaining nationality documents for his children, face a real risk that their children will be stateless, especially if they do not live in the country of the father.

- **Racial and ethnic discrimination**

Racial and ethnic discrimination in the law leaves those who are not perceived to be of the “right” racial or ethnic group at risk of statelessness, especially where combined with discrimination on the basis of sex and the father is from another group.

- **Weak rights attached to birth in the country**

Countries which provide very limited rights based on birth in the country – in particular, that provide no access to nationality for those born in the country and resident during their childhood (enabling automatic or optional access to nationality at the latest at majority) typically have large populations of people who are stateless.

- **Dual nationality rules hard to interpret**

In the many West African countries, the rules on dual nationality are very hard to interpret, leading to a widespread belief that dual nationality is not permitted, even when there is no objection in law, especially for persons who potentially have two nationalities from birth.

- **Provisions on state successions have created statelessness**

Many countries face continuing problems related to poor management of nationality in the transitional provisions of the laws adopted at independence. State successions since independence have also failed to provide carefully for the nationality those who live in a territory transferred between two states (see section 4.6).

- **Non-existent systems for the protection of stateless persons**

No West African country has a legal framework in place to identify and provide a status for stateless persons and facilitate their acquisition of a nationality.

3. Nationality administration in practice

The systems for proof of nationality are in practice often as important as the provisions of the law on the qualifications in principle. If there are onerous requirements or costs attached to proof of nationality, or discrimination in practice means that proof is not obtainable, then the fact that a person actually fulfils the conditions laid down in law may count for little. In conflict-affected countries or regions, nationality and documentation systems are of course generally weakened, especially when records are destroyed and key staff flee the area.

3.1. Civil registration

International and African human rights standards provide that every child has the right to registration immediately after birth.⁸⁴ Birth registration is central to nationality administration. It establishes in legal terms a person's place of birth and parental affiliation, which in turn serves as documentary proof underpinning acquisition of the parents' nationality (*jus sanguinis*), or the nationality of the state where the child is born (*jus soli*). Birth registration, while not itself conferring nationality, is usually fundamental to the recognition of nationality, and thus of all other rights that follow: lack of birth certificates can prevent citizens from registering to vote, putting their children in school or entering them for public exams, accessing health care, or obtaining identity cards, passports, and other important documents.

Table 7: Birth registration rates in West Africa (percentage of children under five)⁸⁵

Country	Total	Urban	Rural
Benin	80	87	76
Burkina Faso	77	93	74
Cape Verde	91	-	-
Côte d'Ivoire	65	85	54
Gambia	53	54	52
Ghana	63	72	55
Guinea	43	78	33
G. Bissau	24	30	21
Liberia	4	5	3
Mali	81	92	77
Niger	32	71	25
Nigeria	42	63	32
Senegal	75	89	66
S. Leone	78	78	78
Togo	78	93	71

[less than 50% highlighted in bold]

According to surveys conducted by UNICEF, the UN Children's Fund, birth registration figures in ECOWAS countries range from more than 90 percent of all births (Cape Verde) to fewer than ten percent (Liberia). Even where births are registered correctly, record keeping and preservation may be very weak, meaning that a person seeking to obtain a copy of a birth certificate after several years may find it impossible to do so. In some cases, records have been destroyed. Birth registration

⁸⁴ Convention on the Rights of the Child, Article 7; African Charter on the Rights and Welfare of the Child, Article 6. See also the General Comment on Article 6 by the African Committee of Experts, extracted in Annex 8.1.

⁸⁵ UNICEF, *Every Child's Birth Right: Inequities and trends in birth registration*, 2013. [-] indicates information not available. Reference years vary from 2005 to 2012.

rates can fall dramatically during periods of conflict: in Côte d'Ivoire, the birth registration rate decreased from 72 per cent in 2000 to 55 per cent in 2006.⁸⁶

Lack of birth registration, especially for children in border areas, children of refugees, abandoned children etc, is regularly criticised by the UN Committee on the Rights of the Child in its concluding observations on state reports submitted under the Convention on the Rights of the Child. The Committee highlights the fact that lack of birth registration may, especially in the francophone countries, prevent a child from being admitted to school or entering exams to pass from one level to another; as well as from obtaining national identity documents on reaching majority.⁸⁷

There have been significant recent efforts at reform of civil registration systems.

A West and Central Africa regional campaign to improve birth registration was launched in June 2003 by 24 national governments in partnership with several international organisations.⁸⁸ A number of countries in West Africa have adopted new legislative frameworks which decentralise civil registration processes, making them more accessible, including in relation to late registration based on the testimony of witnesses.⁸⁹ With the support of UNICEF and international NGOs such as Plan International and Save the Children, there is a major push to improve registration rates, through measures such as support to mobile registration drives or the creation of village committees charged with ensuring that all births are registered; in some countries pilot projects supported by mobile phone companies have been launched for declaration of births by SMS. Fees for registration and late registration have been reduced, or removed altogether.⁹⁰

In Guinea, for example, the rate of birth registration has improved from 46 percent to 59 percent in just a few years, a relatively good rate for a country at its level of income per capita. However, at least a quarter of registered children do not have a birth certificate (*extrait de naissance*), which is almost equivalent to not being registered at all, given problems with archiving of records and administration of the system. The 2008 Code de l'enfant increased the period for normal registration without the need for a *jugement supplétif* from 15/30 days to 6/8 months (in urban or rural areas). In addition, late registration of birth through a *jugement supplétif* is obtainable from any tribunal (including the lowest level, the *tribunal de paix*); though in practice is rarely obtained. Unlike in Senegal and Niger, there are no *audiences foraines* away from the usual court seat for late birth registration, although the civil code does allow for that possibility. Birth registration has been decentralised to each sous-prefecture, and this lack of central control has given rise to a system in which efficiency of registration varies greatly by district. Registration rates in remote regions are still very low, and registration often restricted to births assisted by a hospital or clinic (and even then there is a frequent misunderstanding of the difference between the *attestation de naissance* signed

⁸⁶ « Rapport conjoint de l'équipe pays Côte D'ivoire pour l'Examen Periodique Universel (EPU) », United Nations, 2009.

⁸⁷ Concluding observations of the CRC are available at the "human rights bodies" link at the webpage of the Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>, last accessed 2 July 2014.

⁸⁸ *Birth Registration and Armed Conflict*, UNICEF Innocenti Research Centre, 2007.

⁸⁹ For example, Loi n°2007-30 portant régime de l'état civil au Niger ; Loi. 2009-010 du 11 juin 2009 relative à l'organisation de l'état civil au Togo.

⁹⁰ Interviews and other information from UNICEF West Africa offices.

by the health centre and actual birth registration).⁹¹ Even if current registrations are improving, archiving is virtually non-existent: in Boke, a regional capital in Lower Guinea, only a few years' records are available at the *mairie* (amounting to just a handful of files); the (limited) records of births of more than about five years previously have been sent to the local museum rather than being kept accessible for those who may need them.⁹²

In Senegal, while the national rate of registration was 69 percent in 2006, in Sedhiou, a department in Casamance, the rate was only 35 percent. The actual rate may be lower since the survey was only carried out in zones that were sufficiently secure to access.⁹³ The long-running conflict in Casamance has left some civil registration records burnt, and many displaced without records; while *audience foraines* to enable late registration of births in remote locations are planned, they are not carried out for reasons of security.⁹⁴ At one primary school in Ziguinchor only 269 of 690 children had a birth certificate: without a birth certificate they could not enter the exam to pass from primary to secondary school.⁹⁵ At a school near the border with Guinea Bissau, not a single child arrived at the school with a birth certificate. In these circumstances, school principals will assist children to apply for late registration of birth; including getting sponsors from the community even for those who are born across the border. Many of these are Casamance refugees so are entitled to Senegalese nationality, but do not have Senegalese documentation. Without the birth certificate they are excluded from the possibility of progressing in their studies.⁹⁶ However, a major effort to strengthen the system was launched in 2013, financed by a €5 million grant from the EU.⁹⁷ Tribunals have been carrying out *audiences foraines* throughout the country to establish late birth registration: 263,796 *jugements supplétifs* were issued in 2013.⁹⁸

Children of refugees are often most at risk of non-registration: although UNHCR will seek to ensure registration occurs, it depends on the collaboration of the national authorities, since a valid birth registration must be issued by the state itself, not a UN agency. In Guinea, formerly host to many thousands of Liberians and Sierra Leoneans, as well as Ivorians more recently, birth registration has been successfully organised in the refugee camps; however, those who have remained living in the sites of the former camps, but now with no ongoing refugee status or support from UNHCR, were reportedly virtually cut off from all contact with state authority, including registration of new births. Former refugees living in urban areas also faced difficulties in registering their children; or believed that they were not able to access it.⁹⁹

At the same time, registration in a country of refuge may cause its own problems: Ivorian refugees interviewed in Conakry expressed reluctance to have their children registered in Guinea because they could have trouble returning to Côte d'Ivoire with a Guinean birth certificate, given the history

⁹¹ Jaap van der Straaten, *Towards Universal Birth Registration in Guinea: Analysis and recommendations for civil registration reform in Guinea for Government and UNICEF*, Civil Registration Centre for Development—CRC4D, December 2013.

⁹² Interview, *mairie*, Boke, June 2014.

⁹³ Interview UNICEF Ziguinchor office, May 2014.

⁹⁴ Interviews Ziguinchor and Kolda, Casamance, May 2014.

⁹⁵ Representative of IDPs, Ziguinchor, May 2014.

⁹⁶ Interview school principal Casamance, near Guinea Bissau border, May 2014.

⁹⁷ Viviane Diatta, « Modernisation de l'état-civil du Sénégal », *Enquete*, Dakar, jeudi 13 mars 2014.

⁹⁸ Interview Bienvenu Moussa Habib Dione, Ministry of Justice, Dakar, May 2014.

⁹⁹ *Rapport de mission à Kissidougou du 2 au 6 juin 2013*, Commission nationale pour l'intégration et le suivi des réfugiés, Conakry, 2013.

of suspicion of “foreigners” in that country. A Guinean birth certificate includes a statement of the nationality of the child, and some children of Ivorians born in Guinea had been issued with a birth certificate stating that the child was Guinean – the default option if the parent does not state otherwise.¹⁰⁰ Commendably, the government in Côte d’Ivoire itself had instituted a process to waive, until 31 July 2014, the normal legal time limits for registration of births and deaths that occurred between 20 September 2002 and 31 July 2011 in the central, north, and west zones of the country; and those births and deaths that occurred between 30 November 2010 and 31 July 2011 in the rest of the territory.¹⁰¹

3.2. Systems for proof of nationality

In the context where many people are undocumented, access to definitive proof of nationality for those whose status is in doubt becomes more important. In most of the civil law countries in West Africa, it is assumed by many, perhaps most, people that this is provided by the system of national identity cards, which have been obligatory for adults since the 1960s. A national ID card will usually indicate nationality as one of the pieces of information shown on the face of the card, and it will be accepted as proof of nationality by virtually every institution. Identity card systems are also being introduced in the Commonwealth countries as well as in Liberia. Given that identity card applications are usually vetted in the first instance by quite low-ranking civil servants, this gives the power to determine someone’s right to proof of nationality – for practical if not legal purposes – to a person who is in no way trained in nationality law. Although complaints mechanisms may theoretically exist within the identity card management system for those whose applications are wrongfully rejected, they are usually quite inaccessible unless the person is connected or has some legal assistance. At the same time, a large number of people may “pass” as nationals who are not entitled to do so.

However, government authorities are clear that holding an identity card is not proof of nationality, even in those countries where it is mandatory only for nationals; and not even in the civil law countries do all citizens carry such a card — in Guinea, for example, coverage is estimated at only around 20 percent.¹⁰²

In the civil law countries definitive proof of nationality is rather provided by a certificate of nationality issued by a tribunal, a process provided for in all the nationality codes.¹⁰³ The delegation of this authority to decide if someone is a national to the courts provides both in principle and in fact some protection against arbitrary decision-making. A person whose nationality is seen as being in doubt by the personnel responsible for ID card management will be referred to the tribunal for

¹⁰⁰ Interviews Conakry, June 2014.

¹⁰¹ Article 1 de l’ordonnance n° 2011-258 du 28 septembre 2011 relative à l’enregistrement des naissances et des décès survenus durant la crise : « Les naissances et les décès survenus pendant la période allant du 20 septembre 2002 au 31 juillet 2011, dans les ex-zones Centre-Nord -Ouest, et du 30 novembre 2010 au 31 juillet 2011, sur le reste du territoire national, pourront être déclarés, nonobstant l’expiration des délais légaux ». Article 2 of this ordinance stated that the exceptional measures would end on 31 July 2012. Loi n°2013-35 du 25 janvier 2013 extended this period to 31 July 2014. See also Mirna Adjami, *Statelessness and Nationality in Côte d’Ivoire*, UNHCR, forthcoming.

¹⁰² Jaap van der Straaten, *Towards Universal Birth Registration in Guinea: Analysis and recommendations for civil registration reform in Guinea for Government and UNICEF*, Civil Registration Centre for Development—CRC4D, December 2013.

¹⁰³ A certificate of nationality is also envisaged in international law: see the International Commission on Civil Status Convention No.28 on the Issue of a Certificate of Nationality, 1999.

adjudication on the case. In addition, the possibility of obtaining a nationality certificate means that there is a document that cannot be challenged at moments when conclusive proof of nationality is required for official purposes. Since the document is delivered by a tribunal the decision is made by a person who has been trained in the law, and is tied to a fundamental standard of due process, which creates a basis for challenge of any decision.

Of course, there are problems in practice. Judges cannot overcome weaknesses in the law itself; and interpretations of the law may sometimes vary across different tribunals. It can be very cumbersome to prove all the elements required to obtain recognition of nationality. The relevant tribunal is usually located at the capital of a department or region, and may be quite remote from the areas where many people live. Administrative staff may be unhelpful, and there is substantial triage before cases reach the tribunal president, as those collecting the applications send people back who do not have the correct supporting paperwork. Outside any tribunal or other office for nationality papers will be a queue of people waiting to speak to someone to sort out their case; some of them have been returning to the same spot multiple times over several months. Applicants may have to spend many hours sorting out irregularities in their birth certificates or other documents; for example, where names on different official documents do not conform to each other in spelling (an illiterate person may be completely unaware of the significance for legal authorities of the difference between Mohamad and Mohammed). Intermediaries who assist these people may levy substantial unofficial fees. Statistics for certificates issued are not published, but the numbers obtained from the handful of tribunals visited for this study were well below what you would expect if most people were to have proof of nationality. For example, in Ziguinchor, capital of a department in the region of Casamance in Senegal, the departmental tribunal issued 1,895 certificates of nationality in 2013; at the *tribunal de grande instance* in Niamey, capital of Niger (a city with a population of a million or more), 21,692 certificates of nationality were issued from October 2012 to September 2013.

By contrast, in the Commonwealth countries, although there may be the theoretical provision for a certificate of nationality in cases of doubt, this is delivered by the executive, and is effectively unknown in practice.¹⁰⁴ Thus, there is no single document that provides conclusive proof of nationality: while the passport has highest status, most people do not have an international passport. In practice, a variety of documents may be accepted as proof of nationality, depending on the circumstances.

In Nigeria, for example, the law establishes no document or process that conclusively proves nationality. Constitutional provisions referring to membership of an “indigenous community” in relation to the nationality of those born before independence (see above, section 2.6.3), reinforced by the legal framework of federalism, have created a strong emphasis on “indigeneity” that pervades identification systems and that impacts both internal migrants and those who have come from other countries. The principle of “federal character” introduced in 1979 is based on the idea

¹⁰⁴ For example, the Ghana Citizenship Act 2000, provides in its Section 20 that: “The Minister may, on an application made by or on behalf of any person with respect to whose citizenship of Ghana a doubt exists under Part I of this Act, certify that the person is a citizen of Ghana and a certificate issued under this section shall be prima facie evidence that the person was such a citizen at the date indicated in the certificate, but without prejudice to any evidence that he was such a citizen at an earlier date.” There is a similar provision in Section 14 of the Gambia Nationality and Citizenship Act, 1965, and in Section 24 of the Sierra Leone Citizenship Act 1973; but not in Nigeria.

that government positions at different levels should be shared equitably among those who are “indigenes” of the different units and sub-units that made up Nigeria’s federal system.¹⁰⁵ Hence, a “certificate of indigeneity”, issued by the chair of a person’s local government area “of origin” – determined as the father’s community of origin – is required for many purposes, including applications for civil service positions, government scholarships, election to public office and many other official interactions. A certificate of indigeneity is also required to obtain a passport.¹⁰⁶ An entire infrastructure of personnel and form-filling exists to supply such certificates from each of the 36 states of the federation and 774 local government areas (and the Federal Capital Territory, Abuja).

Since no law establishes another document to do so, the proof of your right to be Nigerian is effectively a certificate of indigeneity, a document that has no legal basis, and for which there are no established written criteria on the basis of which a refusal could be challenged. For those who have lived in urban areas for several generations, ties to communities of origin inevitably become weaker (or several could be claimed). A certificate of indigeneity is usually available only to those whose father is an indigene, and not to children of a “mixed” marriage, if only the mother is from that place; though in other cases, criteria may be more flexible, based on residency and assimilation. Since there is no legal framework, the process is effectively at the discretion of the local government chair. In practice, such certificates can be obtained with money and connections, but it is hard to recommend such a workaround as a matter of public policy.¹⁰⁷

These problems are replicated somewhat in Togo, which is the only francophone country where a certificate of nationality issued by the ministry of justice rather than a court.¹⁰⁸ Even without the requirement for a legal procedure, a study by the Office of the UN High Commissioner for Human Rights estimated that only around 75,000 certificates were issued each year nationwide. Moreover, whereas an unproblematic request for a certificate of nationality will be fulfilled within about two months, in any case where there is a query it may take further months or even years to resolve. The law provides that if the Ministry of Justice does not supply a certificate of nationality within two months of the date of request, it is presumed that the certificate has been refused – and it is not clear if there is any appeal from this outcome.¹⁰⁹ In practice a certificate of nationality is refused when there is any doubt about a late birth registration established by a *jugement supplétif* from a tribunal, so that the administrative authorities thus question the decision of the courts. In such cases of doubt it is the practice is to demand a “*certificat d’origine*” which is awarded on the basis of an enquiry carried out in the district where the person is from; but no legal authority exists for this

¹⁰⁵ See Human Rights Watch, “*They Do Not Own This Place*”: Government discrimination against “non-indigenes” in Nigeria, April 2006; Bronwen Manby, *Struggles for Citizenship in Africa*, pp.110-112.

¹⁰⁶ Interview, Nigerian Immigration Service, Abuja, July 2014.

¹⁰⁷ For a report on recent research on the criteria for certificates of indigeneity, see, “Indigeneity, Belonging, & Religious Freedom in Nigeria: Citizens’ Views from the Street”, Nigeria Research Network, *Policy Brief No.5*, University of Oxford / Development Research and Project Centre Kano, 2014.

¹⁰⁸ Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d’établissement de certificats d’origine et de nationalité, Lomé, 12-16 septembre 2011.

¹⁰⁹ Ordonnance No.78-34 du 7 septembre 1978 portant Code de la nationalité togolaise, art 72.

practice. Efforts to computerise and strengthen administration of nationality certificates has already created problems for those without papers who are not able to meet new standards of proof.¹¹⁰

The impact of this lack of a coordination and coherence across systems is seen perhaps most strikingly in the context of electoral registration, theoretically restricted to nationals. Most people do not have a document that is proof of nationality (even in the francophone countries where a certificate of nationality would provide such proof), so it would not be possible to hold elections if such proof were required. Thus, the required proof of identity to be registered to vote varies greatly across the region, and sometimes the systems may be effectively circular: it may be easier to obtain an electoral card than an identity card; but an electoral card may then be sufficient to serve as the basis of an application for an identity card (for example in Guinea). This lack of a systematic approach can operate both to include people on the voters' roll who should not be there; but also to exclude those who should. According to a survey by the Carter Center, some African countries "have extremely opaque and confusing laws or occasionally no accessible laws or regulations at all governing the voter identification process, allowing great discretion among election administrators and the potential for confusion for all involved".¹¹¹ In Côte d'Ivoire, for example, during election registration: "Local government offices were overwhelmed with the demand, were often distantly located, photocopiers were unavailable in rural areas, birth certificates were difficult to trace on the basis of existing identity cards, and applicants faced additional costs if they had to submit a judicial request to receive a birth certificate."¹¹² People with entitlement to Ivorian nationality were thus denied the right to vote.

3.3. Inaccessibility of naturalisation procedures

It is indicative of the difficulty of naturalisation that there are almost no published statistics about the numbers naturalised in most African countries. In the course of research for this study, it was established that fewer than one hundred people had been naturalised in the course of 2013 in each of Senegal, Niger and Guinea¹¹³; in Senegal as of 2007, a total of only 12,000 people had been naturalised since independence in 1960.¹¹⁴ In Niger and Guinea, the actual number naturalised was not known by the Ministry of Justice, since naturalisation is ultimately by presidential decree on the discretion of the president – and there was no system of feedback on individual dossiers. In Niger, if the application is not considered within one year of its submission it lapses and the applicant has to start again. In Ghana, no non-Ghanaian was granted Ghanaian citizenship by naturalisation between 1993 and 2006;¹¹⁵ as of 2014, UNHCR had no information that any refugee or former refugee in Ghana had been able to naturalise.¹¹⁶ In Côte d'Ivoire exactly 32,819 people acquired nationality by

¹¹⁰ *Le droit à une nationalité: l'accès aux documents d'identité au Togo*, UN Office of the High Commissioner for Human Rights, March 2013.

¹¹¹ Tova Wang, *Voter Identification Requirements and Public International Law: An Examination of Africa and Latin America*, The Carter Center, 2013.

¹¹² General Conclusions on the Côte d'Ivoire Identification and Voter Registration Process, The Carter Center, 6 May 2009, p. 2.

¹¹³ Interviews with ministry of justice officials, Dakar, Niamey, and Conakry, June 2014.

¹¹⁴ "Accès à la nationalité sénégalaise : les mêmes textes pour tous les demandeurs," *APA News*, 13 August 2007.

¹¹⁵ Emmanuel K. Akyeampong "Race, Identity and Citizenship in Black Africa: The case of the Lebanese in Ghana", *Africa*, Vol.76., No.3, 2006, pp.297-323.

¹¹⁶ Information from UNHCR Accra, July 2014.

naturalisation during the whole period from 1962 to 2012; a trivial number in light of the millions of people who remain categorised in the census as “foreigners” although they have lived in Côte d’Ivoire for decades or generations.¹¹⁷

In Nigeria, perhaps 100-200 people are naturalised each year – in a country of around 170 million -- but UNHCR only knows of a single refugee or former refugee (a Rwandan) who has been included among that number.¹¹⁸

This is partly a matter of law but even more a matter of practice: the procedures tend to be heavy in bureaucratic requirements, and slow in terms of processing. The system for application is similar in the civil law countries: an application for naturalisation is submitted at the *mairie* of the commune, requiring a dossier with the birth certificate or proof of nationality from the country of origin, proof of marriage (if relevant), the birth certificates of any children included in the application, a certificate of residence, proof of a clean criminal record (*casier judiciaire*), and a letter of motivation. The mayor sends the application to the *Direction d’administration du territoire* for an inquiry into the morality of the person; and the dossier is then sent the Ministry of Justice to be verified, before it is sent on to the presidency for consideration. The final naturalisation is by *décret*, secondary legislation adopted by the president. In Nigeria, where naturalisation requires fifteen years’ residence and fulfilment of numerous other conditions,¹¹⁹ an application for naturalisation is made to the Ministry of the Interior, and the dossier is then reviewed by a range of different state agencies, including the State Security Service, the Immigration Service, the police, the governor of the state and chair of the local government area where the person is resident, and other agencies.

¹¹⁷ These naturalisations were delivered by the signature of 7,121 decrees published in the official journal (the number of decrees is less than the number of beneficiaries because the figure of 32,819 includes minor children who are automatically included in the naturalisation of a parent and are listed in the decree). Information from Côte d’Ivoire Ministry of Justice, June 2015. Interview, Paul Koreki, Technical adviser, Ministry of Justice, Human Rights and Civil Liberties, Abidjan, June 2014, and subsequent email correspondence.

¹¹⁸ Official figures are not published, but news stories indicate that numbers naturalised are of this order. See, for example, Emeka Anuforo, “79 foreigners get Nigerian citizenship”, *The Guardian*, 31 January 2007; “FEC okays 119 for Nigerian citizenship”, *The Nation*, 5 June 2008; “FG confers citizenship on 82 nationals”, NAN, 18 August 2010; Ahamefula Ogbu, “FG Uncovers 1,497 Illegal Migration Routes into Nigeria”, *This Day*, 15 March 2012; Elizabeth Embu, “FG Grants Citizenship to 174 Foreigners, Denies 27 applicants”, *Daily Times*, 6 November 2013; Jibrin Lumba, “As Nigerians Relocate, Foreigners Struggle For Nigerian Citizenship”, *Orient Daily*, 26 December 2013. Included in the numbers referred to are women married to Nigerian citizens who have applied to register as Nigerians, a far less demanding process under section 26 of the constitution. Also interview, UNHCR Abuja, July 2014.

¹¹⁹ Section 27 of the 1999 Constitution provides that: “(1) Subject to the provisions of section 28 of this Constitution [requiring renunciation of any other nationality also held by naturalisation], any person who is qualified in accordance with the provisions of this section may apply to the President for the grant of a certificate of naturalisation. (2) No person shall be qualified to apply for the grant of a certificate or naturalisation, unless he satisfies the President that - (a) he is a person of full age and capacity; (b) he is a person of good character; (c) he has shown a clear intention of his desire to be domiciled in Nigeria; (d) he is, in the opinion of the Governor of the State where he is or he proposes to be resident, acceptable to the local community in which he is to live permanently, and has been assimilated into the way of life of Nigerians in that part of the Federation; (e) he is a person who has made or is capable of making useful contribution to the advancement; progress and well-being of Nigeria; (f) he has taken the Oath of Allegiance prescribed in the Seventh Schedule to this Constitution; and (g) he has, immediately preceding the date of his application, either- (i) resided in Nigeria for a continuous period of fifteen years; or (ii) resided in Nigeria continuously for a period of twelve months, and during the period of twenty years immediately preceding that period of twelve months has resided in Nigeria for periods amounting in the aggregate to not less than fifteen years.”

Ultimately, the dossier is passed to the Federal Executive Council for review and recommendation and the final decision is made by the president. A fairly substantial percentage of those who apply are rejected (perhaps 15-20 percent, judging from press reports). In Nigeria, naturalisation is also not automatic for minor children of those whose applications are successful: in one case, the child of parents of Palestinian origin who had obtained Nigerian nationality by naturalisation was unable to obtain a Nigerian passport herself on reaching majority; a separate application had then to be made.¹²⁰

In Niger, problems are created in this process particularly by the requirements that a person requesting naturalisation on the basis of ten years' residence has to provide both a certificate of nationality from the country of origin (though they are not required to renounce that nationality), and residence permits showing legal residence for ten years. However, among those requesting naturalisation are people born and brought up in the country of parents born elsewhere (who are not eligible for nationality of origin in Niger). These people have never considered obtaining a residence permit (*permis de séjour*), and it seems absurd to require them to obtain proof of nationality of one or other or both of their parents' countries (for which they would have to travel to that country in order to collect all the documentation and go through onerous administrative processes) in order to obtain recognition of the nationality of the country where they have always lived. Even for people who grew up in another ECOWAS country and do have evidence of nationality of that country, providing a residence permit is usually an impossible demand for those who are not operating in the formal economy and for whom West Africa is perceived as a zone of free movement.¹²¹

In Sierra Leone, after filling out the necessary forms, the applicant is required to undergo a series of interviews at the Immigration Headquarters, the Criminal Investigation Department, and the National Revenue Authority. Final interviews are before a panel chaired by the minister of foreign affairs, and including the attorney general and minister of justice, the minister of trade, and the head of immigration. This committee forwards its recommendation to the cabinet for approval and the president has the final say.¹²² There is no requirement to give any reason for the refusal of an application for naturalisation, and the decision cannot be challenged in any court.¹²³ There was a total of only about 115 naturalised citizens in Sierra Leone in 2005, almost all of Lebanese descent.¹²⁴ No naturalisations were carried out under the Sierra Leone Peoples' Party government in office between 1996 and 2007, although it was alleged by the current All People's Congress government that the previous government of the military National Provisional Ruling Council had carried out "mass naturalisation", especially of Chinese and Korean nationals.¹²⁵ In 2006, procedures for naturalisation were simplified; however, according to the US Department of State 2010 human rights report, the government had approved no new naturalisations since the end of the war in

¹²⁰ Interview, Nigerian National Immigration Service, Abuja, July 2014.

