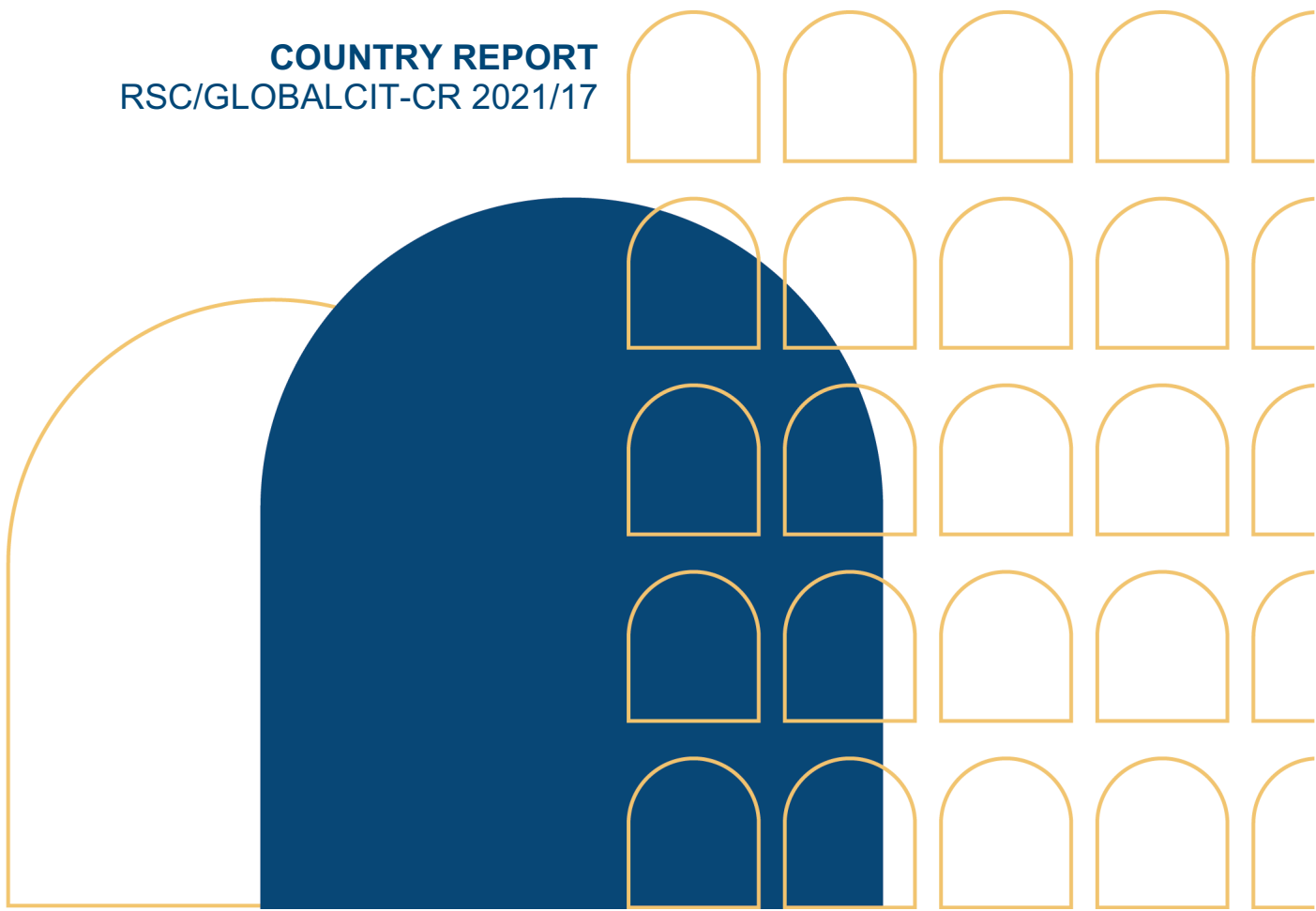


Report on Citizenship Law: Guinea-Bissau

Patrícia Jerónimo

COUNTRY REPORT
RSC/GLOBALCIT-CR 2021/17



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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with Edinburgh University Law School

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Report on Citizenship Law

Guinea-Bissau

Patrícia Jerónimo

1. Introduction

The Republic of Guinea-Bissau is a small West African state, bound by Senegal to the north, the Republic of Guinea (Guinea-Conakry) to the east and south, and the Atlantic Ocean to the west. It occupies a total area of 36,125 square kilometres, comprising a mainland, an archipelago (Bijagós Archipelago) and various coastal islands. According to estimates by the United Nations Population Division, the country's population in 2020 amounted to 1,968,000 inhabitants, 45% of whom reside in urban areas.¹ Guinea-Bissau is among the world's poorest countries² and is notorious for its chronic political instability, with recurring military coups, political murders and other disruptions to constitutional order punctuating the country's history since it achieved independence from Portuguese colonial rule in 1974 (Embaló 2012: 253-257, 265-273; Ture 2017: 134-136; Shaw 2015: 351-356).