¹²¹ Interview, Abdou Hamani, Ministry of Justice, Niamey, May 2014. Thanks to a bilateral agreement, a *permis de séjour* is not required for nationals of Mali.

¹²² Bronwen Manby, *Struggles for Citizenship in Africa*, London: Zed Books, 2009, pp.56-66; see also Lina Beydoun "Lebanese migration to Sierra Leone: Issues of transnationalism, gender, citizenship, and the construction of a globalized identity", unpublished PhD thesis, Wayne State University, 2005.

¹²³ Sierra Leone Citizenship Act, 1973, section 24.

¹²⁴ According to the Immigration Department in Sierra Leone, cited in Jamesina King, *Africa Discrimination and Citizenship Audit: Report on Sierra Leone*, Open Society Justice Initiative, 2005.

¹²⁵ "Immigration unveils Naturalization and Citizenship Application Forms", *Awoko*, 4 May 2011.

2002; moreover, a naturalised citizen must reportedly pay the equivalent of US\$3,000 for a passport.¹²⁶ In 2013, President Koroma naturalised British journalist Mark Doyle and at least twenty others.¹²⁷

The requirement for a presidential decree is no great barrier in some countries, such as Senegal, where presidential approval is a formality after the Ministry of Justice has verified that the conditions for naturalisation are fulfilled. But in many other countries, the perception is that the naturalisation procedure is highly politicised and only approved for those who have connections; naturalisation is therefore effectively available only to elite individuals with the full panoply of documents required, and the ability to follow their dossier closely through the process. In Côte d'Ivoire, in particular, the naturalisation process has been much criticised, especially in the case of group naturalisations.¹²⁸

In Liberia, uniquely in West Africa, the Aliens and Nationality Law gives “exclusive jurisdiction” to naturalise persons as citizens of Liberia to the circuit courts in each county, which are to hear the application in open court. The attorney-general may also “designate an immigration officer to conduct a personal investigation of the person”, on the basis of which the attorney-general may petition the court in support or opposition to the application.¹²⁹ The naturalisation process is still not very accessible, thanks to delays and difficulties with the circuit courts; but Liberia, also unusually, has committed to naturalise refugees based on long residence in the country, including several thousand Sierra Leonean former refugees.¹³⁰

In these circumstances, those who wish to become nationals and show their commitment to a new country are unable to do so. Instead, they may be forced to obtain documents illicitly. This may be done in good faith: if the perception is that nationality is generally obtained through a birth certificate, then seeking a birth certificate in the country even if not born there may be rather an effort to “naturalise” than an act of fraud. Many “ordinary people” interviewed for this report who were long-term residents in a country where they did not have nationality papers were very hazy on

¹²⁶ Sierra Leone Citizenship (Amendment) Act No. 11 of 2006; Bureau of Democracy, Human Rights, and Labor, *2010 Country Reports on Human Rights Practices : Sierra Leone*, US Department of State, 8 April 2011; “Nasser Ayoub appeals to President Koroma”, *Sierra Express*, 15 May 2012

¹²⁷ “Mark Doyle Subscribes to the oath of allegiance as Sierra Leonean”, Sierra Leone presidency, 5 November 2013; “‘We Expect You To Be Good Citizens’ -- President Koroma Admonishes”, Sierra Leone presidency, 11 September 2013, both available at <http://www.statehouse.gov.sl/> last accessed 08 July 2014.

¹²⁸ For example, 8,133 immigrants of Burkinabè origin and their descendants born in Côte d'Ivoire settled in Bouaflé in central Côte d'Ivoire were naturalised by President Henri Konan Bédié by a collective decree in 1995; up to 2010, most of the individuals concerned still had no certificates of nationality proving their naturalisation although this was expressly envisaged by the decree. With the support of UNHCR, the ministry for human rights undertook awareness raising activities to confirm that these people were Ivorian. This collective naturalisation is still controversial today : See « Lutte contre l'apatridie : 8.133 postulants a la nationalité ivoirienne obtiennent leur naturalisation » Government of Cote d'Ivoire 4 March 2013; and « Bradage massif de la nationalité ivoirienne: Ouattara se sert de Bédié, grosse colère au PDCI », *IvoireBusiness.net*, 13 Mars 2013 ; additional information from Paul Koreki, Technical adviser, Ministry of Justice, Human Rights and Civil Liberties, June 2013.

¹²⁹ Aliens and Nationality Law, 1973, arts 21.1 to 21.5. Among the requirements to naturalise are that a person must “state that he does not believe in anarchy”.

¹³⁰ “Liberia grants citizenship to 2,600 Sierra Leone refugees”, AFP, 13 November 2007; Zoom Dosso, “Sierra Leoneans to Get Liberian Citizenship” *New Dawn* (Monrovia), 25 August 2010, “LIBERIA: 300 Sierra Leonean Refugees to be ‘naturalized’”, West Africa Democracy Radio, 18 June 2013.

what the correct procedures should be: they just wanted recognition as nationals in the place where their lives were centred and they had the strongest ties.

Because of these difficulties, the naturalisation process is mostly only used by non-ECOWAS citizens, since those whose origins are in another ECOWAS country can rely on the legal or factual tolerance of their presence. However, even in the case of refugees, who may be in most need of naturalisation as the precondition to full local integration (where they cannot return home), naturalisation may be difficult to access. Several Rwandan refugees had made multiple submissions for naturalisation in Niger, for example, but had yet to be approved, as of mid-2014.

3.4. Official and unofficial costs

Official fees for obtaining registration of birth (whether within the set times limits or by late registration procedures), identity documentation and certificates of nationality are usually fairly modest, and birth registration fees have in some countries been reduced or eliminated altogether with the support of UNICEF. However, even a fee of a few dollars may put the process out of reach; and almost everywhere additional unofficial charges may be required, if not from the officials themselves then from intermediaries who play an important role in explaining the system and facilitating acquisition of documents by those who do not know what the procedures are. Transport costs are a significant additional charge for those who live in remote locations and have to travel to a departmental or regional capital for nationality documentation; added to the cost of transport is the cost of lost time from income-generating activities – any centre responsible for issuing nationality or identity documents will see lines of people waiting to see the responsible official, sometimes for many hours at a time.¹³¹ Costs for naturalisation may be significantly higher, given the multiple documents, many of them from another country, that need to be assembled for an application.

Corruption in nationality administration may, paradoxically, both ease problems of statelessness and create them. The ability to “negotiate” the acquisition of a birth certificate, identity card or other document may enable a person to “pass” as a national for most purposes. However, the sense that the system is not reliable may also mean that the mere possession of documents will not convince others that the person concerned is indeed a “real” national, even if they fulfil all the conditions for nationality from birth or have completed all the procedures for naturalisation. It is widely reported in many West African countries that a person may seek to obtain a new birth certificate in order to change their age, in order to apply for a civil service position, scholarship or other benefit where there is an age restriction. In Guinea — where a recent assessment mission noted that “the administrative system suffers serious dysfunction, including related to lack of financial, human and material resources, difficulties in managing the various institutions and a generalised corruption”¹³² — senior government officials freely admitted that nationality documents could be obtained with

¹³¹ In Senegal, for example, a certificate of nationality costs CFA2300; a national identity card is now free, though until recently cost CFA1000. Birth registration is free if done within the correct time limits, if outside those limits via a *jugement supplétif* the charges have recently been dropped from CFA4,000 to CFA700. To get an *extrait de minute du greffier* confirming that a birth certificate is correct (in case of doubt) costs CFA2500, as does an annulation and reissue of a certificate. Reported “facilitation fees” paid to intermediaries ranged from a few hundred to a few thousand francs. Interviews Dakar and Ziguinchor, May 2014. The exchange rate at the time was roughly 490 CFA francs to one US dollar.

¹³² *Rapport de mission en République de Guinée 29 octobre - 19 novembre 2011*, Commissariat Général aux Réfugiés et aux Apatrides (CGRA/Belgique), de l'Office Français de Protection des Réfugiés et Apatrides (OFPRA/France) et de l'Office Fédéral des Migrations (ODM/Suisse), March 2012.

little if any check on entitlement. While Guinea is perhaps the most extreme case, many West African countries struggle with the same issues.

In Senegal, for example, the national identity card system is in the process of being computerised, which is revealing widespread problems with duplicate or triplicate birth registrations, as the system rejects people who apply with the same number birth certificate. Often, the person in possession of such a document may have been completely unaware that the birth certificate was not valid: they simply followed the understood procedure in paying a fee. At the Niaguis commune outside Ziguinchor in Casamance, all birth registration certificates issued during a certain period are now being replaced, creating major problems for those who had innocently obtained such documents. A person with a birth certificate from Niaguis who applies for an ID document or certificate of nationality has to go back to court to have the birth certificate cancelled or confirmed by the registrar (*greffier*); if it is invalid, the person will then need a *jugement supplétif* confirming the facts of birth and a new birth certificate; and then a certificate of nationality before getting their final identity document issued. Each stage of this process has fees attached. If the identity card itself is incorrectly issued, the person will need to travel to Dakar to get it sorted out. It can take months to complete the unravelling for those trapped in this situation; or they may never do so.¹³³

Box 3: Weaknesses in nationality administration

- **Weak civil registration systems**

Birth registration is the foundation for nationality administration, but five West African countries have birth registration rates of less than 50%. Maintenance or reconstruction of archives (if destroyed in conflict) do not receive the priority they require.

- **Inaccessible, discriminatory or absent systems for proof of nationality**

Most identity documents in common use (national identity cards, electoral cards, passports...) are issued by relatively low-level administrative officials who have no training in nationality law. The civil law countries provide a partial remedy against discriminatory decisions at this level through the possibility of obtaining a certificate of nationality from a tribunal. The common law countries badly lack a similar procedure.

- **Naturalisation is only available to a very few**

The discretionary nature and heavy procedural requirements attached to naturalisation means that naturalisation is effective only available to a small elite. It is easier for nationals of countries from outside the region to naturalise in an ECOWAS state than other ECOWAS citizens. Naturalisation is even inaccessible to long term refugees who cannot return home, or who have established their lives in the new country.

- **Costs can obstruct access to nationality documentation**

While official fees for birth registration, identity documents and nationality certification are mostly reasonable, they can still create barriers for the poorest people. The fees charged by intermediaries who facilitate applications, transport costs, and the many hours of lost time waiting for documents to be issued put them out of reach for many more.

¹³³ Interviews, Ziguinchor, May 2014.

4. Populations at risk of statelessness

The populations at risk of statelessness in West Africa fall broadly into three groups: a) those who have migrated, whether voluntarily or forcibly, and their descendants; b) cross-border populations; and c) vulnerable children — who of course become adults.

Box 4: A taxonomy of statelessness

Migrants

- Historical migrants from before independence, and their descendants
- Contemporary migrants stranded in another country
- “Returnees” to a country of origin
- Refugees, asylum seekers and former refugees

Cross border populations

- Ethnic groups divided by international borders
- Nomads
- Those who live in zones where borders have been changed

Vulnerable children

- Children born out of wedlock
- Abandoned babies and orphans
- Child workers
- Trafficked children
- Girls forced into marriage

4.1. The descendants of historical migrants

The first major political entities in West Africa were the great trading empires of what was known by Arabs and Europeans as the “Sudan”, the land south of the Sahara. Trans-Saharan commerce and the spread of the Muslim religion both promoted migration among the varied polities and ethnic groups across the Sahel region. Specialist long-distance traders developed a distinctive economy; as did migratory pastoralists, whose itinerant way of livelihood was well adapted to the exploitation of marginal ecosystems of the region unsuited for settled agriculture. Conflict between communities, as elsewhere in the world, also led to migration as those defeated moved to search new beginnings and new livelihoods. The slave trade fed these conflicts, disrupted existing political arrangements, and created new sources of population movement within the region as well as from the region to the Americas.¹³⁴

The period of European political control of West Africa from the late 19th century greatly increased migration, especially within the contiguous French territories known as *Afrique occidentale française* (AOF); but also between territories controlled by different colonial powers. For example, members of the same ethnic group might cross the “international” border in order to evade imposition of taxes or forced labour as these were progressively imposed (especially from French to British-controlled territories). Improved transportation links both facilitated colonial requisitioning of

¹³⁴ For a range of perspectives, see the articles collected under “Africa” in Immanuel Ness (general editor), *Encyclopaedia of Global Human Migration*, Wiley-Blackwell, 2013.

labour for infrastructure, industrial, or other projects, and stimulated free movement of traders and others seeking opportunities in the new coastal economic centres. The development of cash-crop farming promoted further migration, both of seasonal labour and of tenant farmers.

Labour migration in colonial West Africa was often un-organised, but agreements were also signed in the 1940s and 1950s among the colonial powers, including between the administrations of Nigeria and Gabon, Nigeria and Equatorial Guinea, and (most notably in light of later history) Côte d'Ivoire and Upper Volta (today known as Burkina Faso). Indeed, France managed a system of forced transplantation of agricultural workers, and others were recruited by private agencies in conjunction with the French West African labour inspectorate (*Inspection du travail de l'AOF*), established in 1932.¹³⁵ The borders between Upper Volta and Côte d'Ivoire were also modified to facilitate movement of labour to the plantations in the south (see box 5).

Just before independence, a survey organised jointly by the statistics departments of the governments of Ghana and Côte d'Ivoire in 1958/59 found that four to five hundred thousand people a year moved into the two countries during that period; of which over 80 percent stayed for less than a year at a time. Senegal in the mid-1940s was said to host 40-45,000 additional immigrant farmers per year. Long-standing trader migration was also facilitated by colonial transportation links; in the case of the migration to Ghana and Côte d'Ivoire, dominated by the Hausa-Fulani, Zerma, Bambara-Soninke and Yoruba. Rivers and sea allowed for migration of fishing communities; in other cases farming communities migrated in search of new land as a group, rather than as individual migrants.¹³⁶ In addition, migrants came from further afield; not just the European servants of empire, but also traders such as the "Lebanese", from what are now Syria and Lebanon but was then the Ottoman Empire, who began to become established in West Africa from the late nineteenth century.¹³⁷

Many of the populations in West Africa with the greatest difficulties in obtaining documentation of nationality of the country where they are resident are descendants of those who migrated before independence, for whom the transitional provisions adopted in the laws at independence were not well adapted; or where those laws were early on amended or manipulated to exclude targeted populations from access to nationality and the broader rights of citizenship (see above, section 2.3).

Among the groups of "doubtful" nationality, perhaps the most visible in West Africa were the "Lebanese", comprising both descendants of migrants arriving from the nineteenth century and more recent arrivals. Many of these "Lebanese" have parents and grandparents born in West Africa, speak West African languages, and have participated in the political, social and economic life of the country. At the same time, a strong Lebanese identity is preserved. The Lebanese in West Africa are for the most part business people, dominating commerce in the large towns, and highly mobile among West African and other international locations. This economic dominance, and a perception

¹³⁵ Vincent Bonnacase, *Les étrangers et la terre en Côte d'Ivoire à l'époque coloniale*, Montpellier : Institut de Recherche pour le Développement (IRD), Document de l'Unité de Recherche 095, N° 2, 2001.

¹³⁶ Ibid.; also Akin L. Mabogunje, *Regional Mobility and Resource Development in West Africa*, Centre for Developing-Area Studies, McGill University, Montreal, Canada, 1972.

¹³⁷ Andrew Arsan, *Interlopers of Empire: The Lebanese Diaspora in Colonial French West Africa* London and New York: Hurst and Oxford University Press, 2014.

of failure to integrate, is often heavily criticised by local populations.¹³⁸ The clearest case of laws being adopted specifically to exclude Lebanese from citizenship (and thus political power) is the situation in Sierra Leone, where specific amendments to the law were made immediately after independence to exclude those not of “negro African descent” from citizenship by birth.¹³⁹ Although, thanks to the indefinite transmission of nationality through the father under Lebanese law (as well as their access to potential other nationalities, including British and French), most Lebanese are probably not stateless, many are excluded from full participation in the life of the country where they live by the difficulties of accessing nationality in that country (or, if they have nationality by naturalisation, they are perceived as having simply bought that right).

But challenges in accessing nationality are very widespread across the region among much less visible groups, among them many people whose parents or grandparents moved prior to the date of independence, and never obtained documentation as nationals of the new states. In most West African countries, a person with a family name that is “foreign” is likely to face consistent difficulties in establishing nationality papers. For example, in Senegal, an informal system exists whereby a person applying for a national identity card with a name that is “obviously” Senegalese (such as Diop or Ndiaye) needs only to produce a birth certificate and certificate of residence as supporting paperwork, but a person with a “foreign” family name, or a name that exists not only in Senegal but also in neighbouring countries (Cissé, Coulibaly, Bah, Diallo....) will be asked to go to court to obtain a certificate of nationality as proof of eligibility. Nonetheless, people who can show evidence that they themselves and one parent were born in the country will be able to establish their eligibility for nationality, even if the process is cumbersome.¹⁴⁰ In Togo, meanwhile, an ad hoc commission looking into nationality law reform noted that it could be required to show the presence of ancestors in Togo for up to six generations to be able to obtain a “certificate of origin”, a document required (with no legal authority) before a certificate of nationality of origin could be issued, and which renders effectively inoperative the rights granted in the law to claim nationality based on birth in the territory (including for those who have no other nationality).¹⁴¹

The most obvious problems of this type are faced in Côte d’Ivoire, where the law includes no *jus soli* element, so that those born in the country over several generations still remain foreigners: one of the main reasons why Côte d’Ivoire is consistently cited as a country with a high percentage of residents who are non-nationals is because it is so difficult to become a national through the normal operation of the law, including for the descendants of those who were present on the territory at independence. (See box.)

¹³⁸ Lina Beydoun, “The Complexities of Citizenship among Lebanese Immigrants in Sierra Leone”, *African Conflict & Peacebuilding Review* Vol.3, No.1, 2013, pp.112-143; Chris Bierwirth, “The Lebanese communities of Côte d’Ivoire”, *African Affairs* Vol.98, 1999, pp.79-99; Michael Humphrey, “Lebanese identities: between cities, nations and trans-nations”, *Arab Studies Quarterly* Vol.26 No.1, 2004, pp.31-50.

¹³⁹ Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009, pp.56-66

¹⁴⁰ Interviews at police commissariats, Casamance, May 2014. Even in Guinea, where law and practice allow those born in the country to obtain nationality at majority, a person with a foreign name may face difficulties from time to time: a person born in Guinea who legitimately held a Guinean birth certificate, identity card and passport, but whose family name was from Benin, was told to register his marriage with the Ministry of Foreign Affairs, as foreigners must do, rather than the commune as a national. Interview, Conakry, June 2014.

¹⁴¹ Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d’établissement de certificats d’origine et de nationalité, Lomé, 12-16 septembre 2011.

Box 5: Côte d'Ivoire

During the colonial period, the French authorities had a policy of forcibly importing labour from the territory of Upper Volta (what is now Burkina Faso) to supply labour for plantations and infrastructure projects in Côte d'Ivoire; to facilitate this transfer, part of the territory of Upper Volta was incorporated into Côte d'Ivoire during the period when the colony of Upper Volta was dismembered from 1932 to 1947. Other migrant workers came of their own initiative both before and after independence: a 1960 agreement between Côte d'Ivoire and Burkina Faso renewed the colonial era agreement on labour migration.¹⁴²

Côte d'Ivoire is the West African country that has the largest number of non-nationals living within its borders. However, though there is some connection between high levels of migration and a high percentage of non-national residents, it is also the case that a nationality law based purely on descent makes it difficult for migrants to integrate. The 1998 population census revealed that of the approximately 15 million inhabitants just over a quarter were non-citizens; but almost half of these had been born in the country, and others had been resident for many years.¹⁴³

The Ivorian nationality code adopted at independence included a transitional provision allowing those who had their permanent residence in Côte d'Ivoire before independence to be naturalised as citizens without further requirements if they applied within one year; in addition, the law allowed children under eighteen born in Côte d'Ivoire of foreign parents (before or after independence) to acquire Ivorian nationality "by declaration" if they had lived in Côte d'Ivoire for more than five years.¹⁴⁴ Nationality of origin was attributed automatically only on the basis of descent: to every child born in Côte d'Ivoire unless both of his or her parents were "foreigners" (*étrangers*).¹⁴⁵ However, there was no definition of what "foreigner" meant: many of those who had migrated — or been forcibly recruited by the French — before independence assumed that, since they were legally established in the country, they were not foreigners. Thus, many potentially affected were unaware they might be required or have the right to opt for nationality by declaration: there were no demands for naturalisation on the basis of residence before independence within the one year time limit, and only two applications for acquisition by declaration between 1961 and 1972, when the right was removed.¹⁴⁶

The long-lived regime of President Félix Houphouët Boigny continued to encourage immigration, creating relatively easy access to national identity documents, promoting access to land, and granting foreigners many rights of citizens, including employment in public services and the right to vote.

¹⁴² Martin Uzochukwu Gasiokwu, *ECOWAS : Problems of citizenship and free movement*, Jos, Nigeria : Mono Expressions, 1998.

¹⁴³ Georges Photios Tapinos, « La population étrangère », in Georges Photios Tapinos, Hugon Philippe et Vimard Patrice (eds.) *La Côte d'Ivoire à l'aube du XXI^e siècle. Défis démographiques et développement durable*, Paris: Karthala, 2001; United Nations, Department of Economic and Social Affairs, Population Division *Trends in International Migrant Stock: The 2008 Revision*, United Nations database, POP/DB/MIG/Stock/Rev.2008.

¹⁴⁴ Articles 17-23 and 105 of the Code de la nationalité 1961.

¹⁴⁵ "Est ivoirien tout individu né en Côte d'Ivoire sauf si les deux parents sont étrangers", Art 6 Loi No.61-415 portant Code de la nationalité ivoirienne. Art.7 provided for citizenship by descent for those born outside the country if one parent was Ivorian (l'enfant ... né à l'étranger d'un parent ivoirien) – the importance of the difference in wording between the two articles was not clear.

¹⁴⁶ Projet de loi portant dispositions particulières en matière d'acquisition de la nationalité par déclaration, Exposé des motifs, Présidence de la République de Cote d'Ivoire, 6 June 2013.

In the mid-1990s, after the death of Houphouët Boigny, Ivorian political leaders adopted a series of measures to deny nationality documents to all those who were perceived to be of foreign origin, including the descendants of historical migrants, who had been integrated into Ivorian society, held Ivorian nationality documents and always considered themselves as Ivorians. Although the law in principle allows dual nationality of origin (see above, section 2.6.6), the nationality of those who potentially have access to another nationality was repeatedly called into question. The constitution adopted in 2000, following the 1999 coup led by Robert Guei, required a presidential candidate to be born to a father *and* a mother who are themselves both Ivorian by origin.¹⁴⁷ Heated political rhetoric around the adoption of this constitution, and the matching provisions of the electoral code, extended that requirement by implication to all Ivorians, not just those who wished to be politicians. The discriminatory policies that followed and the stripping of the rights associated with nationality from many hundreds of thousands of people contributed to the civil war that broke out in 2002.¹⁴⁸ At least half a million people were displaced by the war, and tens of thousands became refugees outside the country.¹⁴⁹

In 2004, as part of the process of fulfilling the terms of the 2003 Linas-Marcoussis Agreement, the government of national reconciliation led by President Laurent Gbagbo proposed a draft law that would establish special temporary access to naturalisation for specific groups of people of foreign origin living in Côte d'Ivoire. The objective of this text was to restore, for a period of two years, the right to acquire nationality by simplified procedures that had been open to the same groups under the Ivorian nationality code in 1961, but removed in 1972.¹⁵⁰ This law adopted by the National Assembly in 2004 was amended in 2005 by two presidential decisions.¹⁵¹ The law had no significant effect in practice, due to the lack of awareness by the populations concerned: 1,800 applications to acquire nationality were filed, and not a single naturalisation decree was signed.¹⁵²

In 2013, the principles of the 2004 law, as amended by the presidential decisions of 2005, were revived through the adoption of a law that again provides access to special temporary naturalisation procedures, allowing for a two-year time frame for the same groups of persons to apply to acquire nationality through a more straight-forward and less discretionary declaration procedure. That is, persons born in Côte d'Ivoire of foreign parents aged less than 21 years old on 20 December 1961, persons who were habitually resident in Côte d'Ivoire before 7 August 1960, and persons born in Côte d'Ivoire of foreign parents between 7 August 1960 and 25 January 1972.¹⁵³

The new law, however, only restored the right to opt for those children born before the 1972 amendment to the 1961 nationality code took effect (that is, before 26 January 1973), and only for a limited period: those born in the country since then of two foreign parents still have no rights based on birth and residence in the country unless they can benefit from the 2013 temporary procedures.

¹⁴⁷ Article 25, Constitution of Côte d'Ivoire, 2000. (« *Le Président de la République ... doit être ivoirien d'origine, né de père et mère eux-mêmes ivoiriens d'origine. Il doit n'avoir jamais renoncé à la nationalité ivoirienne. Il ne doit être jamais prévalu d'une autre nationalité.* »)

¹⁴⁸ Bronwen Manby, *Struggles for Citizenship in Africa*, London: Zed Books, 2009; Ruth Marshall-Fratani, "The war of 'Who is Who': Autochthony, Nationalism and Citizenship in the Ivorian Crisis", in Dorman et al, *Making Nations, Creating Strangers*, 2007.

¹⁴⁹ Internal Displacement Monitoring Centre, *Internal displacement in Côte d'Ivoire: a protection crisis*, Norwegian Refugee Council November 2005 ; 2005 UNHCR Statistical Yearbook, Côte d'Ivoire (there were around 45,000 refugees and asylum seekers from Côte d'Ivoire at the peak in 2003).

¹⁵⁰ Loi No.2004-663 du 17 décembre 2004 portant dispositions spéciales en matière de naturalisation.

¹⁵¹ Décision No.2005-04/PR du 15 juillet 2005 portant dispositions spéciales en matière de naturalisation ; Décision No. 2005-09/PR du 29 août 2005 relative au Code de la nationalité. Under Article 48 of the Constitution, a presidential decision can amend a law during a period of exception.

¹⁵² Information supplied by Paul Koreki, Technical adviser, Ministry of Justice, Human Rights and Civil Liberties, June 2015.

¹⁵³ Loi No.2013-654 du 13 septembre 2013.

Today, the Ivorian government estimates there are around 700,000 persons who are stateless or at risk of statelessness in Côte d'Ivoire.¹⁵⁴

4.2. Contemporary migrants and their children

Migration has continued and amplified since independence, the vast majority within the West African region.¹⁵⁵ Contemporary labour migration within West Africa includes both highly-skilled and unskilled migrants. The highly-skilled include doctors, paramedical personnel, nurses, teachers and others who have moved from countries such as Ghana and Benin, where education standards have been higher, to other countries in the region (and beyond), attracted by relatively higher salaries and improved working conditions. These migrants are more likely to be documented, and to obtain the correct paperwork to regularise their status. Lower-skilled migration includes those working in the agricultural sector (as wage labour or tenant farmers), in mines and other industries, and in small-scale business and trading concerns. The main traditional countries of immigration in the subregion are Côte d'Ivoire, Ghana and Nigeria; the major labour-exporting countries include Burkina Faso, Guinea, Mali, and Togo.¹⁵⁶ Senegal has been both a labour-exporting and labour-receiving country; and in recent years has also become a transit country for migrants to Europe; though migrants seeking to leave the region are, as the sea route via the Canaries has become more difficult, increasingly transiting through Mali and (especially since the conflict in northern Mali) Niger for the trans-Saharan route.

West Africa is also host to irregular migrants from other regions of Africa or other parts of the world, some of whom become stranded in the region after trying and failing to reach intended final destinations in the United States, Europe, or elsewhere, or after being deported from countries that they have entered without the correct papers.

A joint UNHCR and IOM manual on mixed migration flows in West Africa published in 2011 noted the complexity of contemporary migration:

All countries in West Africa are places of origin, transit and destination of complex population movements. Migratory movements between West Africa and other parts of world as well as intra-regional movements raise significant legal, socio-economic and protection concerns. Niger, for instance, faces a multiplicity of migration-related challenges as it is at the crux of a broad range of migratory movements, such as the temporary movement of Fulani herdsmen searching for greener pastures; the cross-border trafficking of children to work in gold mines; refugees on secondary movement; migrants in transit who rely on the informal economic sector for survival, mostly around Agadez; increasing emigration by often highly-educated Nigeriens seeking better opportunities abroad; and increased internal displacement due to environmental degradation, droughts and flooding.

¹⁵⁴ "Côte d'Ivoire becomes latest country to accede to statelessness conventions", UNHCR Briefing Notes, 4 October 2013; Soumission du Haut-Commissariat des Nations Unies pour les Réfugiés Pour la compilation établie par le Haut-Commissariat aux Droits de l'Homme, Examen Périodique Universel : Côte d'Ivoire, September 2013. See also Mirna Adjami, *Statelessness and Nationality in Côte d'Ivoire*, UNHCR, forthcoming 2015.

¹⁵⁵ In 2006, intraregional migrations represented 90 percent of all West African migratory movements; IOM and UNHCR, *Protecting refugees and other persons on the move in the ECOWAS space*, 2011.

¹⁵⁶ Aderanti Adepoju, "Fostering Free Movement of Persons in West Africa: Achievements, Constraints, and Prospects for Intraregional Migration", *International Migration*, Vol. 40, No.2, 2002, pp.3-27.

The complexity of these migratory movements, with their national specificities, calls for enhanced cooperation amongst all stakeholders along migration routes.¹⁵⁷

There is, of course, also significant migration within each country. The first series of population censuses carried out in West African countries in the mid-1970s revealed that, already, almost a quarter of the population was not living where they had been born, whether that was elsewhere in the same country or further afield.¹⁵⁸ A recent survey in Nigeria found that seven of the 36 states of the federation had populations made up at least 40 percent of internal migrants.¹⁵⁹

Migration within the West African region is facilitated by the free movement of persons under the treaties applying among the 15 Member States of ECOWAS (see below, section 5.1).¹⁶⁰ Even though the ECOWAS regime only allows up to 90 days visa-free presence in another ECOWAS country, and an extended stay theoretically requires a residence permit, few ECOWAS citizens resident in other ECOWAS countries in fact have such documents, which can be rather difficult (and expensive) to acquire in practice. Many migrants within the ECOWAS region in fact have no documentation at all; borders may only be subject to controls at the major entry and exit points, and it can be easy to cross with no passport or other travel document. Even to cross the external borders of ECOWAS, for example to travel into Libya or Algeria from Niger, documentation may not be needed so much as money: the transport routes are well organised, and, according to migrants' reports, border guards may ask for cash instead of checking documents at the border posts. In the context of the instability in Libya since 2011, unregulated militias control much of the desert zone in the south of the country, and official paperwork is of no use at all in crossing their territory.¹⁶¹

Although obviously possible, existing without documentation in a foreign country leaves a person open to police extortion and with major problems in integrating into the formal economy, as well as accessing a wide range of other rights supposedly guaranteed to all by constitutions and international human rights treaties. An identity document was the most immediate need expressed in a survey of 172 migrants by UNHCR and IOM in 2013 in Niger and Togo – 60 percent mentioning documentation as a more urgent requirement than transport, food, health care, shelter and other needs. More than half of these migrants lacked any travel document, many of them having been confiscated by the police in the various countries through which they had passed.¹⁶² The Red Cross also notes that former prisoners are often undocumented, and may face difficulties on release from prison, since some are not prepared to contact their own consular authorities, or there is no consular presence in the country.¹⁶³

¹⁵⁷ Protecting Refugees and Other Persons on the Move in the ECOWAS Space, IOM and UNHCR, 2011.

¹⁵⁸ Dieudonné Ouedraogo, "Migration and Population in West Africa: Political Issues and Perspectives", in OECD/SWAC, *Regional Challenges of West African Migration: African and European Perspectives*, OECD Publishing, 2009.

¹⁵⁹ National Population Commission, *Internal Migration Survey in Nigeria*, Federal Republic of Nigeria, 2010.

¹⁶⁰ As well as among the eight francophone countries, plus Guinea-Bissau, that are members of UEMOA. A national of one of the eight UEMOA member states only requires a national identity document to cross a border to another member, and bilateral agreements extend this right to some other borders within and beyond ECOWAS.

¹⁶¹ Interviews IOM staff throughout the region; Father Mauro Armanino, Catholic Cathedral, Naimey, May 2014.

¹⁶² Silvère Konan, *Migrants en détresse: Analyse de situation et cadre de protection: Le cas du Niger et du Togo*, UNHCR and IOM, July 2013

¹⁶³ Regional Office, International Committee of the Red Cross, Dakar, May 2014.

In most cases, however, it seems that it is possible for those migrants who are undocumented to re-establish paperwork of their home country; however, it may require the assistance of a humanitarian agency of some kind. Most important among these agencies is IOM, which will assist migrants stranded in another country to return home, even if well beyond West Africa, including by facilitating the acquisition of documents from their country of claimed nationality. For example, in the case of 569 stranded Sri Lankan migrants identified by IOM in nine West African countries, 553 were assisted to return home, among whom IOM supported 60 who lacked documentation to obtain a *laissez passer* or other travel document from the Sri Lankan authorities.¹⁶⁴ Some religious organisations or legal assistance groups will also provide assistance in contacting consular authorities.

It would not be correct, therefore, to say that all irregular migrants in West Africa without papers who are transiting through or living and working in a country not their own are stateless as a result. Nevertheless, in other regions of the world, research into immigration detention has found many cases of stateless persons who have spent months incarcerated simply because they cannot prove their nationality and regularise their immigration status and there is no country to which they can be deported.¹⁶⁵ It is likely that there are many similar potential cases in the West African context, but the less systematic nature of immigration control means that they are able to resolve an immediate situation of difficulty and disappear from official view.

Nonetheless, some cases come to light. In Nigeria for example, a man of Libyan origin, resident in Nigeria since the 1970s, and his son by a Nigerian wife, spent nine months in immigration detention in 2013-14 after being detained (in an atmosphere of heightened security over terrorism) because he had no identity document, having lost his Libyan passport several years before. Repeated applications to the Libyan embassy in Abuja had brought no confirmation of Libyan nationality; and in the absence of a procedure for identifying them as stateless persons the immigration service did not know how to process their case. It was only by chance that the case came to the national refugee commission, which negotiated their release from detention and facilitated an application for naturalisation as Nigerian citizens.¹⁶⁶

The children of migrants are more at risk, especially in those countries that provide no rights at all based on birth in the country, even if the person remains resident there until majority and beyond. Differences in the law have a real impact. In those countries that follow the double *jus soli* system, the courts responsible for issuing certificates of nationality understand and apply the rules to the second generation born in the country. A person born in Senegal or Niger, for example, of one parent also born in that country will, even if subject to a degree of instinctive discrimination, be able to establish his or her nationality. However, the children born in the country of those who themselves migrated have no access to nationality; only the grandchildren become nationals. Where only citizenship by descent is provided for, such as in Côte d'Ivoire or Nigeria, it can be impossible for the descendants of those who have migrated from another country (or even another

¹⁶⁴ Manya Ghahremani, *Irregular Sri Lankan Migrants in West Africa: Frustrated Dreams, Major Hardship and Hopes for a Better Future: An Analysis of Migration Patterns and Assisted Voluntary Return and Reintegration Services*, IOM, June 2013.

¹⁶⁵ *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of Stateless Persons*, London: Equal Rights Trust, 2010.

¹⁶⁶ Interview, Nigerian National Commission for Refugees, Migrants and Internally Displaced Persons, Abuja, July 2014.

area of the same country), however many generations ago, to become recognised as nationals, leaving them excluded from full enjoyment of civil, political, economic and social rights. In theory, of course, these children will mostly have access to the nationality of their parents who migrated; in practice, establishing that nationality may be next to impossible for those who do not have resources (material and social) to assert their claim.

In Guinea, by contrast, where the nationality law provides that a person who is born in Guinea automatically acquires Guinean nationality on reaching majority if still resident there, officials share this interpretation of the law (even if imperfectly understood) and papers are obtainable by those born in the country, on the basis of birth registration, or late registration established on the basis of witness testimony, without real difficulty. Migrants and their children may thus integrate as Guinean relatively easily, and obtain access to documents. For example, among the Balanta community in the Kansar area, descendants of refugees and migrants from Guinea Bissau around the time of the violence preceding the independence of Guinea Bissau (1975), most possess national identity cards and other documents from Guinea-Conakry, including electoral cards and birth certificates. While they complained in research for this report that they might need connections to get such documents, or to pay bribes over and above the official fees, this is generally the case in Guinea where corruption in the administration of documents is widely acknowledged to be widespread.¹⁶⁷

4.3. The situation of migrants “returned” to their country of origin

West African states have often had a tolerant approach to migrants in irregular status, especially since the establishment of ECOWAS and its zone of free movement. Nonetheless, many countries in West Africa have expelled migrants, including refugees, in response to national economic or political crises when – in the traditional way – it has been easiest to blame foreigners for endogenous problems. But it may not be clear who is a foreign migrant, illegally present in another country and thus under some circumstances legitimately subject to expulsion (though an individual decision-making process would be required in law); and who is a person with (a right to) nationality, whose expulsion even on an individual basis would be impermissible in international (and national) law.

Right from the date of independence, tens of thousands of the well-educated Dahomeyans who had dominated the French colonial administration were expelled from nearby countries.¹⁶⁸ Larger numbers of ordinary migrants were expelled in successive waves from many West African countries. In 1965 and 1969-1970 Ghana expelled several hundred thousand foreigners, many of them Nigerian, including children born in the country; and Ghanaians were expelled from Sierra Leone and

¹⁶⁷ Interviews, Conakry, Kansar and Boke, Guinea, June 2014. At the same time, representatives of the community reported that the Guinea Bissauan electoral commission had come to register them for the second round (only) of the 2014 presidential elections (in which a Balanta, Nuno Gomes Nabiam, was one of the final two candidates, losing to José Mário Vaz of the PAIGC). This was the first time they had any contact with Bissauan authorities, even when they had faced difficulties with their “host” communities in Guinea. It was not at all clear the grounds on which the electoral commission regarded them as eligible to vote, given that many did not hold any Bissauan documents (though some did).

¹⁶⁸ Including Côte d’Ivoire in 1958, Congo-Brazzaville in 1962, and Niger in 1964. Herschelle Sullivan Challenor, “Strangers as colonial intermediaries: The Dahomeyans in Francophone Africa”, in William A. Shack, and Elliott P. Skinner (eds.) *Strangers in African Societies* University of California Press, 1979, pp.67-83 ; Alain Tirefort, “L’affaire « Daho-Togo »: Une fièvre de xenophobie en Côte d’Ivoire”, in Catherine Coquery-Vidrovitch et al, *Etre Etranger et Migrant en Afrique, Vol.1*, 2003, pp.415-452.

Guinea.¹⁶⁹ Nigeria expelled Ghanaians immediately after independence, and again in 1983 around 1.5 to 2 million foreigners, of which an estimated one million were Ghanaians; though many were readmitted within a short period; a further three quarters of a million were expelled two years later.¹⁷⁰

It was episodes of this kind that led the drafters of the African Charter on Human and Peoples' Rights, adopted by the OAU Assembly in 1981, to include in Article 12(5) of the treaty a specific prohibition on mass expulsions, defined as "that which is aimed at national, racial, ethnic or religious groups".

However, expulsions have continued. In the mid-1990s, an estimated half a million Chadian and other nationality workers were expelled from Nigeria, including among them many who had been legally established in the country for many years.¹⁷¹ Refugees from conflict in neighbouring countries have not been exempt despite the prohibitions on *refoulement* in the refugee conventions: Guinea expelled Sierra Leonean refugees en masse in 2000 and 2001, an episode which was later condemned by the African Commission on Human and Peoples' Rights.¹⁷²

Expulsions of migrants from neighbouring African countries have been joined in more recent years by periodic expulsions or deportations of West Africans (and others) from North African or European countries. Migration issues have been systematically integrated into EU-African cooperation frameworks, starting from the Cotonou Agreement between the EU and the African, Caribbean and Pacific (ACP) states adopted in 2000, in which the signatory states agreed to cooperate on irregular migration and readmission of nationals as well as to consider strategies for the "economic and social development of the regions from which migrants originate".¹⁷³ Negotiation of bilateral readmission agreements with EU countries have been highly controversial in countries such as Mali, which have been unable to obtain significant reciprocal concessions from European countries to provide work permits or legalise the presence of some of those with irregular status. Mali is also "among the few countries that have continued to accept the return of non-national migrants", especially from north African countries.¹⁷⁴ Libya under the regime of Colonel Muammar Gaddafi fluctuated between a

¹⁶⁹ Margaret Peil, "The expulsion of West African aliens", *Journal of Modern African Studies* Vol 9, No 2, (1971), pp.203–29; Margaret Peil, "Ghana's aliens", *International Migration Review* Vol.8, No.3, (1974) pp.367–81; Margaret Peil, "Host reactions: aliens in Ghana", in Shack & Skinner, (eds). *Strangers in African Societies*, 1979 pp.123–40; see also Howard-Hassmann, *Human Rights in Commonwealth Africa*, p.104.

¹⁷⁰ Lynne Brydon, "Ghanaian Responses to the Nigerian Expulsions of 1983", *African Affairs*, Vol. 84, No. 337, 1985, pp. 561-585; Roger Gravid, "The Nigerian Aliens Expulsion Order of 1983", *African Affairs*, Vol. 84, No. 337, 1985, pp. 523-537.

¹⁷¹ Committee on Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Nigeria*, 13 May 1998, E/C.12/1/Add.23.

¹⁷² *Communication 249/2002, Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) v Republic of Guinea*, Decided at the 36th ordinary session, December 2004, 20th Activity Report.

¹⁷³ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States of the other part, "The Cotonou Agreement", Signed in Cotonou on 23 June 2000, Revised in Luxembourg on 25 June 2005, Revised in Ouagadougou on 22 June 2010, Article 13.

¹⁷⁴ Florian Trauner and Stephanie Deimel, "The Impact of EU Migration Policies on African Countries: The Case of Mali", *International Migration*, Vol.51, No.4, 2013; see also Eleonora Koeb and Henrike Hohmeister, *The revision of Article 13 on Migration of the Cotonou Partnership Agreement: What's at stake for the ACP?* European Centre for Development Policy Management, February 2010.

policy of welcoming Africans and expelling them. Mass expulsions became a pattern from the mid-1990s, with a particularly serious round of violence against foreigners in 2000.¹⁷⁵ Morocco regularly expels African migrants to the border with Algeria.¹⁷⁶

In some cases, an individual is deported to a country that does not accept him or her as a national: in one example, an undocumented migrant who was deported by the German immigration authorities to Liberia was detained at the airport for six months, then deported to Nigeria, from where the immigration authorities sent him back to Liberia. The deportee was finally sent back to Germany by the Liberian immigration authorities.¹⁷⁷

In other cases, war and insecurity causes migrants to return home precipitately. On the fall of the Gaddafi regime, there was a mass flight across the Libyan borders from the civil conflict that followed, including not only Libyans but also migrants from Africa and further afield. There were also attacks on African migrants by Libyans, blamed for their alleged support for the Gaddafi regime.¹⁷⁸ Some destroyed their own identity documents, fearing that rumours about migrants being given visas to fight for Gaddafi might expose them to danger. According to IOM figures as of March 2012, the crisis resulted in some 317,000 third-country nationals who had fled to Libya's neighbouring countries (Algeria, Chad, Egypt, Niger and Tunisia) requiring evacuation to their home countries – mainly across Africa, and the largest numbers to Chad and Niger. IOM and its partners assisted more than 210,000 people to return by June 2011; and a further 38,000 stranded in the country by May 2012.¹⁷⁹

In most cases, those who return – or are returned – to their “home” country, where that country is unambiguous, will be able to acquire recognition of nationality on their return, even if they have lost their documents. Spokespersons for some of the hundreds of thousands of African migrants who returned from Libya at the time of the 2011 crisis report major problems of reintegration in their home countries when they return with empty hands after making the difficult journey across the desert to seek their fortune.¹⁸⁰ However, these problems are mainly financial, focused on lack of state support, lack of jobs and housing, and loss of dignity and respect, rather than lack of

¹⁷⁵ *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees in Libya*, Human Rights Watch, September 2006; Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination: Libyan Arab Jamahiriya*, CERD/C/64/CO/4, 10 May 2004; European Commission, “Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report”; “UNHCR Concerned Over Continued Forcible Return of Potential Refugees from Libya,” UNHCR Briefing Notes, September 21, 2004; Amnesty International, “Libyan Arab Jamahiriya: Briefing to the UN Human Rights Committee”, June 2007, AI Index: MDE 19/008/2007.

¹⁷⁶ Human Rights Watch, *Abused and Expelled: Ill-Treatment of Sub-Saharan African Migrants in Morocco*, 2014.

¹⁷⁷ UNHCR interview with Alfred Bronwell, Liberian Bar Association, 2014.

¹⁷⁸ Human Rights Watch, “Libya: Stranded Foreign Workers Need Urgent Evacuation: Sub-Saharan Africans Appear at Greatest Risk”, 3 March 2011; International Crisis Group, *Holding Libya Together: Security Challenges after Qadhafi, Middle East/North Africa Report N°115* – 14 December 2011.

¹⁷⁹ Asmita Naik, “Returnees from Libya: The bittersweet experience of coming home”, *Policy Brief*, IOM, May 2012.

¹⁸⁰ *Ibid.*; « Conséquences de la crise libyenne / Plus de 13 900 Maliens rentrés de Libye lancent un SOS aux autorités maliennes » *Le Républicain* (Bamako), 3 January 2012

documentation: “If you are a hundred percent Nigerien, you won’t have difficulty getting a Nigerien identity card”.¹⁸¹

This outcome, however, depends on there being a clearly identified “home country”: the children of those who have migrated may face greater problems. Although birth registration may as a matter of law be compulsory for all, and even accessible on request, it is highly likely that undocumented migrant parents do not register the birth of their children with the authorities either of the country where they are resident or with the consular authorities of their countries of origin. Humanitarian agencies, including IOM, may assist individual migrants to register their children; but if registration is outside the required time limits this process may be exceedingly time consuming, involving weeks if not months of chasing officials and significant transport costs to find witnesses of the child’s birth and connection to his or her parents.¹⁸² Those without such assistance may not be prepared or able to undertake the costs and time investment to register a child’s birth. Without such documentation, a child may be unable to establish the nationality of his or her parents should there be the need to do so at a later date, if the child grows up outside the country “of origin” without good knowledge of the languages and other identifying characteristics of that country; nor to establish a right to the nationality of the country where he or she is born, even if the nationality law of that country allows it.

Some alleged “Burkinabè” arriving in Burkina Faso from Côte d’Ivoire, the country of their birth and upbringing, have found it difficult to obtain Burkina papers on their “return” to the country of origin of their parents or grandparents, even outside a situation of crisis. For example, a student interviewed by academic researchers who had been born in Abidjan in 1978, of a father born in Burkina Faso and a mother of Burkinabè origin born in Côte d’Ivoire, arrived in Burkina Faso in 1992 by train. He found that establishing a certificate of nationality was not at all easy, because his mother had been born in Cote d’Ivoire (though this should not have caused any problem in law).¹⁸³

Most recently, this trap is illustrated by the situation of a number of people fleeing the violence in the Central African Republic during 2014 to “return” to countries of origin of a parent or grandparent where connections are by now very weak. Since they are travelling from a country outside the ECOWAS space their need for documents is greater than for individuals who are clearly “West African” even if their legal connection to one or other West African state is not established beyond doubt. These individuals can find themselves in a protection gap between international agencies: if they are nationals of the country where they now find themselves, then they are not refugees or asylum seekers; IOM can only assist with voluntary return to a country that accepts them as its nationals (or that agrees to readmit them as long-term residents or for humanitarian reasons); but some cannot obtain documentation of nationality either of the country where they are now resident or of the Central African Republic.

¹⁸¹ Interview with spokesperson for CORNI, the Collectif des rapatriés nigériens de la Libye et de la Cote d’Ivoire, Niamey, May 2014.

¹⁸² Interviews with IOM officials and with representatives of organisations working with children at risk, including children of migrants, Niamey and Ziguinchor, May 2014.

¹⁸³ Interview with « Dabiré » in Florence Boyer & Eric Lanoue, “De retour de Côte d’Ivoire: Migrants Burkinabe à Ouagadougou” in Florence Boyer and Daniel Delaunay (eds.) *Peuplement de Ouagadougou et développement urbain : rapport provisoire*, Ouagadougou (BKF), Paris : IRD, Université Paris 1, 2009.

Box 6: “Returnees” from the crisis in the Central Africa Republic

During 2014, thousands of people of West African descent have returned to their countries of origin fleeing the crisis in the Central African Republic. Several countries of the region, including Senegal, Niger and Mali, sent military or chartered planes to both Bangui and Yaoundé (Cameroon) to rescue their nationals from a very dangerous situation. IOM also organised some flights.¹⁸⁴ Immigration or consular officials conducted a rough triage of a claim to nationality – but in the circumstances where many individuals had lost their documents as they fled the violence the identification of nationals could only be approximate.

While most of those who have been assisted to “return” to their country “of origin” have found family members with whom they have reunited, even if they do not have relevant papers, some have not. The status of those who have found family members may end up being problematic in the long run, since their nationality status is not always clear even if a family link is present. However, for the time being, they have been accepted as having a right to stay, and given some assistance by the countries to which they have “returned”: for example, both the Senegalese and Nigerien authorities have given instructions to schools to accept the children of those who have fled the Central African Republic, even if they do not have the paperwork usually required (an *extrait de naissance* less than 3 months old).¹⁸⁵

But others have found themselves stranded without any documentation. The Nigerien government sent chartered flights in February 2013 to both Bangui and Yaoundé to collect several hundred of its nationals fleeing the CAR violence. A small group of 11 -- including a mother and two daughters, and eight teenage boys or young men (two of them brothers) -- were as of May 2014 being accommodated by the Nigerien state in a community centre in Niamey, in the most basic accommodation, with a small subvention from the state to allow them to survive. None of them had any identity documentation from any country. Though all of them claimed to have Nigerien fathers, they had been unable to trace any family after visiting the region where they believed their fathers had come from (Maradi or Agadez). The Nigerien Ministry of Foreign Affairs had written to UNHCR and IOM to state that, after investigation by the Ministry of Internal Affairs, it did not recognise them as Nigerien nationals, asking the UN agencies to assist them.¹⁸⁶ However, most of them did not wish to remain in Niger as refugees, after failing to find any connections there, but rather to connect to other family members who had remained in Cameroon, or, for example, to extended family members who lived in Nigeria. Several of the young men had mothers who were also not Central African – Cameroonian or Congolese – but had no proof of that connection either. Central African Republic law does not give CAR nationality to a child born in the country of two foreign parents, so recognition of any nationality would depend on establishing a connection to the state of their mother. However, where the family members with which they wished to be reunited were in yet another country, there is in effect no way of establishing documents to enable them to make that journey legally. At least one young man had reportedly simply crossed the border into Nigeria from Niger on his own initiative, to join family there without any papers.¹⁸⁷

¹⁸⁴ “IOM Begins Airlift of Stranded Migrants from Central African Republic”, IOM, 10 January 2014.

¹⁸⁵ Interviews with IOM and government officials in Dakar and Niamey, May 2014.

¹⁸⁶ Copy of letter dated 23 May 2014 addressed to UNHCR in possession of author.

¹⁸⁷ Interviews with stranded Central African-Nigeriens, Niamey, May 2014.

Similar small groups of people from the Central African Republic who have not been able to show a connection to the country that rescued them exist in Côte d'Ivoire, Mali and Senegal (and no doubt other countries of the region).¹⁸⁸ In the case of Guinea, no flights were sent by the Guinean government, but some were accepted into the flights sent by the Senegalese, Malian or Nigerian authorities: IOM had been seeking to assist some of these to establish Guinean papers for the next stage of the journey.¹⁸⁹

4.4. Refugees, former refugees, and the internally displaced

The civil wars seen in West Africa since independence have seen massive outflows of refugees from the countries concerned, starting from the Biafran war in Nigeria, 1966-70. The conflicts in Liberia, Sierra Leone, and Côte d'Ivoire during the 1990s and 2000s saw major refugee flows from each of those countries to the other, and to other neighbouring states, notably Guinea and Ghana. Conflict in northern Mali and Niger saw outflows of refugees during the 1990s, and resumed with wider impact with the resurgence of the rebellion in Mali during 2012. The recent outbreak of violence from the Boko Haram group in north-eastern Nigeria has seen refugees fleeing to Niger, Chad and Cameroon. Several thousand people of West African origin resident in the Central African Republic have fled violence in that country during 2013 and 2014, although the majority of refugees are sheltering in neighbouring countries. At the end of 2013, it was estimated that there were approximately 240,000 refugees in West Africa; as well as a total of 3.3 million internally displaced in Nigeria by violence since 2010, up to a quarter of a million internally displaced persons in Mali, and lower figures for some other countries in the region.¹⁹⁰

Among the many difficulties of those affected by conflict, whether or not they cross an international border, are the loss or destruction both of personal documents and of government archives recording their issue. In the Ivorian conflict, where access to documentation was one of the key issues in dispute, civil registration records were in some cases deliberately targeted for destruction; in the Casamance region of Senegal records have also been burnt in some places. Reconstructing official databases is one of the many difficult and costly tasks that must be undertaken when peace is restored.

Refugees registered with UNHCR usually receive both a UN document and a document issued by a national refugee agency recognising their refugee status, which state their country of nationality (or indicate that they are stateless, if that is the case). For those refugees who return home within a few years such documentation is usually sufficient to provide them both with a legal status in their country of refuge and with proof of nationality on return (though often not enough to protect them from harassment by security forces in the country of refuge who see any document that is not a national identity document as an excuse to shake someone down for money). Children born in the country of refugee parents may face more difficulties in establishing their nationality, depending on

¹⁸⁸ For Mali, see Françoise Wasservogel « Migration, conflits, évacuation d'urgence, réinstallation au pays » MaliActu, 25 February 2014 <http://maliactu.net/migration-conflits-evacuation-durgence-reinstallation-au-pays/> accessed 01 May 2014.

¹⁸⁹ Interview IOM Conakry, July 2014.

¹⁹⁰ *War's Human Cost: Global Trends Report 2013*, UNHCR, June 2014 ; *Global Overview 2014: People internally displaced by conflict and violence*, Internal Displacement Monitoring Centre Norwegian Refugee Council, May 2014. The Nigerian National Commission for Refugees, Migrants and Internally Displaced Persons published official figures for the first time in 2013.

whether and how their birth was registered. In addition, there are those who fled into a neighbouring country and never registered as refugees (as is common within the ECOWAS space), as well as those whose asylum applications are rejected but are not deported (a common situation in Nigeria, for example) and thus remain outside their country of origin.