Guinea-Bissau's woes are, to a large extent, explained as a consequence of emulating the European nation-state system with disregard for the country's socio-cultural and political fabric (Kohnert 2010: 4, 7; Kosta 2007: 248-249). Like many other African countries, Guinea-Bissau inherited a weak state infrastructure, which remained underdeveloped and inefficient after independence, while pre-colonial institutions and informal networks were allowed to remain and gain ground (Kohnert 2010: 12-16; Chabal 2002: 69-70; Trajano Filho 2010: 175-180; Shaw 2015: 342). The country's ethnic, religious and linguistic diversity has not been an obstacle to national unity (Kohl 2010: 88), but remains relevant – both in the countryside and the diaspora – and is increasingly exploited for political advantage by the elites (Bappah 2017: 11; Temudo 2009: 62). The last General Census of Population and Housing, carried out in 2009, identified more than thirty ethnic groups, each with its own dialect.³ Most of these groups are also present in neighbouring countries (Senegal, Gambia, Guinea-Conakry) and in other regions of the African continent. The largest ethnic groups in Guinea-Bissau are the Fula, the Balanta, the Mandinka, the Papel, and the Manjaco. Alongside the various ethnic groups, there is also a Creole minority, with mixed African, European, Lebanese, and Jewish origins (Bappah 2017: 11). In terms of religious affiliation,

¹ Data available at <https://www.worldometers.info/world-population/population-by-country/> [30.03.2021].

² Guinea-Bissau ranked 175th of 189 in the 2020 United Nations Human Development Index. Data available at <http://hdr.undp.org/en/content/latest-human-development-index-ranking> [30.03.2021].

³ See Guinea-Bissau's First Implementation Report of the African Charter on the Rights and Welfare of the Child (2008-2018), § 13, available at <https://www.acerwc.africa/wp-content/uploads/2020/03/ENGLISH-GUINEA-BISSAU-REPORT.pdf> [06.04.2021]. Portuguese, which is spoken by 14% of the population, is the official language used in government and legislation, while the language of communication is Guinea-Bissau Creole, spoken by 44% of the population (Garvey 2020: 3-4; Bastos 2013: 3).

45.1% of the population are Muslims, 30.9% are animist and 19.4% are Christians.⁴ Balanta and Muslim misgivings as to their underrepresentation in government and military posts (traditionally held by Creoles and Christians) have come to the forefront in recent years, but the actual weight of the ethno-religious factor in Guinea-Bissau's political dynamics is still much disputed (Rudebeck 2011: 14-15; Kohl 2010: 97-98).

It is often pointed out that community coexistence in Guinea-Bissau is essentially peaceful and that the country's conflicts – including the 1998-1999 civil war – have been military (not ethnic) in nature (Rudebeck 2011: 15; Chabal 2002: 21, 56). The feat of (relative) national cohesion is attributed to the lingering influence of the national-unity-in-ethnic-diversity model advocated by Amílcar Cabral – the nation's uncontested founding father – and to Bissau-Guineans' capacity to “distinguish between the nation and the state”, blaming the latter for its incompetence and corruption while staying committed to the former (Kohl 2010: 86, 98-104). National unity and the rejection of racism and tribalism were established as fundamental constitutional principles by the ‘Boé Constitution’ of 24 September 1973,⁵ and reaffirmed by the 1984 and 1993 Constitutions.⁶ There is no reference to the country's ethnic, religious and linguistic diversity in the 1993 Constitution – which bears a stark resemblance to the Portuguese Constitution of 1976 (Bastos 2013: 4) – and the underlying rules of belonging to the state are similarly universal in tenor, as indicated by the principle that all citizens are equal before the law without distinction based on race or religion, among other grounds (Article 24).⁷