Those who do not cross an international border may in some ways be even worse affected by lack of documents, since they are much less likely to be registered by an international or national agency at the time of displacement, but equally likely to be affected by loss or destruction of their existing documents and the dispersal of community leaders who could vouch for a person's identity. Displaced children separated from their parents are the most vulnerable of all. A survey conducted by the Danish Refugee Council in May 2013 found that 55% of the internally displaced now living in Mopti, Mali, had no documentation (ID card or birth certificate).¹⁹¹

A representative of persons displaced by the Casamance conflict in Senegal noted that the groups put at risk by lack of documentation were not just the refugees and internally displaced, but also those who lived in zones where civil registration records had been burnt; as well as the children of the rebels themselves, who had never been declared to any authority. His brother, also Senegalese born in Senegal, had become a refugee in Guinea Conakry, where he had married a wife from Guinea Bissau and had children. His children, who consider themselves Senegalese, have no documentation from Senegal, Guinea or Guinea Bissau; they have tried to get documents from Senegal but have not been able to do so. The procedure to obtain a *jugement supplétif* for late registration of birth (in this case for the children's father in the first instance) required the physical presence of five people: the person him or herself, both parents (or their death certificates) and two witnesses, which was simply too onerous to achieve. His opinion was that even if the conflict came to an end it would return again if the problems of documentation were not addressed.¹⁹²

For refugees in a "protracted" situation – defined by UNHCR to mean those who have been in exile for more than five years without immediate prospects for implementation of durable solutions – the question of documentation becomes steadily more difficult.¹⁹³ In West Africa, UNHCR estimated in 2004 that there were approximately 300,000 people living in a protracted refugee situation, mainly refugees from the Liberian and Sierra Leonean civil wars, but including those expelled from Mauritania in 1989-1990, as well as around 1,000 refugees from Rwanda.¹⁹⁴ Since then, under pressure both from donor governments to UNHCR and from some of the countries of origin of the refugees, there have been efforts to resolve some of these protracted situations by invoking the "cessation clauses" from the 1951 Refugee Convention, which set out the situations in which refugee status may properly come to an end. These situations may be based on actions by the refugee him or herself (such as voluntarily returning to the country concerned, or naturalisation in

¹⁹¹ Cited in *Forced Displacement of and Potential Solutions for IDPs and refugees in the Sahel – Burkina Faso, Chad, Mali, Mauritania & Niger*, UNHCR and Global Program on Forced Displacement of the World Bank, October 2013.

¹⁹² Interview with representative of IDPs, Ziguinchor, May 2014.

¹⁹³ Conclusion on Protracted Refugee Situations, No. 109 (LXI) – 2009, EXCOM Conclusions, 8 December 2009. For a bibliography see <http://www.prsproject.org/protracted-refugee-situations/bibliography/>, last accessed 3 July 2014.

¹⁹⁴ Protracted Refugee Situations, Executive Committee of the High Commissioner's Programme, EC/54/SC/CRP.14, 10 June 2004; "Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the 'ceased circumstances' Cessation Clauses", UNHCR, 31 December 2011.

another country), but in cases where the reason for ending refugee status is that the situation in the country of origin has changed sufficiently to make return possible, there is a process for a statement to be made by UNHCR and the authorities of the country in question that, as a group, refugees from that country no longer have a well-founded fear of being persecuted (though individuals may always rebut the presumption in an individual case).¹⁹⁵ Since 2010, the cessation clauses have been invoked in Africa by UNHCR and the governments of Sierra Leone (at the end of 2008), Angola and Liberia (in 2012) and Rwanda (in 2013). Following this assessment, UNHCR then enters into agreements with the countries of refuge on measures for one of three “durable solutions” for the refugees concerned: voluntary repatriation, local integration, or resettlement in a third country (which depends both on the particular circumstances of the individual and their ongoing security needs, and on the willingness of a third country to accept the refugee).

On invocation of the cessation clause by each host government, the refugees become simply foreigners with the same status (and requirements to regularise their status) as any other foreigner. In the case of Liberians and Sierra Leoneans, or others who held refugee status in another ECOWAS country, a residence permit is still required in theory; but in practice it may be possible to remain without such a permit, provided the person has identity documents of some sort. Since Rwanda is not part of ECOWAS, those Rwandans who remain in West Africa have a more precarious status if they do not obtain documentation legalising their stay in the country of refuge. The difficulty of obtaining a residence permit varies by country, but can be challenging where systems are not in place or the permit has to be obtained from the capital city.

In principle, refugees are usually eligible to naturalise according to the usual terms of each country’s nationality laws; but in practice this can be very difficult to obtain (see further above, section 3.3), especially if they do not have the assistance of UNHCR, leaving some at risk of statelessness. Refugees may also have a desire to retain the principal identity of their country of origin, even in the context where dual nationality is allowed, although this decision leaves their children vulnerable.¹⁹⁶ Where a person has simply used the ECOWAS free movement provisions and never registered as a refugee, there is then no record of their presence at such time as the cessation clause is invoked, or if they wish to apply for naturalisation.

4.4.1. Mauritanian refugees in Senegal and Mali

In 1989/1990 the Mauritanian government expelled approximately 70,000 black Mauritians alleging that they were illegally present in the country. Among those expelled, it is plausible that there would have been some who held Senegalese nationality documents and others whose parents had held such documents (and thus were entitled themselves to Senegalese nationality); but the great majority had previously been recognised as Mauritians and had no entitlement to Senegalese nationality, even if they had family links across the River Senegal that forms the border between the countries. The Mauritanian identity documents of the expellees were systematically destroyed in the course of these expulsions.¹⁹⁷

¹⁹⁵ The Cessation Clauses: Guidelines on their Application, UNHCR, Geneva, April 1999.

¹⁹⁶ Jennifer Byrne, “Should I Stay or Should I go? National identity and attitudes towards local integration among Liberian refugees in Ghana”, *Refugee Survey Quarterly*, 2013, Vol.32, No.1, pp.50-73.

¹⁹⁷ Human Rights Watch, *Mauritania’s Campaign of Terror: State-Sponsored Repression of Black Africans*, New York, 1994; Report of the Mission of the Special Rapporteur on Refugees, Asylum Seekers and Internally

Senegal still hosts some 13,700 Mauritanian refugees, and Mali more than 12,000, of whom some 8,000 have expressed the wish to return home. UNHCR provided assistance to Mauritanian refugees in northern Senegal until 1995 and facilitated the return of 35,000 people to Mauritania from 1996 to 1998. Although the cessation clause has not been invoked, a change of government in Mauritania led to increased efforts to promote the return of refugees from neighbouring countries. In November 2007, a tripartite agreement was reached between UNHCR, and the Senegalese and Mauritanian governments for the voluntary repatriation to Mauritania of the remaining refugees in Senegal; around 24,000 had been assisted to do so by early 2012.¹⁹⁸ The plan was for UNHCR and the governments of Mauritania and Senegal to complete the repatriation of some 7,500 Mauritanians in 2014.¹⁹⁹ No similar agreement had been reached with the government of Mali in relation to the remaining Mauritanians there.

Those who have opted to stay in Senegal still retain refugee status. The refugees are eligible for naturalisation under Senegalese law, and the Senegalese authorities have repeatedly confirmed that naturalisation is available to the Mauritanians; however, representatives of the Mauritanian community in Senegal state that they do not wish for naturalisation, but either resettlement in a third country or repatriation to Mauritania with full restoration of property and other rights.

In fact, those Mauritanians who were refugees in Senegal and accepted assistance to return to Mauritania have faced difficulties in re-establishing their Mauritanian nationality, as the Mauritanian government has insisted on evaluating eligibility on a case by case basis. Although the Mauritanian government states that 90 percent of the 24,000 who returned under the voluntary repatriation agreement had received identity documentation, representatives of the returnees in Mauritania asserted that only 8,000 had obtained documents as of mid-2014 (leaving some with the paper approving their voluntary repatriation as their only identity document); and even fewer had recovered land and other property.²⁰⁰ In May 2014, several hundred of the repatriated Mauritanians walked from the Senegal Valley to Nouakchott to protest their situation.²⁰¹ Durable solutions have been hard to find.

At the same time, it is clear that many persons of Mauritanian origin in Senegal have obtained Senegalese national identity cards. While a Senegalese identity document is not proof of nationality (which is provided only by a certificate of nationality issued by a tribunal), it enables those who hold them to function more easily in Senegal: the Mauritanian refugees belong to the same ethnic groups as those who live on the Senegalese side of the river, and those born in Senegal are effectively indistinguishable from Senegalese nationals. In the long run, it seems likely that, while those who

Displaced Persons in Africa to the Republic of Senegal, African Commission on Human and Peoples' Rights, 2005; David Stone, *Enhancing livelihood security among Mauritanian refugees in Northern Senegal: a case study*, UNHCR, 2005..

¹⁹⁸ Tripartite Accord UNHCR and the governments of Senegal and Mauritania, November 2007; Tripartite agreement on return of Mauritanian refugees, UNHCR Briefing Notes, 13 November 2007; UNHCR, *Stratégie d'intégration locale et moyens de subsistance des réfugiés Mauritaniens au Sénégal*, 2011; "UNHCR completes repatriation of more than 24,000 Mauritanians", UNHCR, 27 March 2012.

¹⁹⁹ UNHCR, "2014 regional operations profile: West Africa" and "2014 country operations profiles", Mauritania and Mali, available at <http://www.unhcr.org/pages/49c3646c206.html>, last accessed 03 July 2014.

²⁰⁰ Information from UNHCR Nouakchott, August 2014.

²⁰¹ « Répression à Nouakchott d'une marche des rapatriés mauritaniens du Sénégal », APA 5 May 2014 ; « Société : Régler les problèmes des ex-réfugiés mauritaniens au Sénégal », PANA 12 May 2014 ; « Le gouvernement mauritanien s'engage à régler les problèmes des réfugiés rapatriés », PANA, 21 May 2014.

themselves fled the persecution in Mauritania will continue to reject the options available, the descendants of the refugees who have stayed in Senegal will blend into the Senegalese population; under the double jus soli rule, the grandchildren of those who fled will be eligible for nationality under the law. The nationality status of those who have returned to Mauritania, where policies of discrimination against black Africans continue, may be more precarious.²⁰²

Those Mauritians who took shelter in Mali, in that country's south western Kayes region, also retain refugee status, but with no long-term solution in sight.

4.4.2. The "red-coded" former Liberian refugees

Some 750,000 Liberians fled their homes during the civil war to find shelter elsewhere in Liberia or out of the country. Voluntary repatriation to Liberia was launched in 2004, and by 2012 UNHCR had helped almost 135,000 people return. Many thousands of others had gone back to Liberia on their own accord. However, almost 67,000 Liberian refugees were still registered at that time with UNHCR in nine West African countries, with the largest populations in Côte d'Ivoire (23,650), Ghana (11,295), Guinea (9,972), and Sierra Leone (8,046). On 13 January 2012 UNHCR recommended to cease the status of Liberian refugees who had fled between 1989 and 2003; the cessation became effective on 30 June 2012.²⁰³ Refugees whose situation fell under the scope of the cessation clause had the possibility to opt for local integration in the country of asylum or voluntary repatriation to Liberia. Individuals invoking a need for continued protection could alternatively apply for exemption. National eligibility commissions made available an exemption procedure to assess exemption requests. As of 31 December 2012, approximately 80% of registered refugees (46,854 individuals) had chosen between one of the three options: 29,406 refugees opted for voluntary repatriation (63%), 10,806 local integration (23%) and 6,172 applied for exemption (13%).²⁰⁴

In the case of those who opted for repatriation or local integration, UNHCR negotiated with the government of Liberia to issue either travel documents allowing the former to return home, or Liberian passports on the basis of which the latter could obtain a residence permit in the country of asylum as a national of another ECOWAS state.²⁰⁵ The Liberian government sent vetting missions to the various countries to verify the Liberian citizenship of those seeking these documents. Although the process was still incomplete as of mid-2014, it seemed, from lists submitted to UNHCR, that just under 10 percent of the original applicants for Liberian passports (around 900 individuals) who had been registered as refugees for decades by UNHCR and mostly claimed birth in Liberia of parents also born there, had been rejected as non-Liberian by the vetting missions (coded red on the lists), but on very unclear criteria.

Following the realisation that many Liberians had fled the country during the civil war but had never sought refugee status with UNHCR, IOM facilitated a similar process for Liberian nationals who sought repatriation or documentation enabling them to stay in the country where they now lived. This process suffered from some of the same problems – notably that it clearly didn't reach some of

²⁰² Interviews with Senegalese officials, representatives of the Mauritanian refugee community, and human rights activists, Dakar, May 2014.

²⁰³ "Protracted refugee situations in Liberia and Angola to finally end", UNHCR 29 June 2012.

²⁰⁴ Information from UNHCR, June 2014.

²⁰⁵ Strangely, therefore, the criteria for determination of nationality were more stringent for those seeking local integration outside Liberia (who required a passport) than for those seeking to return home (on the basis of a simple one-way travel document).

those eligible – but, in addition, without proof of refugee status, the evidence of a Liberian connection was sometimes even more difficult to show for those who had been absent for a long time.²⁰⁶

Among those rejected were individuals who had spent a long time out of the country, having left as children, and who no longer spoke Liberian English or any national language fluently. Given that only 5 percent of births are registered in Liberia, official proof of birth in the country (which should automatically give Liberian citizenship, provided the child is “negro”) is rare. With no knowledge of the villages they came from and no documentation to prove a connection to Liberia, a registration with UNHCR as a Liberian refugee apparently did not confirm their Liberian nationality. For those born abroad, although the constitution provides that a child of a Liberian father or mother is Liberian, the nationality law only grants nationality to those whose fathers are nationals, and they must take an oath of allegiance before they are 23.²⁰⁷

Former Liberian refugees interviewed for this report also mentioned the situation of Liberian women who had children with Guinean soldiers who were part of the ECOMOG peacekeeping forces in Liberia and had returned with them to Guinea, so never requested asylum; only to be rejected by the families of those soldiers, “and now they cannot find their way home.” Others included non-Liberians married to Liberian citizens, who would under Liberian law be required to naturalise to obtain Liberian citizenship, and have no additional rights based on marriage; and at least one person who held a voter’s card in another country (in this case, Nigeria), which under Liberian law results in automatic loss of Liberian nationality.²⁰⁸

Those who have been denied Liberian passports through this process are stateless unless and until the Liberian government can be persuaded to change its position, or another state recognises a connection that gives them the right to its nationality.

²⁰⁶ Telephone interview, IOM Accra, July 2014.

²⁰⁷ Liberia Constitution Art 28; Aliens and Nationality Law, Article § 20.1(b).

²⁰⁸ Interviews with former Liberian refugees Conakry, Guinea; CNISR Guinea; and UNHCR Nigeria, June and July 2014.

Box 7: Maria Gaye: A Liberian former refugee in Guinea

Maria Gaye was born in 1968, in Grand Gedeh county, Liberia, of two parents also born in Liberia. She fled Liberia in 1990, and spent the next five years in refugee camps in Sierra Leone, then crossing the border to Guinea in 1996, spending a year in Forecariah camp, and travelling to Conakry in 1997. She had no documents in Liberia other than a school enrolment card, which she has lost. In Sierra Leone she had a refugee card from UNHCR and a ration card. In 1997 she received an *attestation de réfugié* from UNHCR and the Guinean *Commission nationale d'éligibilité*. She has four children: two born in Sierra Leone and two born in Guinea, as well as two grandchildren born in Guinea; though all the children and both grandchildren have birth certificates, they have no nationality documentation in any country. Her husband was killed in the attacks against Sierra Leonean refugees incited by the government of Lansana Conté in 2000-2001. Maria opted for local integration when the cessation clause was invoked and the refugees were given the option to choose between local integration or voluntary repatriation, and completed the application to receive a Liberian passport, on the basis of which she could regularise her status in Guinea. The latest renewal of her refugee card was valid from February to June 2013 and has now expired; she also has a temporary *carte de séjour* valid for one year – due to expire at the end of June 2014. Just a few weeks from the expiry of that card she had yet to receive a passport, though others who had gone through the same process had done so. Without a Liberian passport, Maria Gaye will be stateless and, in the absence of any procedure for recognising and documenting stateless persons, unable to regularise her status in Guinea.

4.4.3. Former refugees with no continued status

Among the former refugees from the three countries where the cessation clauses have been invoked, there is a substantial number who now remain in the country of refuge with no legal status. All have been offered the same options in their countries of refuge in West Africa, according to agreements negotiated between UNHCR, the host government and the Sierra Leonean government: local integration, voluntary repatriation, or exemption from the cessation clauses on the grounds of a need for continued international protection.

In Guinea, many Sierra Leonean and Liberian refugees applied for continued international protection, on the grounds that they feared to go home for one reason or another, and also citing the attacks on refugees in 2000-2001 by the government of Lansana Conté in which an unknown number of people were killed,²⁰⁹ as well as the difficulty of integrating in Guinea because of the difference in official language and difficulty of getting employment without local qualifications or languages.²¹⁰ The Guinean government established a system to review these applications, which were first considered by officials, and then appealed to a three-person panel of magistrates. The overwhelming majority of requests for continued protection were rejected, with the rejection letters on appeal giving no reasons for the rejection. Others among both the Sierra Leoneans and the Liberians simply did not apply for any of the solutions offered, rejecting the two options on offer, holding out for resettlement, or not understanding the need to apply for continued protection. Resettlement for the Sierra Leoneans and Liberians at this stage is only a very distant possibility,

²⁰⁹ Human Rights Watch, *Refugees Still at Risk: Continuing Refugee Protection Concerns in Guinea*, 2001; Decision of the African Commission on Human and Peoples' Rights in Communication 249/02 *Institute for Human Rights and Development in Africa (on behalf of Sierra Leonean refugees in Guinea) / Guinea*, 2006.

²¹⁰ Interviews, Conakry, June 2014 ; Lacey Andrews Gale, "The Invisible Refugee Camp: Durable Solutions for Boreah 'Residuals' in Guinea", *Journal of Refugee Studies*, Vol. 21, No. 4, 2008, pp.538-552; « Rapport de mission à Kissidougou du 2 au 6 juin 2013 », Commission nationale pour l'intégration et le suivi des réfugiés, Conakry : 2013.

with the crises in their countries overtaken by new wars in the Central African Republic, Mali, South Sudan or elsewhere.

Altogether perhaps a number in the low thousands of former Sierra Leonean and Liberian refugees remain in Guinea with no legal status.²¹¹ They have neither Guinean documents, nor any documents for their home country, nor any continuing refugee status. Their lack of valid documentation means they have no access to health care and their children are not in school. While their children born in Guinea would, in principle, acquire Guinean nationality automatically at majority, recognition of that right may depend on their being registered at birth. Some refugees interviewed for this report had registered their children's birth in Guinea; but others were reluctant because of the implied acceptance of their children's Guinean nationality, or thought they would be rejected given that they had no documentation themselves as parents; or complained at high (informal) charges for registration for children with foreign parents. At the same time, if they "return" to Sierra Leone or Liberia many would struggle to be recognised as nationals, as the "red-coding" of Liberians indicates. Guinea has no process to provide a status to stateless persons.

Generally, naturalisation procedures are often not effectively open to refugees, even where there are no formal legal impediments to an application (see above, section 3.3). Some Rwandans who have completed the required residence period (according to the nationality law applicable) had already sought naturalisation in their countries of refuge even before the cessation clause was invoked. But this process has not been completed by many: both because refugees have not put themselves forward, and also because of difficulties with the process. In Niger, a group of Rwandan refugees had submitted naturalisation requests every year for several years at the time of research for this report: but an application lapses and must be resubmitted if no reply has been received within a year, and they had not yet been able to obtain Nigerien nationality.²¹² In Senegal, of the more than 200 Rwandans with recognised refugee status, only thirteen responded to radio appeals and other outreach to register their intentions, among whom all requested naturalisation – a process that was still underway as of May 2014. Other Rwandans who had never obtained refugee status in Senegal, were in principle not eligible for this process; UNHCR's Senegal office had requested that the Senegalese authorities open the same offer to them, if they could prove ten years' residence in Senegal.²¹³

Refugees and former refugees face major difficulties in integrating into the society where they find themselves, including in the urban contexts where most Rwandans are found. Among the biggest challenges are those of documentation and proof of identity; including birth certificates as well as proof of nationality. For example, whereas the Senegalese authorities had issued instructions to schools to accept children of "returnees" from the Central African Republic crisis without the birth certificate usually required for entry into secondary school, the children of (former) Rwandan refugees have had greater difficulty. Under the Senegalese (and other civil law systems) a recent copy of a birth certificates is required to enter the exam to pass from primary to secondary school,

²¹¹ According to UNHCR and CNISR unofficial estimates – but no audit has been done to determine the numbers.

²¹² Interviews, Ministry of Justice, Niamey, May 2014.

²¹³ Interview with representative of the Rwandan community in Senegal, Dakar, May 2014. It was not clear why so few Rwandans had come forward for the naturalisation process, though among them a handful were not eligible, since they had obtained refugee status in another country – including the Central African Republic – and had then travelled on to Senegal and remained there without papers.

and for other purposes. The Rwandan refugees or former refugees (some retain refugee status), however, are reluctant to approach their consular authorities for copies of birth certificates in Rwanda (always assuming that the birth of the child in Rwanda was registered), and their children are therefore effectively excluded from the state school system. This requirement creates obstacles that prevent even naturalised refugees from enjoying their rights as nationals. The procedures to obtain a residence permit may also be quite onerous, even for ECOWAS citizens, without the assistance of UNHCR or another agency; and virtually impossible to fulfil where the person concerned has no documents from the country of alleged nationality.

Despite the invocations of the cessation clause, there remains a real lack of capacity in West African countries to implement local integration for former Liberian and Sierra Leonean refugees — or even the much less numerous Rwandans — with a specific plan for their legal status and economic self-sufficiency.

Box 8: Lamin Koroma: A Sierra Leonean former refugee in Guinea

I was born in Freetown in 1970, both my parents were Sierra Leonean. I was a news presenter and I was declared wanted when the rebels attacked. I left Freetown in March 1999 and came to Guinea by the boat. We were met by the Red Cross and I have been here since then. I was given a document by the Red Cross in 1999, and then an *attestation de réfugié* when they snapped [photographed] me in 2005, which enabled me to go to hospital and also to travel around Guinea. In 2008 they told me there were three options – return to Sierra Leone, stay in Guinea or further international protection. I chose further international protection. Then they gave me an appointment and an interview but I was rejected. I appealed, but that was also rejected. They gave me no reasons for the rejection but they said the refugee status was removed. They gave me another slip that gave me just one year more of refugee status. They told me that from 1 January 2010 I could no longer be a refugee. There are too many problems in this country. They will not give me a job as a foreigner, even a cleaning job – there is too much discrimination. My brother went home to Freetown, but he was killed there. I am with an Ivorian woman who is also a refugee; she came here in 2006. She recently gave birth to my son, just three weeks ago, but they would not see her at the hospital. We went there at midnight and said we were refugees and they said “we have no place for you people”, so we went home and she gave birth there. We have not registered the birth of the baby – you have to have the hospital slip to be able to register a baby, that is how it works. Without the slip you cannot go to the commune. I have no documents to prove my nationality so that we can get a birth certificate saying the child is Sierra Leonean.

4.4.4. The paradox of “local integration”

The lack of a plan for the legal status of former refugees is most obvious in the case of those Sierra Leonean and Liberians who have chosen to opt for “local integration” on invocation of the cessation clause, and have been faced with a paradoxical outcome. Rather than being given nationality documents in the country where they have held refugee status (often for longer than the period that would qualify them for naturalisation), they have rather been told to apply for a passport from their country of origin – on the basis of which they can then apply for a residence permit in the country of refuge. But this solution is seen as less than helpful for those receiving the documents: Liberians and Sierra Leoneans resident in Guinea for example, believed that local integration should mean receiving a Guinean national identity card. Although in principle a Liberian or Sierra Leonean passport and Guinean residence permit would give them access to naturalisation as Guinean, this is in practice not an accessible option. So although those who have obtained a passport from their

“home” country do at least have a legal status and are not stateless, they are not locally integrated at the level of nationality and identity documents. The police treat them as foreigners just the same, subjecting them to shake-downs for money if they do not have a national ID card.

4.5. Border populations

Members of ethnic groups that straddle Africa’s arbitrarily generated borders sometimes face difficulties in being recognised as nationals on both sides of that border. Although, technically speaking, the laws of most ECOWAS countries allow dual nationality of origin (with the exception of Liberia only -- see section 2.6.6), the possibility that a person has ties across what is now an international border creates suspicions around entitlement to nationality where the person is born.

The research for this report was not able to explore this issue with a statistical survey on access to documents for those in border regions. Across the region, people who have family names that could also originate from a neighbouring country report discrimination and additional checks in relation to their identity, compared to those whose names are unambiguous. Their access to documentation may depend as much on administrative practice and the attitudes of officials responsible for issuing documents as on the formal provisions of the law. Sometimes, indeed, officials choose for good reasons to turn a blind eye to violations of immigration law, such as in the case of “market women” trading across borders, or children crossing to another country to go to school where none is available on their side of the border.

During election times, when there is the temptation for politicians to ensure that presumed supporters across the border are registered, allegations and counter-allegations fly about those who are denied registration who should be registered – but more commonly that people are being registered to vote as nationals who should not be. In those countries where diaspora voting is allowed the situation is further complicated by the lack of clarity on what documentation is required to register to vote (see further section 3.2).

It is at times of crisis that questions of documentation become most urgent. Where there are population movements across borders at times of conflict, there can be suspicion of those who have sought refuge, even if they are in fact moving to a country where they are entitled to nationality. UNHCR is attempting to address this confusion in the context of the displacement caused by the attacks from Boko Haram in north-eastern Nigeria. As of mid-2014, the Niger authorities had registered almost 40,000 persons who fled the violence in north-eastern Nigeria in 2014. Most of these persons had no identity papers, though a majority stated that they were returning Niger nationals. However, it is likely that many had parents or grandparents on both sides of the border, and could be equally eligible for both nationalities – both countries allow dual nationality of origin in principle. UNHCR and the government agreed that they would seek to document the entire population that fled Nigeria, establishing information relevant to nationality determination.²¹⁴

In the different context of peacetime, IOM is attempting to address similar issues through the concept of a border resident card, made available by two neighbouring countries to individuals resident in a border region who frequently cross from one side to the other (for family ties, trade or

²¹⁴ *Forced Displacement of and Potential Solutions for IDPs and refugees in the Sahel – Burkina Faso, Chad, Mali, Mauritania & Niger*, UNHCR and Global Program on Forced Displacement of the World Bank, October 2013; Information supplied by UNHCR Niamey office, May 2014.

other reasons). So far this has only implemented in Southern Africa, on the Namibia-Angola border.²¹⁵ Although such a card might not completely resolve the question of nationality, and might add to a confusion of identity documents, it could be useful to establish evidence of entitlement to one of two (or both) nationalities, which could be resolved at a later date.

4.6. Populations affected by transfer of territory

A particular category of border population most affected by doubts around nationality are those affected by border disputes; and in particular those where administration of territory has been transferred as a result of a ruling by the International Court of Justice (ICJ), of which there are several cases since independence in West Africa. The best known of these, and the one affecting the most people, relates to the Bakassi peninsula bordering Nigeria and Cameroon; but other cases relate to disputed frontiers between territories formerly administered as part of AOF, where boundary determination had never been a priority during the colonial period.

Often the populations affected by such border disputes have long had limited contact with the central administrations of either country, and thus are likely to have few documents of an existing nationality; in addition, they may be members of minority ethnic groups, or of nomadic or semi-nomadic lifestyle, making them more vulnerable to doubts about their nationality, whether or not any dispute is resolved.

4.6.1. The Bakassi Peninsula

The border dispute between Nigeria and Cameroon over the Bakassi peninsula, as well as territory further north towards Lake Chad, was referred to the ICJ by Cameroon in 1994. A final judgement was issued in the case in 2002, which granted sovereignty over the peninsula and other territory to Cameroon.²¹⁶ The court case did not consider the nationality of the people living in the territory affected (who had largely considered themselves Nigerians), though, in accordance with international norms which base nationality in case of succession of states on habitual residence, it was presumed that Bakassi residents would become Cameroonian.²¹⁷ The number of people affected was also disputed between Cameroon and Nigeria, but was alleged by Nigeria to be more than 150,000 people.²¹⁸ Nigeria rejected the judgement, stating that "For Nigeria, it is not a matter of oil or natural resources on land or in coastal waters, it is a matter of the welfare and well-being of her people on their land."²¹⁹ UN Secretary General Kofi Annan facilitated further meetings on the implementation of the judgment, leading to the establishment of a Cameroon-Nigeria Mixed Commission to negotiate further. In 2006, a bilateral agreement was reached at Greentree, New York, between the two countries, by which Cameroon guaranteed fundamental rights and freedoms to Nigerian nationals living in the peninsula; and in particular promised not to force Nigerian

²¹⁵ "IOM Helps Namibia to Introduce Border Resident Cards", no date, <http://www.iom.int/developmentfund/news/news17.htm>, last accessed 07 July 2014.