The criteria for the attribution of Guinea-Bissau citizenship have never been established by the Constitution – an exception among African Lusophone countries⁸ – and do not seem to have been a topic of constitutional debates over the years, which suggests that the subject is not viewed as particularly relevant by the political elites in the country. Guinea-Bissau went for two years after independence without a nationality act and the main changes to the citizenship regime set by the 1992 Nationality Act were due not so much to domestic claims as to external pressure by the Bissau-Guinean diaspora and international donors. While citizenship's importance may be deduced from its treatment as a fundamental right in Article 44 of the 1993 Constitution (Manby 2016: 4, 45), it is worth noting that this constitutional provision was a legal transplant from Article 26(1) and (4) of the 1976 Portuguese Constitution, where it is similarly established that all persons have a recognised right to a

⁴ Hindus, Buddhists, and Jews represent less than one percent each, while 4.3% of Bissau-Guineans identify as unaffiliated. Information available from the Pew Research Center, at http://www.globalreligiousfutures.org/countries/guinea-bissau/#?affiliations_religion_id=0&affiliations_year=2010®ion_name=All%20Countries&restrictions_year=2016 [11.04.2021].

⁵ Even though, at that time, the national unity envisaged by the Constitution encompassed the Cape Verde Archipelago (Articles 1 and 3). The text of the 1973 Constitution of the Republic of Guinea-Bissau is available at <https://cedis.fd.unl.pt/wp-content/uploads/2016/02/Const-Guine-73.pdf> [15.04.2021].

⁶ Officially, the constitutional reform underwent in 1993 was a mere amendment to the 1984 Constitution, but the regime changes introduced were so significant that the 1993 Constitutional Act is commonly referred to as a separate Constitution (Bastos 2013: 3-4; Gouveia 2014: 487; Medeiros 2011: 19-20). National unity and the rejection of racism and tribalism are mentioned in Articles 1, 3, 4, 7, 35, 55, 67, 105 and 130 of the 1993 Constitution. The text of the 1993 Constitution, as amended in 1995 and 1996, is available at <https://reformatar.co.mz/documentos-diversos/constituicao-de-guine-bissau.pdf> [15.04.2021].

⁷ Article 13 of the 1973 Constitution similarly established that all citizens were equal before the law without distinction as to ethnic group, social origin and religious belief, among others.

⁸ Consider Article 9 of the Angolan Constitution, Article 5 of the Cape Verdean Constitution, Articles 23 to 34 of the Mozambican Constitution, and Article 3 of the Constitution of São Tomé and Príncipe.

citizenship and that deprivation of citizenship may only occur in the cases and under the terms prescribed by law, and may not be based on political motives.⁹

Compared to the rest of the continent, Guinea-Bissau's citizenship regime stands out mostly for the privileged status accorded to certain foreign residents – Cape Verdeans (1976-1984) and Lusophone citizens (since 2008) – and for explicitly prescribing that the naturalisation of refugees is to be facilitated. Like its Lusophone counterparts, Guinea-Bissau started with quite liberal (and gender equal) rules for the attribution of citizenship based on birth or residence (Manby 2018: 92-93; Manby 2019: 18), combined with strict rules for citizenship acquisition by naturalisation and a wide range of grounds for loss, including the voluntary acquisition of a foreign citizenship. Over time, the rules for citizenship attribution became much less liberal, but safeguards against statelessness were eventually (re)introduced and the grounds for loss were reduced. Also in line with trends found elsewhere on the continent, Guinea-Bissau's position as a country of emigration and immigration has led lawmakers to gradually accept dual citizenship and to ease the naturalisation requirements.

The current citizenship regime is characterised by a predominance of *ius sanguinis*, coupled with safeguards against statelessness for those born in the territory. Acquisition after birth is allowed on several grounds, although the possibility of opposition by the Public Prosecutor in all instances of acquisition suggests that the authorities enjoy a considerable degree of discretion, even where the acquisition is said to operate by effect of law as is the case with acquisition based on adoption by a Bissau-Guinean citizen. Citizenship can be lost by renunciation or involuntary deprivation, but can be reacquired in some instances, provided that the interested parties establish their residence in Guinea-Bissau.

The legal framework has remained remarkably stable over the years in spite of the political turmoil. It is not particularly dense, but it is somewhat scattered, at points incomplete, and not always consistent. Significantly, in 2011, under the guise of regulating the 1992 Nationality Act, the Government tried to amend it, in breach of the Constitution, which means that several of the provisions in the 2011 Nationality Regulation are invalid and inapplicable, as will be pointed out in detail further on in this report. The uncertainty as to which provisions are applicable can only add to the difficulties and confusion that are already bound to arise in the interpretation of the statutory provisions on access to citizenship, as these are largely the result of legal transplants from abroad¹⁰ and often unsuited to ascribe membership to people in borderland communities.¹¹ Regrettably, albeit understandably, there are no statistics and no record of court cases that could provide a better view into the way the law in the books is being applied in practice.

Finally, a remark on terminology. As is the case with many other legal systems, *citizenship* and *nationality* are taken as synonymous and used interchangeably in Guinea-Bissau. The 1993 Constitution makes use of both terms, referring to 'citizen' (*cidadão*), 'national citizen' (*cidadão nacional*), and 'citizenship' (*cidadania*), in the chapter on fundamental rights, and to 'nationality' (*nacionalidade*), when listing the subject matters over which the People's National Assembly has exclusive legislative competence. The term 'nationality' is more commonly used in ordinary legislation, but even here the term 'citizen' is sometimes used, as is the case with Article 5 of the Nationality Act. Following editorial guidelines, this report will use the term 'citizenship' when referring to the status and

⁹ The English version of the 1976 Portuguese Constitution, as revised most recently in 2005, is available at <https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf> [18.04.2021].

¹⁰ Often at odds with precolonial and/or religious understandings of the rules of belonging.

¹¹ Where the cross-border family ties and socio-cultural intermixing are such that it is difficult to know who is a Bissau-Guinean and who is a foreigner (Tandia 2010: 22-23).

‘nationality’ when referring to the domestic legislation that sets the rules for access to the status (i.e. Nationality Act and Nationality Regulation).

2. Historical background

2.1 Membership criteria at the time of independence

The state of Guinea-Bissau was solemnly proclaimed in Boé on 24 September 1973, during the first meeting of the People’s National Assembly, elected one year earlier in the liberated areas of the country. The armed struggle against the Portuguese was by then in its eleventh year and the African Party for the Independence of Guinea and Cape Verde – *Partido Africano da Independência da Guiné e Cabo Verde* (PAIGC) – had established itself as a *de facto* government over more than two thirds of the territory, as attested by the special mission of the United Nations (UN) which visited the liberated areas in April 1972, at the invitation of PAIGC’s Secretary-General Amílcar Cabral.¹² Following the Boé proclamation, a large number of states recognised Guinea-Bissau’s independence and expressed the wish to initiate diplomatic relations.¹³ On 2 November 1973, the UN General Assembly adopted a resolution welcoming the “accession to independence of the people of Guinea-Bissau”,¹⁴ and soon after the country was admitted as a member state by the Organisation of African Unity (OAU).¹⁵ Admission to the UN, however, had to wait until 17 September 1974,¹⁶ after Portugal had officially conceded Guinea-Bissau’s independence.¹⁷

The Agreement between the PAIGC and the Portuguese Government, signed in Algiers on 26 August 1974, made the cease-fire official and set the timeline for the *de jure* recognition of Guinea-Bissau’s independence (10 September 1974) and for the withdrawal of Portuguese armed forces from the territory (31 October 1974).¹⁸ It did not include any

¹² See Report of the Special Mission established by the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, A/AC.109/L.804, 3 July 1972, §§ 74 and 78, available at <https://digitallibrary.un.org/record/760369> [19.05.2021].

¹³ See editorials on Guinea-Bissau’s independence, published in the journal *Southern Africa*, vol. VI, no. 10, 1973, pp. 4-8 and 17-18, available at <https://www.aluka.org/stable/10.5555/AL.SFF.DOCUMENT.nusa197312> [19.05.2021].

¹⁴ See Resolution 3061 (XXVII), Illegal occupation by Portuguese military forces of certain sectors of the Republic of Guinea-Bissau and acts of aggression committed by them against the people of the Republic, 2 November 1973, available at <https://digitallibrary.un.org/record/190987> [19.05.2021].

¹⁵ The Republic of Guinea-Bissau was admitted to the OUA on 19 November 1973. Information available at https://au.int/en/member_states/countryprofiles2 [19.05.2021].

¹⁶ See Resolution 3205 (XXIX), Admission of the Republic of Guinea-Bissau to membership in the United Nations, 17 September 1974, available at <https://digitallibrary.un.org/record/189827> [19.05.2021].

¹⁷ Guinea-Bissau was the first of the ‘overseas provinces’ to be recognized as independent by the Portuguese authorities instated after the military uprising of 25 April 1974, which put an end to the *Estado Novo* dictatorship. ‘Constitutional’ Law no. 7/74 of 27 July 1974 established that the solution for the overseas was political, not military, which meant that Portugal recognised peoples’ right to self-determination in all its consequences, including the acceptance of the independence of its overseas territories and the repeal of the section in Article 1 of the 1933 Constitution where those territories were listed as being part of Portugal. Law no. 7/74 is available at <http://www1.ci.uc.pt/cd25a/wikka.php?wakka=descon03> [23.05.2021].