²¹⁶ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, ICJ Judgement of 10 October 2002.

²¹⁷ International Law Commission, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries*, 1999 (Annex to UNGA Res. 55/153, 12 Dec. 2000), article 5.

²¹⁸ Statement of Mrs. Nella Andem-Ewa, Attorney-General of Cross River State, to the ICJ, 28 February 2002, transcript available at <http://www.icj-cij.org/docket/files/94/5005>, accessed 29 August 2014.

²¹⁹ "Nigeria rejects ICJ ruling on Bakassi", PANA, 23 October 2002.

nationals living in the Bakassi Peninsula to change their nationality.²²⁰ The territory was formally handed over to Cameroon on 14 August 2008, though a Nigerian presence remained during a five-year transitional period. The understanding was that at the end of the transitional period, Bakassi residents could become Cameroonian with the right to Cameroonian identity documents; but could also remain Nigerian with resident alien status in Cameroon; or leave Bakassi and resettle in Nigeria.²²¹

The legal authority to enable these outcomes on either side of the border needs clarification. Cameroon would have to adopt specific legislation to grant nationality as a group to the Bakassi residents affected by the transfer of territory; however, it has promised not to force them to change their nationality, so the law would need to provide for an option rather than automatic attribution, and to make that option easily accessible, as well as specifying the right of the Bakassi residents to keep Nigerian nationality and the terms on which they could obtain resident alien status. Naturalisation as a Cameroonian is theoretically available after five years' legal residence (presumably completed at the end of the transitional period), but is highly discretionary and hard to obtain in practice. In Nigeria, the nationality status of Bakassi residents is complicated by the fact that the border between Nigeria and Cameroon at the Bakassi zone was formerly the border between the British Protectorate of Southern Nigeria and the former German territory that was mandated to Britain by the League of Nations and administered from Nigeria as the Southern Cameroons; the legal situation of Bakassi residents moving to Nigeria is not entirely clear.²²²

Today, there are reportedly problems in establishing nationality both for those Bakassi residents who remained in their homes, in what is now Cameroon, and for those who have relocated to the Nigerian side of the border in Cross Rivers State. Within Cameroon, at the end of the transitional period on 14 August 2013, former Nigerians wishing to regularise their status theoretically had to apply either for a residence permit or for Cameroonian citizenship.²²³ A registration drive was promised but had not yet taken place by the end of the year.²²⁴ Without special dispensation,

²²⁰ Article 3(2) states that "Cameroon shall : a) Not force Nigerian nationals living in the Bakassi Peninsula to leave the zone or to change their nationality ...". See also, Alain-Didier Olinga, *L'Accord de Greentree du 12 juin 2006 relatif à la presqu'île de Bakassi*, Paris: L'Harmattan, 2009. There was no similar agreement in relation to the populations living in the disputed border area towards Lake Chad whose territory was allocated to Cameroon; similar problems may exist in relation to the recognition of the nationality of those living there, but there has been much less attention drawn to them (even before the current insecurity in the region).

²²¹ "CAMEROON-NIGERIA: Bakassi - more than one place, more than one problem", IRIN, 13 November 2007; *Le temps des réalisations: Bulletin mensuel bilingue d'informations N° 14*, Special Edition on Bakassi, Government of Cameroon, August/September 2013.

²²² In 1961, the Southern Cameroons voted in a referendum to join (the formerly French mandate) newly independent Cameroon; while the Northern Cameroons voted to join independent Nigeria. Special provisions on the nationality of the residents of the Northern Cameroons were introduced into the Federal Constitution of 1960 by the Nigeria Constitution First Amendment Act of 1961. Since Bakassi has been determined to be part of the Southern Cameroons by the ICJ judgment, there may be the need for an explicit constitutional amendment to provide for the right to Nigerian nationality of Bakassi residents who have moved to Nigeria. See, "Annotated Text of the Citizenship Legislation", in Arthur V.J. Nylander *The Nationality and Citizenship Laws of Nigeria*, Lagos: University of Lagos, 1973.

²²³ "Le Cameroun retrouve la plénitude de sa souveraineté sur la presqu'île de Bakassi », Présidence de la République du Cameroun, 14 August 2013 ; « Bakassi residents to pay tax under Cameroon sovereignty », BBC News, 15 August 2013 ; « Press Statement on Bakassi Peninsula Developments », SC/11094 AFR/2680, UN Security Council, 15 August 2013.

²²⁴ Email communication from Leanne Johansson, doctoral candidate, University of Oxford, 19 February 2014.

Bakassi residents would first require a Nigerian passport to acquire residence permits as aliens. In addition, under the Cameroonian system, a birth certificate is in principle required to obtain any official papers of this type – which very few Bakassi residents hold; a *jugement supplétif* from a tribunal would be required to obtain late registration of birth, a time-consuming and potentially costly process.²²⁵ While the Cameroonian government gave assurances to the ICJ that the Bakassi residents would be made as welcome as other Nigerians in Cameroon, the situation of those who are living where they have always lived is significantly different from those who have moved to Cameroon for other purposes.²²⁶ Without identity documents, Bakassi residents are vulnerable to extortion at police checkpoints in Cameroon.

Meanwhile, several thousands of Bakassi residents have relocated to the other side of the Nigerian border. The Cross Rivers government has purported to carve out a new local government area for the Bakassi displaced – though it has no constitutional authority to do so – and is granting or facilitating some humanitarian assistance.²²⁷ At the federal level, no agency has taken charge of resolving the situation of the Bakassi displaced; and in particular there has been no effort to document them, and thus provide them with proof of Nigerian citizenship. As a consequence, they have also been denied the right to vote in various elections, since the locations where they were registered no longer exist; there is ongoing litigation by the Independent National Electoral Commission on this point.²²⁸ In February 2014, Nigerian Attorney General of the Federation and Minister of Justice Mohammed Adoke, speaking at the opening of the 32nd Session of the Mixed Commission, stated that those affected by the judgment who wished to be Nigerian should simply “apply for Nigerian citizenship” showing a rather alarming disregard for the difficulty of doing so under the Nigerian constitution, but also implying that they need to naturalise, rather than obtain recognition of ongoing nationality from birth (see further sections 2.6.3 and 3.3).²²⁹ Lobbying continues in Nigeria for the government to retake control of the peninsula.

4.6.2. Other border disputes

In a judgment from 1986 adjudicating a frontier dispute between Burkina Faso and Mali, the court noted the difficulty of “ascertain[ing] where the frontier lay in 1932 in a region of Africa little known at the time and largely inhabited by nomads, in which transport and communications were very sketchy.”²³⁰ Affirming the principle of *uti possidetis* (by which territory remains with the possessor), the court noted that: “At first sight this principle conflicts outright with another one, the right of peoples to self-determination. In fact, however, the maintenance of the territorial status quo in Africa is often seen as the wisest course, to preserve what has been achieved by peoples who have struggled for their independence, and to avoid a disruption which would deprive the continent of

²²⁵ Fongot Kini-Yen Kinni, *Bakassi: Or the Politics of Exclusion and Occupation?* Langaa Research and Publishing Common Initiative Group, Cameroon / African Books Collective, 2013.

²²⁶ Cameroon v. Nigeria, ICJ Judgement of 10 October 2002, paragraph 317.

²²⁷ The National Commission for Refugees, Migrants and Internally Displaced Persons was reported by the Cross River State government to have distributed relief supplies to more than 1,500 households in two local government areas in the state. See “Bakassi, Akpabuyo Refugees Get Relief from Refugees Commission” Cross Rivers State government, 29 July 2013.

²²⁸ Jude Okwe, “INEC - Bakassi May Not Participate in 2015 Elections”, *This Day*, 4 April 2014; interview with Chidi Anselm Odinkalu, chair Nigerian National Human Rights Commission, July 2014..

²²⁹ Dele Ogbodo, “Greentree Agreement: FG Advises Bakassi Indigenes to Apply for Nigerian Citizenship”, *This Day*, 3 February 2014

²³⁰ Frontier Dispute (Burkina Faso/Mali), ICJ Judgment of 22 December 1986, paragraph 64.

the gains achieved by much sacrifice.”²³¹ The court emphasised the decision of African states to respect colonial borders, and focused on the delimitation and exercise of administrative power during the colonial period (and the dissolution in 1932 and reconstitution in 1947 of the French colony of Upper Volta), without considering any evidence related to the wishes of those living in the territory affected. Their nationality was presumed to be allocated with the territory itself.

Two other cases more recently decided by the ICJ relate to boundaries between Niger and its neighbours. In 2002, Benin and Niger jointly referred to the court the disputed ownership of 25 islands along a 150 km stretch of the River Niger where it forms the border between the two countries. The largest island, Lété, is “fertile, with rich pastures, and is permanently inhabited; according to information supplied by Niger, its population numbered some 2,000 in the year 2000”.²³² In its ruling of 2005 the ICJ awarded Niger sovereignty over 16 of the islands, including Lété, the remainder going to Benin. The judgment contained no commentary or ruling on the nationality status of the populations currently living in or using the resources of the islands.²³³ The two groups affected by the decision are, first, the Fulani nomads who have traditionally moved from one country to the other with their livestock, many of whom have no nationality documentation from either of the countries (but who have paid taxes to both); and, secondly, the fishermen and agriculturalists who live on the islands for some or all of the year. One of the islands allocated to Benin, the *Ile aux oiseaux*, is occupied temporarily during the dry season — but the inhabitants relocate to one side of the river or the other (Niger or Benin) when the island is flooded. The semi-nomadic nature of the populations makes their documentation difficult since they have no settled residence; many have no identity papers, and no access to public services. A community that had moved to Benin when Lété island (allocated to Niger) was flooded in 2012, have been accommodated in a village in Karimama commune — tellingly named Sabon Gari (“strangers’ quarter”) — but Beninois nationality has not been offered or confirmed; and a large percentage also have no birth registration. One of them commented: “Because no country recognises us, we live as if we were in prison”; without documents they are subjected to extortion from the security forces of both countries.²³⁴

After several decades of failed attempts to finalise the line between their two states, Burkina Faso and Niger referred their border dispute to the ICJ in 2010; in 2013, the court handed down its judgement. In its ruling determining the boundary, the ICJ expressed its wish that “each Party, in exercising its authority over the portion of the territory under its sovereignty, should have due regard to the needs of the populations concerned, in particular those of the nomadic or semi-nomadic populations, and to the necessity to overcome difficulties that may arise for them because of the frontier.”²³⁵ In a separate opinion, Judge Cançado Trindade elaborated on concerns with the local populations,²³⁶ also welcoming the common concern expressed by Burkina Faso and Niger for the local populations (on both sides of their border and constantly moving across it), focusing on territory and their inhabitants together. But there was no specific ruling or expression of views on

²³¹ Ibid., paragraph 25.

²³² Frontier Dispute (Benin/Niger), ICJ Judgment of 12 July 2005, paragraph 19.

²³³ See also, “BENIN-NIGER: International Court rules that main disputed island belongs to Niger not Benin”, IRIN, 12 July 2005.

²³⁴ Information and interview from UNHCR mission to the region, May 2014.

²³⁵ Frontier Dispute (Burkina Faso/Niger), ICJ Judgment of 16 April 2013, paragraph 112.

²³⁶ Frontier Dispute (Burkina Faso/Niger), Opinion of Judge Cançado Trindade.

the nationality of those affected by the judgment; it being presumed that nationality would transfer with the transfer of territory. There has been no further bilateral agreement or national action to confirm the nationality of those affected.

Other border disputes rumble on without referral to the ICJ and without resolution of the status of those living in the affected territory. For example, there is a border dispute between Guinea and Sierra Leone about Yenga town, in a zone close also to the Liberian frontier that is inhabited (on both sides of the river forming the boundary) by the Kissi people. Yenga was historically administered as part of Kailahun district of Sierra Leone. After it became a source of diamond production, Yenga was a base for the Revolutionary United Front (RUF) during the Sierra Leonean civil war, and in 1998 Guinea sent troops into the town to assist in evicting the RUF and defend itself against incursions from the rebel forces – but these soldiers then remained based in the town, as Guinea claimed the territory. This situation continued despite several agreements over the following years for their withdrawal, most recently in 2012, when Sierra Leone and Guinea – both now with elected governments – agreed to demilitarise the zone and Guinea recommitted to withdrawing its troops.²³⁷ However, tensions remain high, administrative infrastructure weak, and the identity documentation of those living in the district very limited.

4.7. Nomadic and pastoralist ethnic groups

Nomadic or transhumant pastoralism is a way of life and means of livelihood for many millions of people in West Africa, largely belonging to one of several ethnic groups traditionally associated with pastoralism, especially the Tuareg (Berber/Amazigh) and Fulani (or Peul, in French), including Fulani sub-groups such as the Mbororo.²³⁸ Although some pastoralists are settled or semi-settled, or move only between two poles of migration in response to the seasons (transhumance), others have no fixed place of settlement and move freely across the region, in response to climate variations over the long term and other priorities. Attempts to “encourage” nomadic pastoralists to settle or submit to centralised political organisation have created tensions in both colonial and post-colonial eras.²³⁹

Many, perhaps most, of these pastoralists do not have identity documents: they can cross borders without any papers, while state institutions may barely exist in the remote rural regions. In any event, even with the correct papers or they may be subject to extortion at border points.

Tuareg demands for self-determination date back to the 1950s when Tuareg leaders wrote to French President Charles de Gaulle in 1957, in the lead up to the independence of African countries, stating that they did not want to be included either in Arab North Africa or in sub-Saharan black Africa but have their own Sahelian state. Tuaregs have since then been actors both in their own continuing demands for autonomy in their desert zone, and in broader geopolitics of the region. It was well

²³⁷ “GUINEA-SIERRA LEONE: Guinea hands back disputed border village”, IRIN, 7 September 2004; Sheikh Bawoh, “The Yenga Dispute Hinders Border Economic Prospects”, *Borderlines* (magazine published as part of the Regional Youth Initiative of the World Bank Civil Society Fund) Edition 1, January 2008; Lansana Gberie, “The Guinea–Sierra Leone border dispute: Time for ECOWAS to intervene”, *Pambazuka No.446*, 3 September 2009; Lt Col. (Rtd) Sim Turay, “Yenga Border Dispute Sierra Leone/Guinea”, *Awoko*, Freetown, 29 September 2009; “Guinea, Sierra Leone demilitarize Yenga”, Press Release, Sierra Leone Presidency, 27 July 2012.

²³⁸ Fulani (or Fula) is the word usually used in the anglophone countries, Peul in the francophone, for members of (subgroups of) the widely dispersed West African ethnic group speaking variations of the Pulaar or Fulfulde languages. The variations in terminology are complex and not consistently used.

²³⁹ Charles Frantz, “West African Pastoralism: Transformation and Resilience”, in Carl Salzman and J. G. Galaty (eds). *Nomads in a Changing World*. Naples, Instituto Universitario Orientale, 1990.

known that many Tuareg were given nationality papers easily in Libya under Ghaddafi's government, and recruited into the Libyan army for deployment in both the Arab and sub-Saharan African theatres of Libyan foreign policy.²⁴⁰ Anxiety over the role of the Tuaregs in the Sahel and their doubtful loyalties led to them being treated with suspicion especially by Algeria, which responded at various times both by expulsion of refugees from conflicts in neighbouring countries, but also with efforts to mediate Tuareg rebellions in Niger and Mali in the 1960s and 1990s.²⁴¹ The collapse of the Ghaddafi regime in Libya in 2011 greatly destabilised the countries to the south, including through the return of former fighters in Ghaddafi's army, and by making weapons available from the suddenly unguarded Libyan arms stores. A regional and global Islamist agenda then profited from this resurgence of Tuareg demands – with appalling knock-on effects, including for those Tuaregs who had no wish to support an independent Tuareg state.²⁴²

Documentation is a critical problem for many Tuaregs who have no proof of identity or nationality even though they have been resident in country many years, and sometimes generations. As one Nigerien commented, "it outrages them" (*ça les révolte*) that they have no documentation from the Nigerien state, symptomatic of a generalised neglect: "it is only when Boko Haram comes that they notice us."²⁴³ While Tuareg leaders freely admit that part of the problem is a lack of awareness of the need for or usefulness of birth registration and other documents, it is also the case that birth certificates and other documents have been difficult to obtain. Only with a recent push for birth registration supported by UNICEF has birth registration become more widespread among the Tuaregs in Niger. Equally, Tuareg refugees in Niger from the conflict in Mali reported that many among them had no documentation, including birth registration, since they did not see the need. Even though an identity card should in principle enable problem-free travel within Mali or across the border between Niger and Mali (their traditional zones of migration), police at the borders or at routine checkpoints would expect money in any event. Access to schools and other public facilities was so poor for the nomadic communities that there was little point in going through the procedures of registering births. Only in the refugee camp itself were births being systematically registered.²⁴⁴

Members of the Fulani/ Peul ethnic group also find themselves treated as presumptively "foreign" across the West African region, and report difficulties in obtaining passports and other documents. Though the Fulani have historically followed a nomadic lifestyle of transhumance with herds of cattle, and many still do so, others are settled for several generations in the same location, or migrate only within the borders of one country, yet still face resistance to the idea that they are nationals of that country. Fulani have also been the target of mass expulsions, often in response to clashes over land use rights: for example, in 1982, Sierra Leone expelled Fulani allegedly originating from Guinea; and Ghana expelled Fulani pastoralists in 1988/89 and again in 1999/2000; Senegal expelled Fulani also in 1989.²⁴⁵ Though outside the ECOWAS region, the Mbororo Fulani sub-group

²⁴⁰ See Pierre Boilley, *Les Touaregs Kel Adagh — dépendances et révoltes : Du Soudan français au Mali contemporain*, Paris : Karthala 1999.

²⁴¹ See commentary by Mohand Salah Tari, "Tuareg : The tragedy of a forgotten people", no date, http://www.amazighworld.org/studies/articles/forgotten_poeple.php, accessed 24 February 2014.

²⁴² See, for example, "Mali: Avoiding Escalation", *Africa Report N°189*, International Crisis Group, 18 July 2012.

²⁴³ Interview, Niamey, May 2014.

²⁴⁴ Interviews, refugee camp, Ayorou, Niger, May 2014.

²⁴⁵ Aderanti Adepoju, "The politics of international migration in post-colonial Africa, in Robin Cohen (ed.), *The Cambridge Survey of World Migration*, Cambridge University Press, 1995; Steve Tonah, "The Politics of

found in Cameroon and beyond face similar difficulties.²⁴⁶ Of the approximately 70,000 people expelled by the Mauritanian government in 1989/1990, the majority were cattle herders of Fulani ethnicity from the Senegal River Valley (site of the most fertile land in Mauritania); though civil servants, military officers and activists from other black African ethnic groups were included (see also section 4.4.1).

Outside the context of such crisis moments, those who are victims of discrimination on the grounds they have a Fulani last name may eventually be able to establish documentation through payment of bribes, or with the assistance of intermediaries who will vouch for them; others may be able to establish documentation of a country “of origin” different from that where they currently live.²⁴⁷ But the poorest and most marginalised members of such communities are certainly at a consistent risk of statelessness.

Others of traditionally nomadic lifestyle face similar problems. In October 2006, the Nigerien minister of the Interior threatened to expel Mahamid Arabs understood to be of Chadian origin, though settled in Niger in the Diffa region bordering Chad since at least the 1970s. The Mahamids are nomadic camel keepers, and the expulsion was provoked by conflicts over access to water points; conflicts that dated back to the 1990s and included the use of firearms. Numbers cited in the media of up to 150,000 Mahamids settled in Niger and a similar number of camels were clearly fanciful, but many thousands of people were potentially affected by the threats. Among the Mahamids many were in possession of Nigerien national identity cards or birth certificates, though there were frequent allegations by neighbouring communities that these documents had been fraudulently obtained. With the intervention of the UN and other agencies, as well as protests from nine Arab members of the Nigerien National Assembly, the threat of expulsion was eventually withdrawn. A group of national human rights organisations called for the nationality status of the Mahamid Arabs to be clarified through a commission of inquiry.²⁴⁸ In 2009, the UN Committee on the Rights of the Child stressed the particular need for registration of the births of Mahamid Arab children, since absence of birth registration left them at risk of statelessness.²⁴⁹

Nationality law in most countries of the world is also poorly adapted for the situation of those who have no fixed home. For example, in Niger, the core principle is that of double *jus soli* – birth in the

Exclusion: The expulsion of Fulbe pastoralists from Ghana in 1999/2000”, *Working Paper No. 44*, Max Planck Institute, 2002.

²⁴⁶ Michaela Pelican, “Mbororo Claims to Regional Citizenship and Minority Status in North-West Cameroon” *Africa*, Vol.78 No.4, 2008. pp 540-560; Sam Hickey, “Caught at the crossroads: citizenship, marginality and the Mbororo Fulani in northwest Cameroon”, in Dorman et al *Making Nations, Creating Strangers*; Nicodemus Fru Awasom, “From Migrants to Nationals and from Nationals to ‘Undesirable Elements’: The case of the Fulani (Mbororo) in the North West Province of Cameroon”, in Catherine Coquery-Vidrovitch et al, *Etre Etranger et Migrant en Afrique*, Vol.1, pp.403-414. Even during the period of British rule in Cameroon there was discussion over whether the Fulani-Mbororo were “natives” (“a person originating from the area where he is living”) for the purpose of 1927 Land and Native Rights Ordinance.

²⁴⁷ For example, Fulani in Ghana interviewed in a focus group by UNHCR and IOM in August 2013 (transcript shared with author).

²⁴⁸ Rapport mission HCR au Niger : La situation des mahamides, 27 octobre au 02 novembre 2006 ; « Niger says it will expel nomadic Arabs to Chad », AFP, 26 October 2006 ; “NIGER: Govt expulsion order will fuel instability, Arabs warn”, IRIN, 26 October 2006; « Le statut civil des Arabes mohamids du Niger, encore mal défini, selon la société civile », APA 12 December 2006.

²⁴⁹ UN Committee on the Rights of the Child, *Observations finales: Niger*, CRC/C/NER/CO/2, 18 June 2009.

country of one parent also born there. Tuaregs interviewed for this study said that many who were long-term migrants from Mali (over several decades) and wished to obtain Nigerien nationality had presented themselves to the *audiences foraines* established to provide late registration of births, on the understanding that the process to obtain nationality starts with acquiring a birth certificate. They were bemused that they had been rejected, believing that this showed discrimination against them. Yet the tribunal was simply applying the rules. For someone who is not familiar with the system, it is not at all clear why you can obtain a birth certificate only from the country where you are born, but nationality documents only from the country where you have a claim to nationality, which could be a different country – and what would be the appropriate procedures in each case (especially when the common law and civil law countries differ so radically in the way nationality is administered). Nobody had directed those same people towards an application for naturalisation -- which would be initiated at the *mairie* rather than the tribunal responsible for the process of late birth registration.²⁵⁰

4.8. Orphans and vulnerable children

The longer it takes to establish a legal identity the more difficult it becomes. Those who are adults before they attempt to prove their origins and nationality may find it impossible to do so; or they may only succeed at great effort and cost. Those vulnerable children who are in situations of difficulty, and remain completely undocumented, are thus greatly at risk of statelessness. Paradoxically, their stories often become known only once they have resolved their situation, because of assistance given – but those who never receive assistance remain invisible. For these children, lack of a nationality may not be their most obvious or urgent problem; but a total lack of documentation means that statelessness is a real risk, and likely to be a more important issue the older they become.

Among this group of the most vulnerable are:

- children born out of wedlock, as well as children of unknown parents (both abandoned babies and older children separated from their families, for example by war) and children of mentally ill or intellectually disabled mothers (also almost certainly born out of wedlock).
- children working away from their families, whether trafficked or voluntary migrants, including domestic workers (largely girls) and agricultural workers (mainly boys).
- children entrusted under a system of guardianship, which may include some domestic workers, but also children enlisted for Koranic education.
- girls who are forcibly married, including in particular those within the system of “servile” marriage prevalent in Niger, Nigeria and some other countries, and their children.

There are well-established networks of children’s organisations across West Africa, linked through the West Africa Network for the Protection of Children, the *Union des Coalitions Ouest Africaines pour l’Enfance* (UCOA), and other groupings.²⁵¹ Among the major efforts of these networks is to reunite street children, trafficked children, and others, with their birth families. In addition, in many countries (especially those in the civil law tradition), it is a requirement for a children’s home to have a court order granting guardianship of a child, and to obtain a court order the child must have a birth certificate. Thus, children’s organisations are also often engaged in obtaining late registration of

²⁵⁰ Interviews, Tillaberi, Niger, May 2014.

²⁵¹ See website for the West Africa Network at <http://www.resao.org/>, last accessed 30 June 2014.

birth. Although the question of proof of the nationality of the child is not usually a priority, it may become relevant if a child in difficulty comes from another country. Even in these cases, the main concern is then to obtain a document enabling the child to rejoin his or her family rather than providing recognition of nationality. A member of the network will contact a partner organisation for assistance in tracing the family of the child concerned, or travel to the country themselves with the children involved. It can take months or years to make these connections, and they are not always successful. Where the birth family is traced, national authorities of the child's country of residence and/or origin will provide the children with a safe conduct pass (*sauf conduit*) to enable to return to the family (if that is determined to be in the best interests of the child); however, this is only a travel document, and does not prove the child's nationality or legal identity. If the family is not traced, the child may be left without documentation entirely, and thus without the ability to obtain proof of nationality — even in countries where the law provides for the attribution of nationality to abandoned children.

Those children who do not come to the attention of any social welfare agency – certainly a very large number -- will not receive such assistance in getting documents: the procedures are time-consuming, require an understanding of the system, and depend on the child having free time and permission to travel, and an advocate to speak for them. Those who do not receive such assistance are likely to remain undocumented and at high risk of statelessness. Although advocacy by children's rights groups, and the UN agencies, for the principle of the "best interests of the child" to govern state interaction with children has made an impact, especially in relation to registration of births, it has not focused to the same extent on achieving reforms to national law to ensure the right of vulnerable children to acquire a nationality.

4.8.1. Abandoned babies, orphaned children and children born out of wedlock

Most nationality laws, with the exception in West Africa of Côte d'Ivoire, Gambia, Nigeria and Sierra Leone, provide for a foundling (new born infant) or, more generously, a child of unknown parents to be presumed to be a national (see above, section 2.6.2). This provision is reinforced in some countries by provisions of the *Code de la famille* or a specific children's law. In Senegal, Niger, and Guinea, for example, a system exists to declare an abandoned infant to the state authorities, and the child will then be given a provisional birth certificate and name, which can later be confirmed if no parents are found; and the child will obtain nationality with no further difficulties. In Senegal, however, the presumption on nationality is restricted to abandoned new-born infants, excluding children who are found at an older age but are still unable to identify or trace their parents. In Côte d'Ivoire, the law on civil registration establishes a procedure to provide a provisional birth certificate to a child²⁵²; however, since the foundling provision included in the 1961 nationality code was repealed in 1972, a birth certificate will not resolve the question of the child's nationality, leaving the child at risk of statelessness.²⁵³

However, even where the legal frameworks are in place, the practice may be different. A point of difficulty is often where a birth certificate needs to be established.

There is a theoretical commitment to universal birth registration across West Africa, and in principle either the father or mother or another interested party may declare the child. But in practice there

²⁵² Art. 46 de la loi de 1964 sur l'état civil telle que modifiée par la loi n° 99-691 du 14 décembre 1999.