¹⁸ Agreement between the Portuguese Government and the African Party for the Independence of Guinea and Cape Verde (*Acordo entre o Governo Português e o Partido Africano da Independência da Guiné e Cabo Verde*), published in the official journal on 30 August 1974; available at <https://dre.pt/application/file/a/185641> [23.05.2021]. A formal Declaration on the Independence of the Republic of Guinea-Bissau (*Declaração sobre a*

provisions on the repercussions of independence for the citizenship status of Guinea-Bissau's inhabitants,¹⁹ even though it mentioned the goal of maintaining “harmonious relations between the citizens [*cidadãos*] of the two Republics” (Article 4)²⁰ and made several references to the “citizens of the Republic of Guinea-Bissau” *a propos* the payment of salaries or pensions and the return to civil life of those who had worked for the Portuguese armed forces in any capacity (§§ 24-26 of the Annex).

At the time of independence, Guinea-Bissau's population was “almost entirely African with about 3,000 [white] Portuguese and Lebanese settlers” (Obichere 1975: 204). Those who had been born in Guinea-Bissau, with the exception of children of foreign diplomats, were entitled to Portuguese citizenship, as per Article 1 of the 1959 Portuguese Nationality Act,²¹ but this formal status was scarcely understood, let alone exercised, by the majority of the population.²² Most Africans would, in any case, lose their Portuguese citizenship not long after independence, due to the adoption by Portuguese lawmakers of Decree-Law no. 308-A/75 of 24 July 1975,²³ which assumed that the persons born or domiciled in an overseas territory turned independent state would acquire the citizenship of the new state and so deprived them of Portuguese citizenship *ex lege* (save for a few exceptions), with no regard to whether or not they wished to keep Portuguese citizenship and/or would become stateless as a result (Ramos 1976: 140-141).

The Constitution of the Republic of Guinea-Bissau, approved by the People's National Assembly on 24 September 1973, did not provide any criteria for the determination of who was to be considered a Bissau-Guinean citizen, although a *ius soli* preference may be inferred from the wording of Article 20, which provides that “persons *originating* from the Cape Verde Archipelago enjoy the same rights and are subject to the same obligations as the citizens of the state of Guinea-Bissau, and are to be considered as such for all legal purposes”. It would seem logical to interpret ‘originating’ as synonymous with ‘born in’ and to infer from this provision that persons originating from (i.e. born in) Guinea-Bissau were Bissau-Guinean citizens. This is not a farfetched assumption, given the prevalence of *ius soli* in the 1959 Portuguese Nationality Act and later in Guinea-Bissau's first Nationality Act of 1976. It can also be pointed out, with Green (2016a: 25), that birthplace has long been an important

independência da República da Guiné-Bissau) was published in the official journal on 11 September 1974; available at <https://dre.pt/web/guest/pesquisa/-/search/426753/details/normal?q=declara%C3%A7%C3%A3o+independ%C3%Aancia> [23.05.2021].

¹⁹ Like France and Belgium, Portugal did not sign bilateral treaties on citizenship with the leaders of its former colonial possessions, leaving open a number of problems associated with conflicts of citizenship laws (ACHPR 2015: 21), although it did include a set of citizenship provisions in the Alvor Agreements signed in January 1975 with the Angolan liberation movements (Jerónimo 2019a: 5-6).

²⁰ In pursuance of this goal, Guinea-Bissau and Portugal signed a General Cooperation and Friendship Agreement on 11 June 1975. Both states committed *inter alia* to treat each other's citizens as their own nationals with regard to self-employment, employment, and taxation. The text of the Agreement, as published in the Portuguese official journal, is available at <https://dre.pt/home/-/dre/506852/details/maximized> [04.06.2021].

²¹ Law no. 2098 of 29 July 1959; text available at <https://dre.pt/application/conteudo/431607> [23.05.2021].

²² The colonial state's reach – nowhere far and wide – was particularly limited in Guinea, “the least developed of Portuguese colonies” (Chabal 2020: 48). As noted by Bappah (2017: 13), for the vast majority of Bissau-Guineans, the only (sporadic) contact with colonial authority was with the tax collector, the policeman and the soldier. At the time of the first population census, in 1950, 99,7% of the population were classified as ‘indigenous’ (Silva 2010: 33-34), as opposed to citizens, a category which, since the 1946 ‘Citizens’ Decree’ (*Diploma dos Cidadãos*), in theory comprised both the white settlers and the ‘civilised natives’ who had previously been relegated to the in-between category of assimilated natives (Silva 2010: 41-42). When, in 1961, the Indigenous Statute (*Estatuto do Indigenato*) was repealed and full citizenship became accessible to all persons born in Guinea-Bissau, irrespective of level of ‘civilisation’, the legacy of the indigenato policy proved hard to shake off and black Bissau-Guineans remained disenfranchised (Mendy 2003: 46).

²³ Text available at <https://dre.pt/application/conteudo/530841> [23.05.2021].

signifier of belonging among African peoples, but the picture is somewhat muddled by the fact that blood ties seemed to also play an important part, since Amílcar Cabral, who was born in Guinea-Bissau to Cape-Verdean parents, was considered to be Cape-Verdean or of Cape-Verdean origin (Kohl 2010: 90; Bastos 2013: 2; Abadia 2018: 185-186).²⁴ Also not entirely clear was the status of white settlers and their offspring born and/or residing in Guinea-Bissau at the time of independence. Contemporary reports indicate that there were discussions about the “question of dual citizenship for the hundreds of [white] Portuguese who wish[ed] to continue to live in Guinea-Bissau” (Obichere 1975: 215), but the residence requirements announced by then Minister of Justice Fidelis Almada suggest that access to Bissau-Guinean citizenship was not to be granted immediately.²⁵ There is no record of these requirements ever being applied in practice and they did not make it into the 1976 Nationality Act.

Further clues as to the rules governing citizenship ‘recognition’ in the liberated areas under PAIGC control and, after independence, in the period before the adoption of the 1976 Nationality Act can be taken from the eligibility criteria used for the 1972 general election and from the writings of Amílcar Cabral. The picture, again, is not straightforward.

In the election for the People’s National Assembly, conducted in the liberated areas between September and October 1972, the electorate consisted of “all Guinean citizens [*citoyens*, in the French original] above the age of seventeen, regardless of origin, sex, special condition or activity in the framework of our life and our struggle.”²⁶ Those eligible to stand as candidates were persons born in Guinea-Bissau or who had acquired Bissau-Guinean citizenship (*nationalité*, in the French original), regardless of ethnic origin, sex, social condition or religious belief, provided that they satisfied a number of conditions, related, in particular, to their commitment to the liberation struggle.²⁷ The provision about the electorate (Article 9) referred to ‘origin,’ whereas the provision about the candidates (Article 2) referred to ‘ethnic origin.’ Assuming that Amílcar Cabral was deliberate in the use of different wordings for the two provisions, ‘origin’ in Article 9 could perhaps be interpreted as synonymous with place of birth, which would mean that Bissau-Guinean citizenship (and the corresponding right to vote in the general election) was recognised for Guinea-Bissau’s inhabitants irrespective of their place of birth (be it Cape Verde, Portugal or any other country), so long as they had not worked for the colonialists to the detriment of the liberation struggle. This would be consistent with the fact that, according to Article 2, the right to stand

²⁴ Amílcar Cabral himself referred to Guinea-Bissau as his “native land” (see Cabral 1979). It is worth noting that Cabral died stateless, since he refused the citizenship status granted him by Portugal and was assassinated before the independence of Guinea-Bissau (Abadia 2018: 248).

²⁵ According to Obichere (1975: 215), Minister of Justice Fidelis Almada “announced three legal categories which would make it possible for these Portuguese to be allowed dual citizenship. To qualify, one must have been a citizen and resident of Guinea-Bissau for ten years or be a naturalized citizen for twenty years or be a child of those who qualify under the two categories above.”

²⁶ With exclusion of those who were serving or had served the colonialists against the interests of the people since the start of the liberation struggle and of those known to be of bad moral and civic behaviour. Article 9 of the ‘Bases for the creation of the People’s National Assembly in Guiné’, in Cabral (1979). Contemporary reports indicate that the voting age ended up being lowered to fifteen (Obichere 1975: 206). Silva (1997: 120-122) points out that the voter roll did not cover the areas still under Portuguese control (Bijagós, Bissau, Bolama and Bafatá) and was overall far from accurate.