²⁵³ Interview Dignité et Droits pour les Enfants en Côte d'Ivoire, Abidjan, June 2014.

are many challenges: not only with poor coverage of the territory and lack of accessibility of registration, but also in relation to the details that are required to be completed in the registration form and the training of staff in relation to those details. In the case of abandoned babies or children born out of wedlock (often the same children), the indication on the form that both parents' names should be noted means that in some cases registration of a child "without" a father may be refused. This refusal can be based on good intentions: the social prejudice against a child born out of wedlock is very strong in some West African countries and a child that carries only its mother's name may be subject to permanent stigma; but it still leaves the child at risk.

Many children abandoned by or separated from their parents are of course not registered at birth. The difficulty of obtaining late birth registration varies by country; and, even where theoretically not difficult to obtain, may require a degree of persistence in amassing evidence or paying increased fees that makes late registration inaccessible for those who have not remained in contact with an extended family.

In Niger, for example, the usual naming system is patronymic and a person cannot have a female last name; so if the father does not acknowledge the child, and an uncle or grandfather cannot be found to give the child his name, the child may simply not be registered – even if the mother seeks to do so. Since giving a name to a child may carry implications in relation to inheritance, it is not so easy just to give the child another name; the lack of a *Code de la famille* or children's code and the wide variety of customary rules (custom is recognised as a source of law in Niger), means that there is widespread confusion about the validity and consequences of different decisions.²⁵⁴ Similarly, to establish birth registration and other papers for a child whose parents have died may require yet further time-consuming procedures, first to establish death certificates for the parents, and then to establish a connection with a male relative or other figure who will give the child his name. In one case, a centre for children in Niamey tried to assist the child of a mother who had been detained in a facility for the mentally disabled: the mother, who was not able to identify herself, fled the facility, leaving the child with no identity – and a doubt as to whether her nationality was of Niger or Nigeria. The child remains without papers years after she first came into custody of the centre. Another child of around eight years old had come to the centre having fled abuse from his father, a Cameroonian; the child believes his mother remains in Cameroon but has no documents of any kind, and no knowledge of the place where his mother might be.²⁵⁵

If a baby or child is likely to be adopted, adoptive parents will usually sort out legal identity and documents. In some countries however, including Sierra Leone, the nationality law makes no provision for adopted children. In all countries, children in the "hard to adopt" category, including disabled children, may be left without any documentation of any kind. Some children's homes (such as SOS Children's Villages) ensure that every child has a personal file compiling every aspect of their known identity, and ensure that state documents are acquired, including late birth registration if needed. Other children may not be so lucky even if they are in a children's home. With persistence, most children that are helped will eventually find some documentation of identity and nationality – but many never find help.

²⁵⁴ Interview, Abdourahaman Chaibou, advocate, Niamey, May 2014.

²⁵⁵ Interviews Soeur Brigitte Marie, Fraternité Notre Dame, Niamey, May 2014.

Box 9: Ziguinchor, Senegal: Two children in difficulty

Abdoul, aged about 6 or 7, was brought to the attention of a centre for children in difficulty by other children who pointed him out as a child who slept sometimes in the streets, and needed medical attention for an injured foot. His father was from Guinea, much older than his mother, who was from Guinea-Bissau; the father had decided to return to Guinea, leaving the child with the mother. The mother had died and he was staying with his uncle, who worked in the market. Abdoul's birth had not been registered, and the one of the first actions of the children's centre was to try to get him documented: a birth certificate is necessary for the *juge pour enfants* to give the centre the *ordonnance de garde* that provides legal authority for their custody of any child. It was a huge struggle to find witnesses who could give evidence as to his parentage, given the demands on time to attend court, transport costs etc, but eventually they were able to establish a birth certificate for Abdoul, and he is enrolled in school and doing well. However, Abdoul will not be entitled to Senegalese nationality on majority, since neither of his parents is Senegalese, nor born in Senegal. He has no contact with any family in either Guinea or Guinea Bissau; even if he may be able, on the basis of a birth certificate, to establish nationality of one of those countries, it will effectively be useless to him since his life is clearly established in Senegal.

Mohammed was found by the centre sleeping rough at night in the bus station in Ziguinchor, where he'd been portering and doing other tasks in return for pocket money and food. He had left Guinea at the age of about 12 with his older brother, with the intention of earning money to look after his mother. They had arrived together at Kolda, inland from Ziguinchor, and his older brother had stayed there, but Mohammed had decided to travel on. The centre eventually managed to trace his brother, but they both refused the idea of returning to Guinea until they had attained their objective of earning some money. Mohammed was too old to be enrolled in school, but accepted the idea of obtaining training in a skill, and is now learning to be a tailor. But it has been impossible to establish a birth certificate for him. Only because the *juge pour enfants* was sympathetic to the situation was it possible to get a provisional *ordonnance de garde* without a birth certificate; and no contact has been established with his family in Guinea. Mohammed is at real risk of remaining without any documents proving his nationality when he reaches adulthood. He will not be eligible to be Senegalese under Senegalese law.

With thanks to Futur au Present, Ziguinchor, Senegal. Names have been changed.

4.8.2. Child workers

UNICEF noted in 2001 that the scale of child trafficking in West Africa was "enormous", with "clearly established trafficking routes involving Benin, Ivory Coast, Gabon, Ghana, Mali, Nigeria, Togo, Cameroon, Burkina Faso, Guinea and Niger".²⁵⁶ Reports of trafficking in babies for childless couples also regularly surface, including between Niger and Nigeria while this report was being completed.²⁵⁷ More than two thirds of countries in West and Central Africa surveyed in 2003 identified trafficking in persons, especially children, as a problem (compared to one-third in East and Southern Africa).²⁵⁸ The main types of trafficking identified include trafficking in children within and across countries

²⁵⁶ Rima Salah, *Child Trafficking in West and Central Africa: An Overview*, UNICEF, 2001 (Regional Director for West and Central Africa address to the first Pan African Regional Conference on Human Trafficking).

²⁵⁷ See, for example, « Arrestations au Niger dans une affaire de trafic de bébés », RFI, 26 June 2014 ; Monica Mark, "Wives of top Niger politicians held over child trafficking", *The Guardian* (London), 27 June 2014; See also, Al Chukwuma Okoli, "Commercialism and Commodification of Illicity: A Political Economy of Baby Buying/Selling in South East of Nigeria", *International Journal of Liberal Arts and Social Science*, Vol. 2 No. 2 March, 2014.

²⁵⁸ *Trafficking in human beings, especially women and children, in Africa*, UNICEF Innocenti Research Centre, 2003.

primarily for farm labour and domestic work, but also in the mining, fishing and other sectors; and trafficking in women and young persons for sexual exploitation, both inside and outside the region including to Europe and South Africa.²⁵⁹ West African victims are mainly trafficked within the same country or into neighbouring countries;²⁶⁰ those countries within ECOWAS identified to be most heavily affected by trafficking, as origin, transit and destination countries, are Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Ghana, Guinea, Mali, Niger, Nigeria and Togo.²⁶¹ Many other children are transferred to the care of persons other than their parents in circumstances which may not amount to trafficking, including under traditional systems of guardianship (*confiage*) that are in principle a system of protection rather than exploitation, but nonetheless potentially leave the children in a highly vulnerable situation.

Whether or not they have been trafficked, children working away from their families, especially those who have crossed borders, are often completely undocumented in the country where they have work; many of them also have no birth registration in their country of origin. For example, a Human Rights Watch report on girls working as domestic servants in Guinea, among whom some came from neighbouring countries, noted that most girls crossing the border from Mali to Guinea entered the country without documentation (neither identity documentation, nor documentation indicating that the adult in whose care they were at the time was authorised to be so).²⁶² A report by Anti-Slavery International on children working in the cocoa plantations in Côte d'Ivoire similarly reported that many crossed borders without any identity documents.²⁶³ This lack of documents not only leaves the children vulnerable to (further) trafficking and exploitation, but also will prevent them from establishing their nationality once they become adults. As in the case of adult migrants, even if they return to their home countries, many are ashamed to return to their families – who could confirm their identities – because they are returning “with empty hands” (especially, but not only, if the family itself decided to send the child away).

4.8.3. *Enfants talibés*

Across Muslim West Africa, there are children in the care of imams or *marabouts* who promise to teach them the Koran. In many cases these children, known as *enfants talibés* (in the francophone countries) or *almajiris* (in Nigeria) are willingly entrusted to the *marabouts* by poor parents who believe that their sons will be looked after and receive an Islamic education, as well as being fed and clothed. However, a traditional system has become subject to modern abuse, and some of the children receive little to no education in the Koran, and are rather exploited as income generators through a practice of forced begging. Many, perhaps most, of these children are without any documentation of their identity or origins; including the many children who have crossed borders,

²⁵⁹ Aderanti Adepoju, “Review of Research and Data on Human Trafficking in sub-Saharan Africa” in Frank Laczko and Elzbieta Gozdzia (eds.), *Data and Research on Human Trafficking: A Global Survey*, IOM, 2005 (Special Issue of *International Migration*, Vol. 43 Nos.1&2); *Global Report on Trafficking in Persons*, UNODC, 2012; Claire Healy, *Counter-Trafficking: Baseline Assessment*, FMM West Africa, 2013.

²⁶⁰ UNODC, *Global Report on Trafficking in Persons*, 2012

²⁶¹ Alexis Aronowitz, *Human Trafficking, Human Misery: The global Trade in Human Beings*, Praeger Publisher, Westport, 2009, cited in IOM, *Trafficking in Persons in West and Central Africa Brief: Regional figures and trends*, 2014.

²⁶² Human Rights Watch, *Bottom of the Ladder: Exploitation and Abuse of Girl Domestic Workers in Guinea*, June 2007.

²⁶³ Anti-Slavery International, *Ending Child Trafficking in West Africa: Lessons from the Ivorian cocoa sector*, 2010.

some of them trafficked. While there have been measures to regulate the system and prohibit child begging in several countries, these efforts have not always had significant impact: the phenomenon of forced begging has been eradicated in Gambia, but in neighbouring Senegal it continues despite widespread condemnation from inside and outside the country.²⁶⁴

In Senegal, centres housing children in difficulty note that they are required to obtain a guardianship order (*ordonnance de garde*) from the children's court (*tribunal pour enfants*), within one week of a child coming into their care, which requires first of all that a birth certificate and legal identity be established for the child. These rules are not applied, however, to the *enfants talibés* in the *daaras* (Koranic schools), who are allowed to remain in the custody of the *marabouts* without any legal authority. While such centres do not intervene in the *daaras*, it does happen that children flee abuses they suffer there, and in that context the formally regulated children's centres often face difficulty in establishing papers for the boys concerned.²⁶⁵

4.8.4. Child wives of "servile" origin and their children

Across the Sahel region, historical systems of slavery and caste discrimination persist in contemporary forms, perhaps most of all in Mauritania.²⁶⁶ In Niger, the anti-slavery group Timidria has reported on the practice of men taking additional wives beyond the four permitted in Islam, provided those additional wives are of "servile" origin. These women, known as *wahayu* (singular *wahaya*), are bought and sold, including between Niger and Nigeria, in Niger especially in the Tahoua region.²⁶⁷ Typically they are sold even before puberty, and may remain in servitude their entire lives. Timidria assisted one woman, Hadidjatou Mani Koraou, who was imprisoned simply for marrying the man of her choice after being freed by her "master" (who wished to marry her legally himself), to bring a landmark successful case to the ECOWAS Court of Justice.²⁶⁸ But many others remain hidden. Women who are "additional wives" in the *wahaya* system are usually completely undocumented, crossing borders (where they do so) without any identity papers; their children, who, in Niger, are not regarded as legitimate children of the "master" and remain as domestic

²⁶⁴ In Senegal, it is estimated that there are tens of thousands of children living in Koranic schools, perhaps as many as 100,000. In Nigeria, the Ministerial Committee on Madrasah Education estimated in 2010 that there were about 9.5 million *almajiris*. See, « *Sur le dos des enfants* » *Mendicité forcée et autres mauvais traitements à l'encontre des talibés au Sénégal*, Human Rights Watch, April 2010 ; *Time for Change: A call for urgent action to end the forced child begging of talibés in Senegal*, Anti-Slavery International, 2011 ; International Labour Organization, UNICEF, World Bank, *Enfants mendicants dans la région de Dakar*, Understanding Children's Work Project Working Paper Series, 2007; US Department of Labour, *2012 Findings on the Worst Forms of Child Labor; National Framework for the Development and Integration of Almajiri Education into UBE Scheme*, Nigerian Universal Basic Education Commission, 2010.

²⁶⁵ Interviews, Dakar and Ziguinchor, May 2014.

²⁶⁶ See, for example, the information at the website of Anti-Slavery International, http://www.antislavery.org/english/slavery_today/descent_based_slavery/slavery_in_mauritania.aspx, and at SOS Slaves, Mauritania, <http://www.sosesclaves.org/>, last accessed 04 July 2014.

²⁶⁷ Abdelkader, Galy Kadir and Moussa Zangaou, *Wahaya: Domestic and sexual slavery in Niger*, Timidria and Anti-Slavery International, 2012.

²⁶⁸ *Hadidjatou Mani Koraou vs. Republic of Niger*, ECOWAS Court of Justice, Arrete ECW/CCJ/JUD/06/08, 27 October 2008; see also Helen Duffy, "Hadidjatou Mani Koraou v Niger: Slavery Unveiled by the ECOWAS Court", *Human Rights Law Review*, 2009, Vol.9, No.1, pp.151-170..

servants to the family (and if girls may themselves be sold as *wahayu*), are also likely to be unregistered at birth and undocumented thereafter.²⁶⁹

Box 10: A stateless victim of internal trafficking in Côte d'Ivoire

Ibrahima was born in 1981 in Abengourou in the east of Côte d'Ivoire. He doesn't know his parents, but he grew up among the Burkinabè community there and speaks Mooré. At six years old, he was taken away from the family where he was living by an "aunt", and taken to Bapleu in the west of Côte d'Ivoire. The "aunt" left him with a man who subsequently entrusted him to another man, for whom he worked for seven years on a cocoa plantation, until he was 14 years old. At that age, he went back to see the first man, an important business person in Bapleu, asking to be reunited with his family; but, instead, he was threatened and worked a further seven years. In 2012, Ibrahima travelled alone to Abengourou to look for his parents, using as an identity document a Burkinabè consular card lent to him by the father of the young man it had belonged to, now deceased. He stayed three months in Abengourou, but failed to find his parents, and returned to Bapleu. According to the information he obtained from the chief of the Burkinabè community in Abengourou, it was believed that Ibrahima's mother was Burkinabè, but nobody knew the real identity of the father, or had any information about the current whereabouts of his mother. The "aunt" who had taken him away had essentially stolen the boy and sold him for his labour; but she has now died. Ibrahima has recently tried to obtain a genuine Burkinabè consular card, on the basis of the information he had found out about his origins, but the Burkinabè consular authorities had refused to give him one because he had no documentary proof of his birth or parentage.²⁷⁰

²⁶⁹ Interview, Habibou Ibrahim, President Timidria, Niamey, May 2014. In Nigeria, however, the children may be regarded as legitimate, and inherit property (or even ruling titles).

²⁷⁰ Interview by Mirna Adjami, Duékué, July 2014.

5. An analysis of the ECOWAS legal and policy framework

5.1. Freedom of movement, residence and establishment

The first treaty to establish the Economic Community of West African States (ECOWAS) was signed in Lagos on 28 May 1975, after more than a decade's discussion around the necessity and mandate of such a body. Among other provisions aimed at supporting the overall objective "to promote cooperation and development in all the fields of economic activity" was the ambition to abolish by stages all obstacles to the free movement of persons, services and capital.²⁷¹ In Chapter IV of the treaty it was provided that "Citizens of Member States shall be regarded as Community citizens and accordingly Member States undertake to abolish all obstacles to their freedom of movement and residence within the Community." The measures to promote this outcome include removal of visitors' and residence permits and permission to work and establish businesses.²⁷² Today, ECOWAS has fifteen members: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

In 1979, the heads of state adopted the Protocol to the Treaty Relating to Free movement of Persons, the Right of Residence and Establishment; it entered into force in 1980. The protocol envisaged that the right of entry, residence and establishment would be accomplished within fifteen years, in phases of five years each, with the first phase of visa-free entry for 90 days to come into force immediately. According to the Protocol, "A citizen of the Community' means a citizen of any Member State".²⁷³

The ECOWAS Authority (the meeting of heads of state and government) has adopted several supplementary protocols to the original protocol, relating to the carrying out of its phased programme: a code of conduct for implementation (1985);²⁷⁴ the right of residence (1986);²⁷⁵ and the right of establishment (1990).²⁷⁶ There are also several decisions by the Authority: on travel certificates,²⁷⁷ on residence cards,²⁷⁸ and on harmonised immigration and emigration forms.²⁷⁹ In 2000, it was decided to adopt a common format passport.²⁸⁰ The eight member states (seven francophone and one lusophone²⁸¹) of the West African Economic and Monetary Union (known by

²⁷¹ ECOWAS Treaty, 1975, Article 2(1).

²⁷² ECOWAS Treaty, 1975, Article 27.

²⁷³ Protocol A/P.1/5/79 Relating to Free Movement of Persons, the Right of Residence, and Establishment, Article 1 and 3.

²⁷⁴ Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment.

²⁷⁵ Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment.

²⁷⁶ Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment.

²⁷⁷ Decision A/DEC.2/7/85 of the Authority of the Heads of State and Government of ECOWAS relating to the Establishment of ECOWAS Travel Certificates for Member States.

²⁷⁸ Decision A/DEC.2/5/90 establishing a Residence Card in ECOWAS Member States.

²⁷⁹ Decision C/DEC.3/12/92 on the Introduction of a Harmonised Immigration and Emigration Form in ECOWAS Member States. All these texts are reproduced in *An ECOWAS Compendium on Free Movement, Right of Residence and Establishment*, March 1999, available in print form and online at <http://www.comm.ecowas.int/sec/index.php?id=publicat-1&lang=en>, last accessed 03 April 2014.

²⁸⁰ Decision C/DEC.1/5/2000 on the adoption of an ECOWAS Passport.

²⁸¹ Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Sénégal and Togo.

its French acronym, UEMOA), all of whom are also ECOWAS members, have separate agreements on freedom of movement, allowing travel and residence based only on a national identity card rather than a passport.²⁸²

The ECOWAS Supplementary Protocol on the Code of Conduct provides for expulsion of undocumented migrants to be carried out “solely on strictly legal grounds”²⁸³ and Member States are enjoined to “take all possible steps to ensure or facilitate the obtaining of the correct documents by illegal immigrants”.²⁸⁴ The Supplementary Protocol on the Right of Residence provides for each State to “grant to citizens of the Community who are nationals of other Member States the right of residence in its territory for the purpose of seeking and carrying out income-earning employment.”²⁸⁵ Chapter V of the same Supplementary Protocol prohibits collective and arbitrary expulsion, and Chapter VI provides for extensive rights of due process in case of individual expulsions.

The Revised Treaty of ECOWAS, adopted in 1993, aimed to accelerate the integration of economic policy and improve political cooperation. It created a West African Parliament and an Economic and Social Council, and replaced the existing Tribunal with an ECOWAS Court of Justice to enforce community decisions. Chapter X, on cooperation in political, judicial and legal affairs, regional security and immigration, recommitted member states, among other things, to the rights of entry, residence and establishment for Community citizens.²⁸⁶ Chapter X of the Revised Treaty was supplemented by further protocols, notably the Protocol for the Establishment of a Mechanism for Conflict Prevention, Management and Resolution, Peace and Security, adopted in 1999; in turn supplemented by a Protocol on Democracy and Good Governance.²⁸⁷ Among other things, the Supplementary Protocol on Democracy and Good Governance committed member states to the principle that “The State and all its institutions belong to all the citizens; therefore none of their decisions and actions shall involve any form of discrimination, be it on an ethnic, racial, religion or regional basis.”²⁸⁸

In more recent years, ECOWAS has adopted further documents addressing mixed migration from a regional perspective, aiming to speed up the implementation of previous ECOWAS migration policies but also (under pressure from the EU) to control migration to Europe. In 2007, ECOWAS confirmed, as was already implied, that refugees are to be guaranteed equal treatment under the free movement protocols with other Community citizens.²⁸⁹ In 2008, it adopted a Common Approach on Migration, addressing mobility both within the ECOWAS region and between west Africa and other regions of the world.²⁹⁰ In the Common Approach on Migration, the heads of state committed, among other things, to “Formulate an active integration policy for migrants from ECOWAS Member

²⁸² *Traité de l'Union Monétaire Ouest Africaine*, 1984, revised 2007, and associated directives.

²⁸³ Supplementary Protocol on the Code of Conduct, Article 3(6).

²⁸⁴ Article 5.

²⁸⁵ Supplementary Protocol on the Right of Residence, Article 2.

²⁸⁶ ECOWAS Revised Treaty, 1993, Article 59.

²⁸⁷ Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

²⁸⁸ Article 1(g).

²⁸⁹ Memorandum on the Equality of Treatment for Refugees with other Citizens of Member States of ECOWAS in the exercise of Free Movement, Right of Residence and Establishment, adopted by the Meeting of the Committee on Trade, Customs, Immigration Accra 25-27 September 2007.

²⁹⁰ ECOWAS Common Approach on Migration, January 2008

States and combat exclusion and xenophobia” as well as to “Put in place mechanisms for granting rights of residence and establishment to refugees from ECOWAS countries.”²⁹¹

5.2. ECOWAS Citizenship

In addition to its treaty framework on free movement, in 1982 ECOWAS adopted the Protocol Relating to the Definition of a Community Citizen. The Protocol provides an important recognition of the common rights and obligations among the nationals of West African states. The meaning of the Protocol, including the content of ECOWAS citizenship and the actions required of Member States, is, however, very hard to understand.

Article 1 of the protocol, “on the acquisition of community citizenship” provides for four ways of becoming a community citizen: by descent, by place of birth (providing one parent is a national), by adoption and by naturalisation:

1. A CITIZEN OF THE COMMUNITY IS :

- a) Any person who is a national by descent of a Member State and is not a national of any non-Member State of the Community.
- b) Any person who is a national by birth of any of the Member States either of whose parents is a national by sub-paragraph (1) above provided that such a person on attaining the age of 21 decides to take up the nationality of the Member State.²⁹² However, a person who had already attained the age of 21 before coming into force of this protocol and who is of dual nationality shall renounce the nationality of that parent who is not a national by virtue of sub-paragraph (a) above.
- c) i) Any adopted child who at birth is not a citizen of the Community or whose nationality is unknown but who on attaining the age of 21 expressly takes up the nationality of his adoptive parent who is a community citizen.
ii) An adopted person who has already attained maturity before the coming into force of this Protocol and who is of dual nationality shall expressly renounce the nationality of any State outside the Community.
iii) Any child adopted by a citizen of the Community provided that the child has not attained his maturity to decide on the nationality of his own choice.
- d) A naturalised person of a Member State who has beforehand made a formal application and satisfies the following conditions :
 - i) had renounced the nationality of any State outside the Community and such a renunciation is explicitly supported by an act of renunciation duly authenticated by the appropriate authorities of the country or countries whose nationality or nationalities he formerly enjoyed, and
 - ii) had effectively resided permanently in a Member State for a continuous period of fifteen years preceding his application for Community citizenship. Such residence shall mean a permanent establishment of abode on the territory of a Member State without any subsequent transfer to any State outside the Community.The ECOWAS Council of Ministers or any organ of the Community invested of such power at the request of a Member State may reduce this period of fifteen years for the benefit of a person because of exceptional services that such a person had rendered to the Community or because of any other special consideration.

²⁹¹ Common Approach on Migration, paragraph 2.5.

²⁹² Note that this sub-article continues to place the emphasis on descent even though the French text clarifies that “by birth” means based on place of birth, not that a person is a citizen from the time of birth: “Toute personne qui a la nationalité d’un Etat Membre par le lieu de naissance et dont l’un ou l’autre des parents est citoyen de la Communauté »

However, a naturalised person of any Member State may not be granted such status of Community citizenship if by granting such status the fundamental interests of one or more Member States shall be jeopardised.

- e) Any child who is not a Community citizen at birth or whose nationality is unknown, adopted by a naturalised citizen of the Community and who, at the age of 21 years, expressly takes up the nationality of his adopted parent. However, such adopted child shall enjoy this status only after fifteen (15) years of permanent and continuous residence in the same Member State.
- f) A person adopted by a naturalised citizen of the Community and having already attained the age of 21 years before the entry into force of the present Protocol and who is of dual nationality, who expressly renounces the nationality of any other State outside the Community.
However, he shall only enjoy the status of the Community citizenship only after fifteen (15) years of permanent and continuous residence in the same Member State.
- g) Any child born of naturalised parents of a Member State who has acquired the citizenship of the Community in accordance with the provisions of Paragraph (d) above. However, in order to become eligible for Community citizenship, the child shall before attaining the age of 21, expressly renounce the nationality of any non-Member State of the Community which he may possess.²⁹³

Article 2(1) provides for loss of Community citizenship on the following grounds:

- a) permanent settlement in a State outside the Community;
- b) voluntary acquisition of the nationality of State outside the Community;
- c) a de facto acquisition of the nationality of a State outside the Community;
- d) loss of one's nationality of country of origin;
- e) on his express request.

Article 2(2) provides for deprivation of community citizenship from a naturalised citizen if he or she is involved in "activities incompatible with the status of Community citizen, and/or prejudicial to the fundamental interests of one or more Member States of the Community". It adds, "The situation is the same when such a crime is committed against a citizen of the Community". Article 2(3) provides for loss of citizenship in cases of fraud or if it becomes apparent that the person did not fulfil the conditions to acquire citizenship.

There is a deep ambiguity in the wording of this protocol about who is responsible for the recognition or deprivation of community citizenship, and what the content of community citizenship is beyond the rights given by citizenship of any individual Member State. While the primary responsibility is clearly for Member States, the wording about the responsibility of the ECOWAS Council of Ministers or other organs implies that the Community bodies may have a direct role. However, no procedures have ever been adopted to provide for ECOWAS to recognise community citizenship aside from the recognition procedures at national level; there is no requirement on Member States to reduce statelessness among people who have always lived within West Africa; and there are no provisions relating to harmonisation of Member States' own nationality laws in a way that would give effect to the protocol.

²⁹³ Protocol A/P.3/5/82 Relating to the Definition of Community Citizen, Article 1. The lettering has been adjusted slightly, from e) onwards, in line with the French text, since the English version on the ECOWAS website does not follow the meaning of the clauses.

There is also a critical lack of definition of some aspects: for example, in section 2(1)(c), there is no explanation of what “de facto acquisition of the nationality of a State” might mean. The clearest provision of the protocol is perhaps the prohibition on dual nationality with any non-ECOWAS state; yet the majority of ECOWAS member states permit dual nationality, by law or in practice, without restriction as to the country of other nationality; none distinguishes between ECOWAS and non-ECOWAS states in this regard; and only Liberia provides an absolute ban on adult dual citizenship.

5.3. ECOWAS and trafficking in persons

ECOWAS member states have taken concerted actions to combat trafficking in human beings, starting with the adoption of the 2001 Political Declaration and 2002-2003 Initial Plan of Action to Combat Trafficking in Persons in West Africa. Further plans of action have followed.²⁹⁴ In 2005, ECOWAS created a dedicated anti-trafficking ECOWAS unit. Some West African countries have also signed bilateral agreements, including Burkina Faso and Mali (2004), Mali and Senegal (2004), Mali and Guinea (2005), Benin and Nigeria (2005), and Benin and Congo Brazzaville (2011). The impact of these initiatives was discussed at a review meeting held in July 2014, which recommended strengthened efforts to collect data and combat human trafficking, including increased supervision of *talibé/almajiri* schools.²⁹⁵

5.4. ECOWAS and pastoralism

In addition to the usual ECOWAS framework on freedom of movement, there have been quite extensive state efforts to address issues related to cross-border pastoralism, with bilateral and multi-lateral agreements to facilitate cross-border movement.²⁹⁶ Since 2000 pastoralists have been issued explicit sets of livestock passports, international transhumant certificates (ITC) and handbooks of travel. The ITC is essentially a pass which is issued to transhumant pastoralists and their herds to manage the departure of herds, ensure sanitary protection of local herds, and provide inhabitants of reception zones with advance information on the arrival of transhumant herds. UEMOA has also adopted policies on the regulation of the free movement of animals among its eight Member States.²⁹⁷ The African Union also adopted a *Policy Framework for Pastoralism in Africa* in 2010 which

²⁹⁴ Joint ECOWAS ECCAS Plan of Action 2006-2009, and ECOWAS plan of action against trafficking in human beings 2008-2011.