²⁷ The conditions, listed on Article 2, were the following: (a) to be above the age of eighteen; (b) to be a producer or have a well-defined profession; (c) to not be a collaborator with the Portuguese colonialists, nor to have collaborated with them since the launching of the liberation struggle; (d) to not have been convicted of common law crime or crime against the interests of the liberation struggle; (e) to have good moral and civic behavior; and (f) to enjoy prestige, respect, esteem and trust on the part of the mass of the working people. Article 2 added furthermore three conditions that were to have priority for the candidature: (i) exemplary attachment to the Bissau-Guinean people, to the Party and to the national liberation struggle; (ii) to have carried out important tasks in the framework of the liberation struggle; and (iii) exemplary attachment to productive labour.

as candidate was not restricted to those who had been born in Guinea-Bissau, but was also enjoyed by those who had ‘acquired Bissau-Guinean citizenship,’ presumably through their involvement in the liberation struggle, as there is no indication as to how (under what rules) this acquisition was supposed to have been granted.

In his speeches and lectures, Amílcar Cabral talked often about the ‘sons and daughters of the land,’ suggesting a *ius soli* take on citizenship, but he made a point of noting that birth in Guinea-Bissau alone did not make one ‘a member of the people,’ as this depended on one’s commitment to PAIGC’s principles and the liberation struggle.²⁸ Cabral rejected the idea that Bissau-Guineans were only those born in Guinea-Bissau to parents also born in Guinea-Bissau, something which he viewed as a ploy by the Portuguese colonialists to sow division between the peoples of Cape Verde and Guinea-Bissau.²⁹ He was adamant in his rejection of ‘tribalism’ and often stressed the need for unity among the different ethnic groups of Guinea-Bissau and with descendants of Cape Verdeans in Guinea-Bissau.³⁰ Membership of the Party was irrespective of ‘tribe and colour,’ which meant that white Portuguese committed to the liberation struggle were allowed in. It is not entirely clear, however, whether white Portuguese settlers engaged with the PAIGC were viewed as part of the people of Guinea-Bissau (and allowed to vote in the 1972 election, for instance) or as foreign allies.³¹

²⁸ “The definition of *people* depends on the historical moment which the land is experiencing. Population means everyone, but the people have to be seen in the light of their own history. [In] Guiné and Cape Verde today the people of Guiné or the people of Cape Verde mean for us those who want to chase the Portuguese colonialists out of our land. They are the people, the rest are not of our land even if they were born there. [The] people of our land are all those born in the land, in Guiné or Cape Verde, who want what corresponds to the fundamental necessity of the history of our land. It is the following: to put an end to foreign domination in our land.” Lecture entitled ‘Not everyone is of the Party,’ delivered during a seminar for PAIGC cadres held from 19 to 24 November 1969, in Cabral (1979). As pointed out by Alumona (2006: 20, 22, 33-38), Cabral’s intrinsic requirements for citizenship – “founded on introspective moral sensibility akin to psychology” – meant that there was no objective standard to determine who was to be considered a ‘genuine citizen.’

²⁹ “But from time to time they [the Portuguese] put an individual up to say: ‘I am one hundred per cent Guinean, not the child of a foreigner like some who were born here.’ To see if they can maintain a certain idea of division.” Lecture entitled ‘Unity and struggle,’ delivered during the same 1969 seminar, in Cabral (1979). There was no shortage of Bissau-Guineans willing to go along. For instance, in 1958, a Movement for the Liberation of Guinea (MLG), which advocated that Guinea should become a federate state of the Portuguese Republic, was formed by a small group of civil servants who claimed to be ‘Guineans of origin’ (*guineenses de origem*), as opposed to Guineans with ties to Cape Verde (Silva 2006: 11). After independence, the calls for privileging the ‘genuine Guineans’ (*fidjus di tchon* or ‘sons of the land’) as opposed to mixed-race Guineans would again be heard (Sá 2012: 25).

³⁰ “In our Party no one is divided, but on the contrary we are more united every day. Here there is neither Pepel, nor Fula, nor Mandinga, nor sons of the Cape Verdians, nothing like that.” *Idem, ibidem*. As often noted in the literature, Cabral was opposed to tribalism, but not to ethnicity or ethnic diversity (Kohl 2010: 90; Abadia 2018: 182).