²⁹⁵ Aurore Mayard, *Trafficking in Persons in West and Central Africa Brief: Regional figures and trends*, IOM, May 2014; “Experts discuss the impact assessment of the ECOWAS Plan of Action to Combat Trafficking in Persons (TIP) in West Africa” ICMPD, 3 April 2014, [http://www.icmpd.org/News-Detail.1668.0.html?&cHash=2445736781&tx_ttnews\[tt_news\]=212](http://www.icmpd.org/News-Detail.1668.0.html?&cHash=2445736781&tx_ttnews[tt_news]=212), last accessed 05 August 2014; “ECOWAS Member States Urged to Sign MOUs Against Human Trafficking”, Press Release N°: 143/2014, Abuja, Nigeria, 25 July 2014.

²⁹⁶ See for example, Loi n°01-004/du 27 février 2001 portant Charte pastorale en République du Mali; Agreement Concerning Transhumance between the Republic of Mali and the Islamic Republic of Mauritania, 19 September 1989; Loi n° 2000-044 portant Code pastoral en Mauritanie; Decret No.97/007 PRN/MAG/EL du 10 janvier 1997 fixant statut des terroirs d’attache des pasteurs (Niger); Réglementation de la transhumance entre les états membres de la CEDEAO Décision A/DEC.5/10/98 of 1998 and C/REG.3/01/03 of 2003.

²⁹⁷ See, for example, Règlement N°007/2007/CM/UEMOA Relatif a la sécurité sanitaire des végétaux, des animaux et des aliments dans l’UEMOA.

endorses the ECOWAS framework and creates strategic objectives relating to the recognition of pastoralism in development.²⁹⁸

However, these documents do not address the issue of nationality of the pastoralists themselves — and are rather focused on facilitating the conflict-free movement of the livestock rather than the people concerned. There are also many criticisms of their operation in practice.²⁹⁹

5.5. ECOWAS and the African Union

The ECOWAS policies on migration and free movement must be seen within the context of the African Union policy frameworks on migration, including most importantly the African Common Position on Migration and Development, and the Migration Policy Framework (both adopted in 2006).³⁰⁰ The Migration Policy Framework included among many other recommendations that AU Member States should “incorporate key guidelines as recommended in the 1954 and 1961 Statelessness Conventions”, and “develop national legislative and policy frameworks to counter statelessness, particularly in cases of long-term residents, by reforming citizenship legislation and/or granting rights similar to those enjoyed by foreigners residing in the country.”³⁰¹

The AU’s principal human rights bodies have also recently focused on the right to a nationality. In 2014, the African Committee of Experts on the Rights and Welfare of the Child adopted a General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, which provides for the right of every child to a name, to registration and birth, and to a nationality. The General Comment paragraphs on nationality, extracted in the annexes to this paper, provide detailed guidance on minimum standards required in nationality laws and policies. In 2013 and 2014, the African Commission on Human and Peoples’ Rights adopted resolutions on the right to a nationality, also reproduced in the annexes, and decided to move towards the drafting of a Protocol on the Right to a Nationality to the African Charter on Human and Peoples’ Rights (see annexes 8.1 and 8.2).

5.6. Implementation of the ECOWAS treaty and protocols in practice

Only the first phase of the ECOWAS framework for regional integration – visa-free entry for 90 days – has been fully implemented, although there has been progress in the partial implementation of many other commitments. National laws and policies very often do not conform with the ECOWAS protocols, even when they have been adopted to implement commitments under the protocols. Among the challenges noted as of 2009 were that: “two of the 15 member states have not ratified the supplementary protocol on the right of residence and the right of establishment; regional travel documents have not been distributed in half the countries; and in most countries West African

²⁹⁸ See also “Legislation to Support Crossborder Livestock Mobility”, *COMESA Policy Brief Number 14*, February 2010. *Policy Framework for Pastoralism in Africa: Securing, Protecting and Improving the Lives, Livelihoods and Rights of Pastoralist Communities*, African Union, Department of Rural Economy and Agriculture October 2010.

²⁹⁹ *Livestock and regional market in the Sahel and West Africa: Potentials and challenges*, OECD Sahel and West Africa Club and ECOWAS, 2008.

³⁰⁰ For a summary of developments at the AU, see Henrike Klavert, “African Union frameworks for migration: current issues and questions for the future”, *Discussion Paper 108*, ECDPM, June 2011.

³⁰¹ Migration Policy Framework for Africa, EX.CL/276 (IX), AU Executive Council, Ninth Ordinary Session, 25 – 29 June 2006, Banjul, The Gambia, Paragraph 3.7.

passports are not available; harassments at border control posts continues and racketeering has increased on international routes.”³⁰²

Among the difficulties in implementing the ECOWAS migration regime is that the labour market in the region is largely informal: the ECOWAS texts are based on the assumption that people moving for work will be employed in the formal sector and will thus obtain work permits and other documentation with the support of an employer. Since most jobs are in the informal sector, the system falls down in practice.

At the same time, although ECOWAS Member States generally display a tolerant attitude to nationals of other ECOWAS countries with irregular migration status, expulsions do occur and frequently do not follow the requirement to be carried out “solely on strictly legal grounds”. Nor did officials of Member States interviewed for this report note any coordinated efforts to “facilitate the obtaining of the correct documents by illegal immigrants”, as required by the Code of Conduct. The Protocol on the Definition of a Community Citizen has remained unaddressed in national laws and policies; indeed, its provisions are for the most part not implementable for lack of clarity on what is required. The various protocols have not resulted in any agreement or action to resolve the situation of individuals whose nationality is in doubt, nor to provide access to nationality for migrants and their children.

Nonetheless, as noted by a recent survey, ECOWAS has achieved definite successes, including: “abolition of the entry visa; adoption and use of a standardized ECOWAS Travel Certificate (1985); agreement on and gradual introduction of the ECOWAS passport (since 2000); and implementation of the Brown Card Motor Vehicle Insurance Scheme (since 1982).”³⁰³ Many of the ambitions of the ECOWAS treaties in relation to freedom of movement and residence are implemented through a network of bilateral agreements among Member States rather than as a matter of ECOWAS law.

The protocols are under review to address some of the problems in their implementation and further changes are under discussion, including the replacement of the travel certificate and ECOWAS passport with an ECOWAS biometric ID card; removal of the residence card requirement for citizens of the Community and abolition of the 90-day residence limit; revision of the concept of ECOWAS citizenship; and removal of the health card requirement.³⁰⁴ In July 2014 the ECOWAS Authority approved the introduction by 2017 of a new ECOWAS national biometric ID card, and the abolition in 2015 of the requirement for residence permits for ECOWAS citizens resident in another ECOWAS State.³⁰⁵ There is a minimum action programme for the implementation of free movement of persons that provides timelines for further action on monitoring and control and activities at national level.

The ongoing review of the ECOWAS framework on freedom of movement provides a real opportunity to integrate consideration of nationality and statelessness within the reforms proposed. The abolition of the requirement for a residence permit, for example, which reflects in part simply a recognition that ECOWAS citizens rarely obtain such a document, also risks reinforcing the existing

³⁰² Ouedraogo, 2009.

³⁰³ Livia Styp-Rekowska, *Immigration and Border Management Baseline Assessment*, FMM West Africa, 2013.

³⁰⁴ Interview with N’faly Sanoh, Directeur, Libre Circulation, ECOWAS Commission, Abuja, July 2014..

³⁰⁵ Final Communiqué: Forty-Fifth Ordinary Session of the Authority of ECOWAS Heads of State and Government, Accra, Ghana, 10 July 2014.

difficulties for access to nationality for migrants within the ECOWAS region: how can a person obtain naturalisation in another state if there is no proof that he or she has been legally resident there? There is a need to consider measures to ensure effective access to nationality to complement the measures to ensure implementation of the ECOWAS commitments to freedom of movement, residence, work and establishment.

6. Conclusions

Statelessness is a serious but largely invisible problem in West Africa. This invisibility is also true in other regions of the world, but the scale of the problem is particularly obscured in countries where many people are undocumented even if their nationality and legal status is not in doubt; where weaknesses in administrative systems and pervasive corruption mean that documents are in any event given a low evidential value; where conflicts have meant that individuals have lost documents and records have been destroyed; and where attachments to contemporary states may (partly as a result) be less strong than attachments to ethnic group, religious communities or other affiliations.

It is difficult (anywhere) to identify obvious populations of “stateless people”: the undocumented tend to want to remain out of the limelight; and often it is believed that they are not in fact stateless, just “from somewhere else”. There is thus a common perception that statelessness is not really an issue, since “If you are really Senegalese/Nigerian/Guinean/Liberian...” documents are available; and if you are not “really” from that country, there is one that you can return to in order to obtain (proof of) its nationality. But who is “really” from the country may be a matter of interpretation: as became apparent in Côte d’Ivoire when the state started to apply stricter rules that excluded many who had always thought themselves Ivorian; and as the case of Côte d’Ivoire also showed, systematic policies of exclusion breed resentments that can ultimately end in civil war.

Statelessness – the lack of a legal status, of a right to belong in any state – essentially arises from migration, from the fact that people do not necessarily remain in the place where they were born and among people who have known them since birth, in a community where they share a language, culture and physical resemblance with the majority of its members. Of course, statelessness is not a necessary result of migration: but statelessness may result when people migrate and lose access to (the possibility of) documentation of their nationality or where the legal and administrative framework does not allow them to change nationality or their children to become nationals of the new country. Migration within West Africa is not a new phenomenon, but its magnitude is increasing, and is likely to continue to do so, as mobility becomes easier, information about opportunities more accessible, pressures on land intensify, and the impacts of climate change become more keenly felt; and as conflict continues to affect the sub-region.³⁰⁶ Systems for the integration of migrant populations into the countries where they have established their lives are urgently needed, or they may become a source of instability in themselves.

6.1. When is lack of identity documentation evidence of statelessness?

Lack of documentation is in part just one symptom of more general weaknesses in the state. A very large number of people in West Africa have no documents because they don’t see the point of having documents, and because they are costly in time and money to obtain. The first point of need is often when a child should enter school or needs to take an exam, but if schools are inaccessible or worthless (either objectively or as a matter of opinion), then what need for birth registration? If you remain entirely in the informal sector, a peasant farmer or transhumant pastoralist, then identity documents are not required; if the police demand money when you cross a border or an internal checkpoint whether or not you have the right documents, then a passport or identity card does not

³⁰⁶ On climate change, see UNHCR, *Forced displacement in the context of climate change: Challenges for states under international law*, 2009.

serve even its most basic use of proving your right to be present or to travel. If, in addition, obtaining documentation requires a journey to the nearest administrative centre, a long wait to be seen, a mixture of official and unofficial fees, and at least a day's lost income, the cost-benefit analysis looks untempting.

It is not the case that all these people are necessarily stateless as a result: but those who are in this situation and are in addition members of a social group generally regarded as marginal – including those described in this study -- are certainly at risk of statelessness. It is only in the effort of seeking documents that statelessness will become apparent.

UNHCR has published a set of guidelines on statelessness, of which the first in the series considers the definition of a stateless person.³⁰⁷ The definition in international law appears in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, as follows:

For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.

In its guidelines on this definition, UNHCR notes that “establishing whether an individual is not considered as a national under the operation of its law ... is a mixed question of fact and law”, thus:

[E]xamining an individual's position in practice may lead to a different conclusion than one derived from a purely objective analysis of the application of nationality laws of a country to an individual's case. A State may not in practice follow the letter of the law, even going so far as to ignore its substance. The reference to “law” in the definition of statelessness in Article 1(1) therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.³⁰⁸

The guidelines go on to emphasise that in many states it is not one single authority that determines whether a person has the nationality of that state, but rather a combination of many different agencies responsible for issuing different documents and making different decisions for different purposes. It may therefore be a cumulative rejection of applications for documents rather than one single one that shows that a person is not regarded as a national. Where a person acquires nationality automatically, by operation of law – as is usually the case for attribution of nationality at birth (whether of the parents or of the state in which birth takes place) – documents are not usually issued at that time. But it is later, when documentary proof of nationality is sought, that it may become apparent that the state concerned does not regard the person as its national. In particular :

Where the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national.³⁰⁹

For very many people in the groups highlighted as being at risk of statelessness in this study it is not exactly clear if they are stateless or not: they exist in a blurred zone between clearly having a nationality and clearly being stateless. It may be the case that some members of a community have

³⁰⁷ UNHCR, *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012; the first three of four Guidelines have been compiled into the *Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons*, UNHCR, 2014.

³⁰⁸ Handbook, para.24.

³⁰⁹ Handbook, para 37.

some (but not all) documents related to nationality (just a birth certificate, just a national identity card, just an electoral card -- but were rejected or never applied for a nationality certificate or passport); whereas others were never registered at birth and applications for all other documents have been rejected; others have obtained documents by paying bribes to intermediaries; and others have travelled to a different “home” country to obtain documents there because they cannot get them where they currently live (or because they prefer to keep that affiliation). Each person has his or her own narrative, and his or her own particular circumstances (of parentage, place of birth and childhood, marriage partner, habitual residence, autonomy of social status, access to connections and money) that will explain these outcomes – but among the groups highlighted in this study are certainly people who fulfil the definition of stateless person under international law.

6.2. Law – and law reform – makes a difference

Despite a commonly expressed scepticism that the law is essentially irrelevant, that people “know who they are” and documents don’t change much, the research for this study repeatedly showed how important the law and access to documentation is, not only in shaping the behaviour of officials (as one would hope), but also in creating popular understanding, thus impacting even (or especially) the poorest and most marginalised people. A person’s life can be utterly blocked by the lack of documents proving their right to be in the country where he or she was born and has always lived.

In Guinea, a very open nationality law (shaped by the pan-Africanist outlook of the first independence leader, Sekou Touré), has created the common understanding that if you are born in Guinea you are Guinean. Although it is rather the case under the strict interpretation of the law that a person born in Guinea who remains in the country becomes Guinean automatically on majority, the basic structure is understood. By contrast, in neighbouring Côte d’Ivoire, francophone Africa’s most closed nationality law (at least since 1972) has enabled a national political dialogue in which any effort to extend the right to Ivorian nationality to those who have been excluded is criticised as an effort to mobilise *bétail électoral* (electoral cattle), even in relation to people who have parents and grandparents born in the country.

The most obvious positive impact of law reform since independence has been the steady reduction in gender discrimination in nationality law, most recently in Senegal. Removal of gender discrimination has provided access to a nationality for many thousands of children. Those countries where women are not able to transmit nationality to their husbands or children perpetuate this injustice – and increase the risks of statelessness.

Many countries face continuing problems related to poor drafting and implementation of nationality laws at the time of the transition to independence, in particular, where there was no default allocation of nationality but instead the creation of a right to opt or register for those who had migrated before independence. Many were of course never aware of the need to make such an option -- most obviously in case of Côte d’Ivoire, but the same problem impacts other countries also, including Ghana, Niger, Nigeria, Senegal, Sierra Leone and others. There has also been a failure to adopt effective laws to regulate nationality in the case of state successions since independence, when territory has been transferred between two states; the International Court of Justice does not consider the legal status or views of the populations affected in its judgements. The failure to adopt laws that resolve the status of those affected by these boundary disputes and transfers of territory has left many thousands trapped by the lack of documents.

6.3. Nationality laws in West Africa are ill-adapted to the reality of migration

Many thousands of people in West Africa live in a country that is not the one where they were born, and many millions more in a country that is not the one where their parents were born. Most of them have their origins in another West African country; many have established new lives and intend to remain indefinitely in the “new” country, which may be the country of their birth. Despite this, it is very difficult to acquire the nationality of another country as an adult; and a number of West African countries provide almost no possibility for the descendants of migrants to obtain the nationality of the country that is their home.

Although all West African countries provide in theory for a person to apply to acquire nationality as an adult, the procedures established by law for naturalisation render it ineffective for all but a small elite. In all ECOWAS countries, the inaccessible and highly discretionary process of naturalisation makes it exceedingly difficult to obtain recognition of membership in the state where a person lives and has the closest connections if it is not their country “of origin”. The nature of free movement within the ECOWAS (and UEMOA) space – in which few have residence permits, even though they are theoretically required -- means that it is paradoxically easier for non-West Africans to naturalise in a West African state than for the national of another West African state to do so. Naturalisation has become a mistrusted process, believed (accurately or not) to be granted only to cronies of the president or persons with the means to buy it.

Countries which provide very limited rights based on birth in the country — in particular, that provide no access to nationality for those born in the country and resident during their childhood (enabling automatic or optional access to nationality at majority) — risk creating large populations of people whose nationality is doubtful or who are stateless. Where this lack of rights based on birth in the territory is at its most acute (in Côte d’Ivoire, Gambia, and Nigeria), or racially discriminatory (Liberia and Sierra Leone) it can be near-impossible for the children of immigrants to become nationals and be integrated into the national community if they do not belong to an “indigenous” ethnic group. Even if those in this situation may have a theoretical access to the nationality of one or other of their parents, such a nationality may be inaccessible in practice as those connections become steadily weaker; or useless to them, if their lives and identity are established where they now live.

Those countries that provide for double *jus soli* (attributing nationality to a person born in the country of one parent also born there), such as Senegal or Niger, at least prevent this situation carrying on through more than one generation; but those born in the country of parents who themselves migrated form a missing generation, without the nationality of the country where they have the strongest links. While the rules on *possession d’état de national* (the presumption that a person is a national if they seem to be so) in many civil law countries in principle provide a guard against statelessness for such children, especially useful where birth registration rates are low, the implicit or explicit discrimination in what it means to be “treated as a national” may exclude those who are visually or by other marker distinguished from the majority population of the country concerned.

Nationality law in most countries in the world is also very poorly adapted to provide for those who do not live a settled existence. There are no definitions of “habitual” or “ordinary” residence allowing for habitual residence in more than one place (in case of naturalisation or state succession;

but also at national level for voter registration and other events); and laws mainly based on location of birth may not be so relevant to those who consistently move about. West Africa is one of the regions of the world with the largest percentage of the population following nomadic or transhumant lifestyles, yet its laws take no account of this fact.

Most recent migrants or refugees will not themselves be stateless, since, even if they lack documents, they retain the knowledge of their “home” country, its languages and other identifying features, that would enable them to re-establish that nationality in case of need (provided they had assistance to make the necessary applications). Yet a failure to act to provide the possibility of obtaining nationality in the country where they now live, and especially for their children, creates the risk of multi-generational statelessness of individuals, families and communities who cannot obtain nationality in either (or any) country where they have connections. Ethnic groups cut in two by modern borders, or those whose nomadic lifestyles lead them to cross such borders frequently, are often distrusted for their ability to claim to belong either side of that boundary. But they are as much at risk of having documents of neither state as of both. Equally, most foundlings and children separated from their parents will find a niche where they are accepted, with or without documents, even if they are not in the country of their birth; but some will not. Failing to provide systems to document such children creates for them the risk not only of exclusion from school, medical treatment and other needs; but also that on adulthood they have no legal status in the society where they have made their home, and therefore no enjoyment of their other human rights.

Of course, if a person has money, it is usually possible to sort out such problems: but it is hardly desirable to advocate corruption as a means of avoiding statelessness. Moreover, if documents are known to be obtained corruptly, they are mistrusted; and, in a crisis, will not be believed as proof of nationality.

6.4. Due process and transparency are key

In societies where many people are undocumented, decisions about access to public services, voter registration and other rights are effectively left to interpretation by low-level administrative officials. In this context, instinctive criteria such as language or last name are often the default basis for determining eligibility. It becomes very important for those who do not fit these criteria to have a means of proving nationality in case of doubt. In this regard, the civil law system in which nationality of origin is determined by the courts and not by the administrative authorities has significant advantages over the common law countries in terms of due process and clarity. It establishes the certificate of nationality as a single document that is definitive proof of nationality, and in the president of the relevant tribunal nominates an impartial arbiter who, while (of course) not entirely immune from bias or financial impropriety, is significantly more rule-bound and better informed than in a system dependent on much more junior administrative staff responsible for processing applications for identity documents. Nonetheless, court-based systems, perhaps even more than those that are purely administrative, can be very burdensome in terms of process, and may require individuals to be assisted by lawyers or other advisers in order to have effective access to the procedures established.

Completely discretionary systems for deciding questions of nationality – such as those in place in most West African countries for naturalisation – create major risks of statelessness, not necessarily for reasons of ill faith, but because they have enabled a paralysis in the process for people to change

their nationality to that of the place where they have the closest connections. They also greatly favour people with money, lawyers and connections over the poor who do not have access to such assistance in navigating the application process. Where naturalisation is used for political reasons, or to benefit economically powerful individuals, it discredits the process for ordinary applicants.

It is striking how much misinformation there is in general circulation about nationality administration. Little information is officially published, the law is often misunderstood, and wildly inaccurate assumptions abound about the numbers of people naturalised or granted nationality of origin on fraudulent grounds. Harmonisation of the laws across the region would enhance understanding of the rules in place; better publication of the rules and the decisions made in relation to nationality would assist to restore faith in the system; and support for legal assistance to those who have difficulties in establishing their nationality would greatly help under any legal regime.

6.5. Nationality administration is uncoordinated and incoherent

Nationality law and administration are typically thought of as the responsibility of only one government ministry – usually the Ministry of Justice (in the civil law countries) or the Ministry of Home Affairs or the Interior (in the common law countries). Yet multiple government departments and agencies are responsible for different aspects of nationality administration, and their interventions are rarely coherently linked together. Among the government functions that have important roles to play in the process of establishing a person's nationality are:

- Civil registration, especially birth registration
- Judicial confirmation of nationality
- National identity card systems (where they exist)
- Issuing of passports and other travel documents
- Refugee protection
- Child protection
- Electoral registration
- Border management and immigration control (visitors', work and residence permits)
- Censuses

These functions are typically split between several government departments and agencies (or may even have one each).

Nationality administration is thus a complex system, not just one piece of legislation (the nationality law) and its subsidiary regulations, decrees or administrative directives. To understand the risks of statelessness in any particular country, it is necessary at minimum to consider those agencies responsible for issuing different kinds of identity documentation, including birth certificates, identity cards, passports and other travel documents, electoral cards, and refugee status documents. In addition, it may be necessary to consider the functioning of the court system (especially in the civil law countries) and of the decentralised administrative units responsible for accepting applications for documents at the lowest levels.

This confusion of systems at the national level is reflected in international aid relating to identification. There is major support to birth registration from UNICEF, as well as NGOs such as Plan International; election administration has support from UNDP, national UN offices and other agencies; other donors support justice sector or administrative reform; UNFPA will advise on census administration; IOM provides assistance for border management and identity documents, especially

passports (including securing them from the relevant authorities for stranded migrants without documents); and UNHCR engages on the reduction of statelessness and protection of stateless persons as well as refugees. Yet these efforts too are not coordinated. In particular it is striking how electoral registration has massive resources allocated to the process each time elections come around, yet this periodic assistance is rarely shaped in such a way as to form the nucleus of a national identity documentation system. Nationality law reform itself is rarely on the international agenda, except for the removal of gender discrimination: although international law does create obligations to prevent and reduce of statelessness, as well as in relation to non-discrimination and due process, nationality is too often seen as being within the sovereignty of individual states and too sensitive to address.

6.6. Regional cooperation mechanisms are badly needed

There is a lack of cooperation between countries to resolve cases of where nationality is in doubt. While there may be contact between consular authorities to obtain agreement on the nationality of a person without documents in order to arrange deportation, there is no positive system to establish nationality and documents for a person where it is clear that he or she can only lay claim to the nationality of two possible states, but both states are currently disputing that claim.

Consular authorities, courts and immigration and nationality officials not unreasonably understand their task to be to ensure that those who are not entitled to nationality documentation do not receive it. While there may be some flexibility in recognition of nationality — especially where the pressures to limit access are not high and where national laws are relatively generous or ambiguous (or indeed where money is offered) — the fundamental concern of those within the administration is to police the boundaries of the system. Under the current legal systems in West Africa, there is no requirement on such officials to ensure that individuals are not left stateless. Nationality systems concentrate on ensuring that only those persons who are clearly entitled to the nationality of that particular country obtain the documents proving nationality; they do not focus on ensuring that a person has documentation of at least one of the states where he or she fulfils the relevant qualifications; or, as a last resort, in providing a status of stateless person to someone who somehow does not fulfil the qualifications in any particular state — and a route to a recognised nationality for that person and his or her descendants.

Thus, there are living within West Africa uncounted thousands of people who are clearly West Africans but do not have the documentation of any one state. This study was too limited in scope to identify individuals who had applied for documentation and been rejected — or given up, dispirited — in more than one country. However, it seems likely that, in the event that requirements to carry identity documentation were universally implemented, large numbers of people might find themselves in a situation where they could not obtain recognition of nationality from any state: that is, stateless.

Some state representatives recognise this situation; for example, a consular official in Conakry spoke of heart-breaking situations where people claiming to be nationals of his country come to seek a passport or other document but had no proof of their connection. They may have left the country as a child, no longer speak any national language fluently, and have no knowledge of their “home” village. The consular authorities will make inquiries and try to trace family, but if they cannot find anyone to vouch for the connection, they cannot help. There is no system to coordinate with the

Guinean (or any other relevant) authorities to decide if the person has another nationality, for example to strengthen the presumption that the nationality “of origin” should be recognised on the basis of the testimony of the person concerned.³¹⁰ The applicant is left with nothing.

6.7. Nationality is politically sensitive

Statelessness is a difficult problem to solve, not just for technical and practical reasons of legal drafting and state capacity, but because access to nationality goes to the heart of political and economic power. Recognition as a national is tied up with access to property, especially land, and with economic power more generally, as well as the right to vote and participate in public affairs. In the phase immediately after independence, denial of access to nationality was a way of clipping the wings of those whose economic and political power had been unfairly increased by the colonial regime. Vestiges of that concern remain, especially in the widespread resentment of “Lebanese” and other trading networks in West Africa. Affirmative action measures are permitted in international law to respond to historical injustice and contemporary disadvantage³¹¹; but these measures should be designed to address existing discrimination — rather than denying a person’s right to be a member of society at all.

Moreover, denial of (proof of) nationality is just as much likely to affect those who are the most marginalised in society – including many of the groups identified in this report. Or, simply to affect those who are believed to be supporters of an opposition political party. It is not a coincidence that access to nationality and identity documentation has been central to several recent West African political agreements, including not only the series of agreements between the Ivorian political opponents³¹², but also the less well-known August 2006 Togolese Global Political Accord (also signed in Ouagadougou) which envisaged the issue of identity cards along with electoral cards.³¹³ While tactics of denial of nationality may have short term appeal, the misuse of nationality law for these purposes not only creates stateless persons; but also favours the breakdown of political systems within a state and, ultimately, fuels rebellions.

6.8. “Technical fixes” may not address the core problems

There are ongoing initiatives to improve aspects of nationality administration in most countries of the region, supported by a variety of international actors. These include efforts to increase levels of birth registration, to strengthen border controls, to improve electoral registration procedures, to introduce or upgrade national identity cards, and to computerise all these systems. There are efforts to introduce new biometric identity data to the various identity documents. More generally, the current security context in West Africa has created a focus on the need for stronger identification systems. In addition, a number of West African states have recently acceded to the two UN conventions on statelessness (see annex 8.3).

While computerisation would certainly help to improve the administration of identity documentation, it is not a panacea to all the ills of the system; especially if not accompanied by

³¹⁰ Interview, Conakry, June 2014.

³¹¹ Human Rights Committee, General Comment 18, Non-discrimination, 1989.

³¹² For example, Chapter I of the March 2007 Ouagadougou Political Agreement for Côte d’Ivoire was headed “General identification of the population”; Chapter II was on the electoral roll. Reproduced in UN Security Council document S/2007/144, 13 March 2007.

³¹³ Clause 1.2.5 Accord Politique Global, Ouagadougou, 20 August 2006.

training on the computer systems and on correct record-keeping. The introduction of biometric data is also a technical fix that does not address many non-technical aspects of the problem. As noted by the Carter Center in the context of electoral registration: “Given its expense, countries should remember that biometrics only addresses one problem: multiple voting... Thus, officials must consider whether multiple registrations and/or voting are among the most serious problems the electoral system of a given country faces.”³¹⁴

These new initiatives, with their focus on computerisation and strengthening administrative systems, are mostly useful interventions. Ratification of the international treaties is also important. But without a focus on the broader context of law and practice, they risk ignoring important issues surrounding access to a nationality and the avoidance of statelessness, including the need for reform to address gaps in the law, a lack of due process, and the inaccessibility of nationality determination systems and naturalisation processes.

A focus on strengthening identity systems mainly as a security measure risks reinforcing the very exclusions that have fuelled some security problems. A system that is not fully “securitised” creates ambiguities which people whose status is in doubt (but see themselves as good citizens) can use to find themselves documents and a legal identity; reforms to that system that focus only on removing those who have fraudulently obtained documents or who are a security threat, but not on ensuring that those who should be able to access such documents can legitimately do so, will be counterproductive. Above all, they will create statelessness.

³¹⁴ Wang, *Voter Identification Requirements*, Carter Center, 2013.

7. Recommendations

7.1. An integrated approach to nationality systems

- ECOWAS Member States should address nationality and statelessness from a systemic perspective, seeking to put in place coherent initiatives on documentation and identity management that provide access to a nationality for all both in theory and in practice, and that identify and provide documentation to all. Investments in civil registration, electoral registration, national identity cards, border management and other related initiatives should be seen as linked part of the same system and coordinated accordingly to avoid duplication, incompatibility of systems and conflicting approaches.

7.2. Accessions to and implementation of UN and AU treaties

- ECOWAS Member States should accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and review national law and practice to ensure it is compliant with their requirements, based on the Guidelines on Statelessness published by UNHCR.
- All ECOWAS Member States are already party to the African Charter on the Rights and Welfare of the Child, of which Article 6 deals with birth registration and the right to a name and nationality, providing for every child to have the right to acquire a nationality, and, in particular to “acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with its laws.” The Committee of Experts on the Rights and Welfare of the Child has recently adopted a General Comment on Art 6, which provides comprehensive guidance on which ECOWAS Member States could draw to understand their obligations under the treaty.

7.3. Law reform

ECOWAS Member States should:

- Remove discriminatory provisions from domestic legislation in relation to the transmission of nationality to a spouse or child, including on the basis of sex, of birth in or out of wedlock, or on the basis of race, religion or ethnic group.
- Ensure that every child has the right to a nationality, and that nationality shall be confirmed at the latest at majority, including through provisions that :
 - Incorporate the safeguards against statelessness that are contained in the statelessness conventions and international and regional human rights treaties.
 - State that a person born in the country who remains there during childhood has the right to the nationality of that country either automatically or by option, at the latest at majority.
 - Establish an accessible procedure for the confirmation of nationality, based on testimony and other forms of proof as well as birth registration.
- Establish conditions and procedures for naturalisation that are not overly onerous or subject to discretionary decision-making processes, and that are clearly advertised and accessible to all. Naturalisation should be facilitated for refugees and stateless persons.
- Ensure that domestic legislation on nationality ensures a right to nationality, and documents to prove it, for vulnerable children, including abandoned infants and children separated from their parents, and girls at risk of early marriage.
- Review laws to ensure that they are adapted to the contemporary West African realities, including laws and regulations that provide systems for access to nationality from birth for nomadic and border populations, as well as the descendants of migrants and refugees.

- Provide in law for judicial procedures to establish conclusive proof of nationality, including the right to appeal in case of rejection.
- Establish procedures for the determination of statelessness and the protection of stateless persons, including through providing pathways to obtain the nationality of the country where the person is resident.

7.4. Nationality administration

ECOWAS Member States should adopt measures to increase accessibility, due process, transparency and efficiency in nationality administration, including by:

- Improving the current operation and archiving of civil registration systems, aiming to achieve 100 percent registration of births, including for children of migrants, refugees, nomadic populations and other marginalised groups.
- Publishing annual statistics on nationality procedures, including issuance of identity documents, certificates of nationality, and naturalisations.
- Conducting public awareness campaigns on the need for birth registration and other documentation, especially in border areas, among nomadic populations and in the poorest neighbourhoods.
- Providing for an effective right for appeal or review of decisions by judicial or administrative authorities relating to nationality determination, including national identity card systems and electoral registration.
- Providing or facilitating judicial and other assistance for those who are seeking proof of nationality, especially during periods when new procedures or law reforms are introduced.

7.5. Documentation of populations at risk of statelessness

ECOWAS Member States should seek to identify and provide solutions for those persons who are at risk of statelessness, and in particular they should:

- Conduct research into populations at risk of statelessness, in order to identify those who require confirmation of their right to nationality of the country they live in, or protection as stateless persons.
- Conduct specific awareness raising activities among populations at risk of statelessness to encourage individuals to acquire those documents that would confirm their nationality, including birth certificates, and to apply for confirmation of nationality through the procedures available, whether of the country of residence or another relevant country.
- In case of forced population movements caused by conflict or other crises, ensure documentation of those who have been forced to move at the earliest moment, and take particular measures to provide access to registration for their children.
- Where individuals cannot be confirmed to have a nationality under existing laws, provide them with a status in accordance with the procedures required by the Convention relating to the Status of Stateless Persons, and facilitate their acquisition of nationality.

7.6. ECOWAS institutional support for inter-state cooperation and common norms

The ECOWAS institutions should facilitate collaboration among ECOWAS Member States to resolve cases of potential statelessness, by:

- Adopting a directive on nationality and the avoidance of statelessness to promote accession to and implementation of the international treaties on statelessness as well as reform of national legislation in line with the requirements of international and African norms.
- Establishing bi- and tri-lateral commissions to conduct verification missions to border populations, ensuring that all those resident in border areas have the documents of one or

other (or both) states, in particular where there are substantial populations affected by transfers of territory.

- Promoting the exchange of information and coordinated adjudication procedures among ECOWAS Member States and with neighbouring countries in order to establish a nationality for persons whose nationality is in doubt.
- Creating a mechanism such as a regional ombudsman to serve as an interface between ECOWAS citizens and the ECOWAS Commission on nationality matters.
- Promoting the harmonisation of the nationality laws and practices of Member States in line with the recommendations in this report.
- Ensuring that initiatives to strengthen the implementation of the ECOWAS regime on free movement of persons, including the adoption of the biometric national ID card and abolition of the residence requirement for a residence permit for nationals of other ECOWAS states, take adequate account of the obligation to reduce statelessness.
- Taking steps to replace the Protocol Relating to the Definition of a Community Citizen with a new Protocol that creates (in coordination with the relevant African Union institutions) common standards for West African nationality laws that respect other rights endorsed by ECOWAS standards, including rights to non-discrimination, democratic participation, and due process of law; provides a role for ECOWAS in ensuring access to nationality; and ensures a common understanding of the rights of West African nationals as ECOWAS citizens.
- Conducting research and publishing reports on statelessness in the region to inform legislative and policy reforms to be implemented by Member States.
- Promoting collaboration with other regional organisations on these issues, including UEMOA and the Mano River Union.

7.7. The role of international partners

The different UN agencies and other international partners of West African states should strengthen coordination and collaboration around the right to a nationality both at international and West African levels and among national offices, in particular by:

- Ensuring that different interventions to address lack of documentation are coordinated both with governments and with each other, based on gaps identified through a common baseline assessments and analysis.
- Adopting regulations or guidelines on statelessness and nationality law as it interacts with other relevant systems, including border management, identity documentation and birth registration.
- Supporting the implementation of the recommendations in this report.

8. Annexes

8.1. Extract from General Comment on Article 6 of the ACRWC

African Charter on the Rights and Welfare of the Child, Article 6: Name and Nationality

1. *Every child shall have the right from his birth to a name.*
2. *Every child shall be registered immediately after birth.*
3. *Every child has the right to acquire a nationality.*
4. *States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.*

General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/02 (2014), adopted by the Committee at its twenty-third Ordinary Session, 7 - 16 April, 2014.

Full text, including footnotes, available at : <http://acerwc.org/the-committees-work/general-comments/>

[...]

Right to acquire a nationality: Art 6 (3) and the obligation to prevent statelessness: Art 6 (4)

83. The right to a nationality has a central importance for the recognition and respect for other rights: thus the prevention of statelessness, including the statelessness of children, is a fundamental principle of international human rights law. The Committee of Experts has held that, "One of the main purposes of Article 6, in particular Article 6(4), of the African Children's Charter, is to prevent and/or reduce statelessness." A person who is stateless is a person who is "not considered as a national by any State under the operation of its law": this definition, found in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, has been recognised by the Committee of Experts to constitute part of customary international law.

84. Even if the vast majority of human rights are not formally restricted on the basis of nationality, the lack of a recognised nationality in practice has a profoundly negative impact on respect for and fulfilment of other human rights. The effective proof of nationality (usually through documentation issued by the State) is a necessary foundation not only for the exercise of rights of civic and political participation, but also freedom of movement, participation in the formal economy, and the entitlement to mobilize the protection of the State of nationality when the enjoyment of human rights is endangered or threatened. The Committee of Experts notes that, although the African Charter on Human and Peoples' Rights does not specifically include a provision on the right to a nationality, the African Commission on Human and Peoples' Rights has considered issues touching on the right to a nationality in a large number of communications, underlining the challenges related to nationality in Africa. Highlighting its findings in these cases, the African Commission on Human and Peoples' Rights adopted a resolution on the right to a nationality in April 2013 stating that:

"[...] the right to nationality of every human person is a fundamental human right implied within the provisions of Article 5 of the African Charter on Human and Peoples' Rights and essential to the enjoyment of other fundamental rights and freedoms under the Charter."

85. While the right to a nationality becomes of greater significance as a person approaches and reaches adulthood, it is critical for the right to a nationality to be recognised for children. This is both because the clear recognition of nationality from the moment of birth is the best guarantee that

nationality of the adult will also be recognised; and also because children may have their other rights restricted if they are not regarded as nationals, in particular in relation to their access to education, health care and other social services.

86. It is thus not a coincidence that the first case in which the Committee has ruled on interpretation of the African Children's Charter related to the statelessness of children. In the Kenyan Nubian Children's case), the Committee stated that it :

[...] cannot overemphasise the overall negative impact of statelessness on children. While it is always no fault of their own, stateless children often inherit an uncertain future. For instance, they might fail to benefit from protections and constitutional rights granted by the State. These include difficulty to travel freely, difficulty in accessing justice procedures when necessary, as well as the challenge of finding oneself in a legal limbo vulnerable to expulsion from their home country. Statelessness is particularly devastating to children in the realisation of their socio-economic rights such as access to health care, and access to education. In sum, being stateless as a child is generally an antithesis to the best interests of children.

87. The Committee thus reminds African States that States do not enjoy unfettered discretion in establishing rules for the conferral of their nationality, but must do so in a manner consistent with their international legal obligations. These include those set out in Article 6, paragraphs (3) and (4) of the African Children's Charter, as well as Article 4, which provides that "In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration". The Committee also draws States' attention to Article 5(2) of the African Children's Charter, which provides that "States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child", and notes that the possession of a nationality is critical to the ability of a child to access such State protection.

88. Articles 6(3) and (4) of the African Children's Charter reaffirm the established international principle set out in the Universal Declaration of Human Rights Article 15(1) that "Everyone has the right to a nationality". However, the combination of sub-articles (3) and (4) of Article 6 provide a more specific obligation than Article 15(1) of the Universal Declaration of Human Rights. This is because these subarticles require States "to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born". Article 6(4) of the African Children's Charter strengthens the overarching provision on nationality, and harmonises the Charter with the principle established by the 1961 Convention on the Reduction of Statelessness: that a child who would otherwise be stateless – that is, who does not obtain any other nationality at birth – shall have the nationality of the State in which he or she is born. The African Children's Charter thus reaffirms the specific responsibility of the State where the child is born to confer its nationality upon the child, if that child has no other nationality.

89. Above all, the inclusion of Article 6(4) within the African Children's Charter represents a recognition by African States that the lack of the right to a nationality, and the lack of recognition as a full participant in the political and social life of the country where a person has been born and lived all his or her life, has been at the heart of many of Africa's most intractable political crises and civil conflicts. Ensuring that all children have a nationality from birth is not only in the best interests of the child and future adult, but also of States Parties to the Charter.

90. In considering the significance of the wording of Article 6(3), the Committee of Experts held in the Kenyan Nubian Children's case that:

The African Committee notes that Article 6(3) does not explicitly read, unlike the right to a name in Article 6(1), that "every child has the right from his birth to acquire a nationality". It only says that "every child has the right to acquire a nationality". Nonetheless, a purposive reading and interpretation of the relevant provision [Article 6(3)] strongly suggests that, as

much as possible, children should have a nationality beginning from birth. This interpretation is also in tandem with Article 4 of the African Children's Charter that requires that "in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration".

91. As indicated in that case, because by definition, a child is a person below the age of 18 (Article 2 of the African Children's Charter), any law, policy or practice which entails that children must wait until they turn 18 years of age to apply to acquire a nationality cannot be seen as an adequate effort on the part of the State party to comply with its Charter obligations.³⁷ Although the Committee accepts that there are a variety of legal systems in place in Africa relating to the acquisition of nationality, and acknowledges the discretion of State parties to adopt rules that conform with their traditions and needs, this discretion is at the same time limited by the principles of international human rights law, including the African Children's Charter. Thus, the Committee believes that States should adopt legal and other measures to ensure that nationality is acquired by a child at birth not only on the basis of descent from a citizen without restrictions (such as limitation of transmission of nationality to one generation only for children born abroad), but also in some circumstances on the basis of birth in the territory of the State. The commitment to reduce the possibility of statelessness is an overarching obligation in the best interests of the child.

92. While the situation of children born in the territory who do not acquire the nationality of another State at birth is considered in Article 6(4), the Committee notes that it can be difficult to prove the risk of statelessness: that is, that a person does not have, or is not going to acquire, another nationality. In addition, it may be unreasonable to expect a child who may have a theoretical right to another nationality to take the steps needed to acquire that nationality. Thus, the Committee encourages States Parties to adopt legal provisions – already in place in many African States – that a child born in the State with one parent (either mother or father) also born in the State acquires the nationality of that State at birth. As already recommended in the Kenyan Nubian Children's case, the Committee also believes that States should adopt provisions giving children born in their territory the right to acquire nationality after a period of residence that does not require the child to wait until majority before nationality can be confirmed. Additionally, a number of African States provide for a child born in the territory of parents who are lawfully and habitually resident there to acquire nationality at birth, and the Committee regards this as best practice. Further, the Committee encourages African States to facilitate the acquisition of nationality by children who were not born in their territory but who arrived there as children and have been resident there for a substantial portion of their childhood.

93. Although this impacts only on a very small number of children, the Committee suggests that States parties to ensure that their nationality laws provide that children born on a ship or in an aircraft flagged or registered in that State are deemed to have been born in the territory of that State.

Nationality and the Principle of non-discrimination

94. In establishing rules relating to nationality, States must also uphold the principle of non-discrimination set out in Article 3 of the Charter. Specifically, all criteria established by States relating to acquisition of nationality by children must not distinguish on the basis of "the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status". Accordingly, the Committee recommends that those African States that have legal provisions that discriminate on any of these grounds should review them and replace them with non-discriminatory provisions.

Nationality and the gender of the parent

95. In the context of nationality, the most common ground for discrimination relates to the gender of the parent. Over the past two decades, many African countries have amended their laws to

remove discrimination in the rights of men and women to transmit their nationality to a child, and the Committee urges those countries that still retain such provisions to do the same.³⁸ Such reforms should also remove discrimination based on the birth of a child in or out of wedlock (which is usually incorporated within provisions that discriminate on the basis of the gender of a parent, where a father would transmit nationality to a child born in wedlock, and a mother if the child is born out of wedlock).

Nationality and foundlings and abandoned children

96. The Committee of Experts emphasizes the importance of provisions ensuring that children found abandoned in the territory of a State Party (foundlings) acquire the nationality of that State. Such provisions are important to ensure that children abandoned by their parents, or whose parents have died, or who are separated from their parents in case of war or natural disaster, also acquire a nationality. The Committee notes that a number of African nationality laws do not include such provisions, and that in other cases they apply only to infants; it also commends those States that have adopted laws providing for nationality to be conferred under such provisions to much older children. The Committee urges States to, at a minimum, grant nationality to all such children found abandoned, including those who (at the date they were found) were not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth.

Nationality and adopted children and those in similar situations

97. A child whose parentage is established by court order or by similar procedures to adoption should acquire the nationality of the parent concerned, subject only to an administrative procedure established by law. In the case of an adoption of a child where the family relationship with the child's birth family is not completely replaced, States should facilitate the child's acquisition of the nationality of the adoptive parents. The Committee notes that there are many different traditions relating to recognition and adoption of children within African States and that the specific procedures applied in such situations may vary greatly; however, they should comply with the requirements of Article 24 of the African Children's Charter. The basic principle to be respected in these procedures that it is in the best interests of the child to possess the nationality of the person(s) who is (are) primarily responsible for his or her care, and to retain that nationality if it has been held for a reasonable period, even if the adoptive relationship does not continue.

Nationality of a child in case of change of status of his or her parents

98. In several contexts, the nationality of a child may be impacted by a change in status of his or her parents: in particular in case of marriage, divorce, or change of nationality of a parent. In general, it is in the best interests of the child that, when his or her parent acquires a new nationality through marriage, naturalization or similar procedure, the child also acquires that nationality. However, where a parent loses or is deprived of nationality, that loss or deprivation should not affect the child and in no case may a child lose or be deprived of his or her nationality if he or she would be left stateless. In cases where a parent renounces his or her nationality, the State is under a general obligation to ensure that the person obtains another nationality; while a parent may also renounce nationality on behalf of a minor child (subject to the principle that the older a child is, the greater extent his or her own views should be heard and taken into account), the obligation of the State to ensure that another nationality is acquired is particularly important to avoid statelessness for that child.

Article 6(4)

99. Article 6(4) requires States parties: "to ensure that their Constitutional legislation recognizes the principles according to which a child shall acquire the nationality of the State in the territory of which he[/she] has been born if, at the time of the child's birth, he [/she] is not granted nationality by any other State in accordance with its laws." As noted above, the importance of Article 6(4) is to

go beyond a generalized obligation on all states to reduce statelessness among children, and to create a specific obligation for the State where a child is born. Various formulations of this safeguard are found in a number of other international instruments and form the bedrock of global efforts to prevent statelessness.

100. A determination of whether a child has been granted nationality of another State at birth requires consideration of whether the child has acquired the nationality from either of his or her parents on the basis of descent.³⁹ This determination must be made on the basis of an analysis of the nationality legislation and its implementation of the parents' State (or States) of nationality. States may also consult the authorities of the parents' country of nationality to establish whether the child is considered a national of that country or countries. States must accept that a child is not a national of another State if the authorities of that State indicate that he or she is not a national. A State can refuse to recognize a person as a national either by explicitly stating that he or she is not a national or by failing to respond to inquiries to confirm the child is a national.

101. When applying Article 6(4), it is necessary to examine the situation of the child. It is not sufficient to examine whether the parents are stateless. In some instances one or both parents may possess a nationality but cannot confer it upon their children, for example due to discrimination against women with regard to conferral of nationality to children or limitations on conferral of nationality to children born abroad. Thus, the Committee of Experts notes that legal provisions for a child born in their territory to acquire the nationality of the State if the parents are stateless do not in themselves fulfil the requirements of Article 6(4).

[...]

8.2. ACHPR resolutions 2013 and 2014

234: Resolution on the Right to Nationality

The African Commission on Human and Peoples' Rights, meeting at its 53rd Ordinary Session held from 9 to 23 April 2013 in Banjul, The Gambia;

Recalling the provisions of Article 45(1) (b) of the African Charter on Human and Peoples' Rights which provides that the Commission shall "formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation";

Recalling Article 6 of the African Charter on the Rights and Welfare of the Child which provides that every child shall have the right from birth to a name, to be registered immediately after birth and to acquire a nationality, and that State Parties to the Charter shall "undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws";

Noting that the provisions of Article 2 of the African Charter and Article 6 (g) and (h) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa establish the equal right of men and women to acquire their partner's nationality;

Further recalling Article 15 of the Universal Declaration of Human Rights which stipulates that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality;

Noting the provisions of other international human rights treaties relating to nationality, including Article 5 (d)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 24(3) of the International Covenant on Civil and Political Rights, Articles 7 and 8 of the UN Convention on the Rights of the Child, Articles 1 to 3 of the UN Convention on the Nationality of Married Women, Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, and the UN Convention on the Reduction of Statelessness;

Recalling that persons arbitrarily deprived of nationality are protected by the Convention Governing the Specific Aspects of Refugee Problems in Africa, the UN Convention relating to the Status of Stateless Persons, the UN Convention relating to the Status of Refugees and the Protocol thereto;

Expressing its deep concern at the arbitrary denial or deprivation of the nationality of persons or groups of persons by African states, especially as a result of discrimination on grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

Regretting the failure of African states to ensure that all children are registered at birth;

Convinced that it is in the general interest of the people of Africa for all African States to recognise, guarantee and facilitate the right to nationality of every person on the continent and to ensure that no one is exposed to statelessness;

Reaffirms that the right to nationality of every human person is a fundamental human right implied within the provisions of Article 5 of the African Charter on Human and Peoples' Rights and essential to the enjoyment of other fundamental rights and freedoms under the Charter;

Calls upon African States to refrain from taking discriminatory nationality measures and to repeal laws which deny or deprive persons of their nationality on grounds of race, ethnic group, colour, sex,

language, religion, political or any other opinion, national and social origin, fortune, birth or other status, especially if such measures and laws render a person stateless;

Calls upon African States to observe minimum procedural standards so that decisions concerning the recognition, acquisition, deprivation or change of nationality do not contain any elements of arbitrariness, and are subject to review by an impartial tribunal in accordance with their obligations under Article 7 of the African Charter;

Also calls upon African States to adopt and implement provision in their constitutional and other legislation with a view to preventing and reducing statelessness, consistent with fundamental principles of international law and Article 6 of the African Charter on the Rights and Welfare of the Child, article 6 (g)(h) in particular by:

- a. Recognising that all children have the right to the nationality of the State where they were born if they would otherwise be stateless;
- b. Prohibiting arbitrary denial or deprivation of nationality;
- c. Reaffirming the equal rights of men and women and persons of any race or ethnic group in respect of nationality; and

Calls upon African States to ratify all relevant international and African human rights treaties, including the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness;

Requests African States to take the necessary measures to strengthen civil registration services to ensure the prompt registration of the births of all children on their territory, without discrimination;

Requests African States to include information on the recognition, respect and implementation of the right to nationality in their periodic reports presented to the Commission under Article 62 of the African Charter and Article 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

Considering the necessity to carry out an in-depth research on issues relating to the right to nationality:

- ***Decides*** to assign the task to the Special Rapporteur on Refugees, Asylum seekers; Displaced and Migrants in Africa;
- ***Calls upon*** civil society and other stakeholders to give full support to the mandate of the Special Rapporteur.

Banjul, The Gambia, 23 April 2013

277: Resolution on the drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa

The African Commission on Human and Peoples' Rights (the Commission), meeting at its 55th Ordinary Session held from 28 April to 12 May 2014 in Luanda, Angola;

Recalling the provisions of Article 45(1) (b) of the African Charter on Human and Peoples' Rights which stipulates that the Commission shall "formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation";

Bearing in mind its Resolution ACHPR/Res.234 (LIII) 13 on the Right to Nationality adopted at its 53rd Ordinary Session held from 9 to 23 April 2013 in Banjul, The Gambia;

Considering the roadmap for the implementation of Resolution ACHPR/Res.234 (LIII) 13 adopted in May 2013 in Addis Ababa, Ethiopia, and the meeting of various stakeholders held in Midrand, South Africa, in April 2014;

Considering the adoption of the Study on the Right to Nationality in Africa by the Commission during its 55th Ordinary Session held from 28 April to 12 May 2014 in Luanda, Angola;

Stressing the need to take new decisive steps towards identifying, preventing and reducing statelessness and protecting the right to nationality;

Considering the need to prepare a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa:

- **Decides** to assign the task of drafting a Protocol to the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;
- **Calls upon** civil society organisations and other stakeholders to support the mechanism.

Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights held from 28 April to 12 May 2014 in Luanda, Angola

8.3. ECOWAS States Parties to the UN Conventions on Statelessness

State	1954 Convention relating to the Status of Stateless Persons (year of ratification/accession)	1961 Convention on the Reduction of Statelessness (year of ratification/accession)
Benin	2011	2011
Burkina Faso	2012	-
Cape Verde	-	-
Côte d'Ivoire	2013	2013
Gambia	2014	2014
Ghana	-	-
Guinea	1962	2014
Guinea Bissau	-	-
Liberia	1964	2004
Mali	-	-
Niger	2014	1985
Nigeria	2011	2011
Sierra Leone	-	-
Senegal	2005	2005
Togo	-	-

Source: UN Treaty Collection website, <https://treaties.un.org/>.

8.4. Nationality legislation currently in force in ECOWAS States

(Revisions noted in parentheses)

Benin	Loi No. 65-17 du 23/06/65 portant Code de la nationalité dahoméenne Loi No 2002-07 portant Code des personnes et de la famille
Burkina Faso	Zatu No. An VII 0013/FP/PRES du 16 novembre 1989, portant institution et application du Code des personnes et de la famille
Cape Verde	Constitution 1999 Decreto-Lei No 53/93 de 30 de Agosto de 1993
Côte d'Ivoire	Loi n° 61-415 du 14 Décembre 1961 portant Code de la nationalité ivoirienne (modifiée par la loi No.64-381 du 7 octobre 1964, la loi No.72-852 du 21 Décembre 1972, la Loi No.2004-662 du 17 décembre 2004, les décisions n°2005-03/ PR du 15 juillet 2005 et n°2005-09/ PR du 29 aout 2005, et la Loi No.2013-654 du 13 septembre 2013)
Gambia	Constitution 1996 as amended 2001 Gambia Nationality and Citizenship Act No. 1 of 1965
Ghana	Constitution of the Republic of Ghana 1992 (amended by Act 527 of 1996) Citizenship Act 591 of 2000 Dual Citizenship Regulation Act 91 of 2002
Guinea	Loi No. 004/APN/83 du 16 février 1983 portant Code civil de Guinée
Guinea-Bissau	Constitution 1984 (as amended 1991, 1993 and 1996) Lei da nacionalidade No. 2/92 de 6 de abril (modificado pela Lei No 6/2010 de 21 de junho)
Liberia	Constitution 1986 Aliens and Nationality Law 1973
Mali	Loi n°2011-087 du 30 décembre 2011 portant Code des personnes et de la famille
Niger	Constitution 1999 Ordonnance No.84-33 du 23 août 1984 portant Code de la nationalité (modifiée par l'Ordonnance No.99-17 du 4 juin 1999 et la Loi No.2014-60 du 5 novembre 2014)
Nigeria	Constitution 1999
Senegal	Loi No. 61-70 du 7 mars 1961 déterminant la nationalité sénégalaise (modifiée par la Loi No.61-10 du 7 mars 1961, la Loi No.67-17 du 28 février 1967, la Loi No.70-27 du 27 juin 1970, la Loi No.70-31 du 13 octobre 1970, la Loi No.79-01 du 6 janvier 1979, la Loi No.84-10 du 4 janvier 1984, la Loi No.89-42 du 26 décembre et la Loi No.2013-05 du 8 juillet 2013)
Sierra Leone	Constitution 1991 Sierra Leone Citizenship Act, 1973 No 4 of 1973 (as amended by Act No.13 of 1976 and Act No. 11 of 2006)
Togo	Constitution 1992 Ordonnance 78-34 du 7 septembre 1978 portant Code de la nationalité togolaise Loi No.2007/017 du 6 juillet 2007 portant Code de l'enfant

8.5. Bibliography

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