³¹ In the lectures delivered to PAIGC cadres in November 1969, Cabral made statements to the effect that all members of the population (including whites) who were against Portuguese colonialism were welcome to the Party and part of the people. “For against the Portuguese colonialists, we accept even persons from this group of whites in the struggle on our side, if they so wish. Because among the whites there may be some who are in favour of colonialism and others who are anticolonialists. If the latter join us, that is fine, it is an additional force against the colonialists” [Lecture ‘Unity and struggle’]; “All those of the population of our land who at this moment want the Portuguese colonialists to leave our land, so that we should gain our freedom and independence, are our people” [Lecture ‘Not everyone is of the Party’]. However, in the same instance, Cabral also referred to whites as friends. “Only some overly ambitious fellow would be able to say: we cannot accept the help of so and so, in Bissau, who is white, or of so and so, in Catio, who is white. How? This is no good. If we want to serve our land, our Party, our people, we must accept everyone’s help. But as a friend, as a companion in struggle” [Lecture ‘To start out from the reality of our land – to be realists’]. Furthermore, in a message addressed to the Portuguese settlers in Guinea and Cape Verde, in 1960, Cabral referred to them as foreigners. “We, who are not hypocrites like the Portuguese colonialists, already guarantee that, after our liberation, the just interests of all foreigners who live and work in our lands will be respected” (Cabral 1979).

Most white settlers and many Africans who had collaborated with the colonial administration and military departed from Guinea-Bissau soon after the fall of the Salazar regime, between the summers of 1974 and 1975 (Maggioli & Arbore 2018: 57),³² for fear of retaliation by the PAIGC. There were, nevertheless, African civil servants, who had been in subordinate positions in the public administration under colonial rule, who after independence were allowed to take over the positions previously held by the Portuguese (Kohl 2010: 91) and rapidly rose to prominence in the state's hierarchy (Jauará 2005: 125). And there were several Africans who had fought on the Portuguese side of the colonial war who “presented themselves at PAIGC headquarters asking to be reassigned or employed in one capacity or another” (Obichere 1975: 215). The PAIGC appeared to be satisfied with the explanation that “the predominant motive that led them to fight on the Portuguese side was economic rather than ideological,” but scepticism remained as to whether these individuals should be reintegrated into the military forces of Guinea-Bissau, as there was the danger that they would engage in acts of sabotage (Obichere 1975: 215). Interestingly, the question does not seem to have been phrased in terms of whether or not these individuals were entitled to Bissau-Guinean citizenship. In fact, Decree no. 27/74 of 18 January 1975 created a special section within the Political Commissariat of the People's Revolutionary Armed Forces (FARP) to review the cases of “national citizens [*cidadãos nacionais*] who had rendered military service to the Portuguese Armed Forces”.

At independence, the PAIGC also had to address the challenge of ensuring the return and resettlement of thousands of Bissau-Guinean refugees who had been forced to migrate to neighbouring countries due to the devastation brought by the war. Estimates of the number of refugees vary between 80,000 and 150,000 (Adepoju 1982: 34). Most refugees were able to voluntarily repatriate themselves to Guinea-Bissau once the war was over (Adepoju 1982: 34; Costa & Sousa 2018: 100), and there are no reports of obstacles being raised by the PAIGC as to the recognition of their status as Bissau-Guinean citizens.

2.2 Membership criteria in the years of political union with Cape Verde

Unity with Cape Verde was a key tenet of the PAIGC agenda from the start³³ and the party formed the government in both Guinea-Bissau and Cape Verde when the two countries became independent, establishing a “bicephalous single-party state” (Chabal 2002: 35) based on close political ties. Amílcar Cabral had explained this goal of unity between Guinea-Bissau and Cape Verde as stemming from the “very nature” of the two countries, since they were one “by nature, by history, by geography, by economic tendency, by everything, even blood.”³⁴

³² Most went to Portugal, where they were received as returnees (*retornados*), even though for many Africans this was the first time they set foot in the country (Maggioli & Arbore 2018: 56-57). In Portugal, African returnees originating from Guinea-Bissau are referred to as ‘Luso-Guineans’ (Pires 2013: 155-156; Machado 1998: 11). As noted by Maggioli & Arbore (2018: 57), Luso-Guinean networks would be instrumental in assisting Bissau-Guineans who migrated to Portugal after the 1980 military coup and in later waves of migration pushed by poverty and political instability in Guinea-Bissau.

³³ It was right there, in the name: African Party for the Independence of Guinea and Cape Verde.

³⁴ Lecture ‘Unity and struggle’ (Cabral 1979). There were also strategic considerations, since unless both countries were independent, there was always the risk of Portuguese colonialists using one as a military basis to attack the other. “Only someone who understands nothing about strategy can think that this part of Africa can be independent with Cape Verde occupied by colonialists. It is impossible. The converse is true. Cape Verde cannot have real independence without the independence of Guiné and without the real independence of Africa” (*idem, ibidem*). The idea was reprised in the lecture ‘To start out from the reality of our land – to be realists’: “It suffices to mention the following from the strategic point of view: there can be no peace in Guiné if the Portuguese have air bases in Cape Verde; it is impossible. If we were to liberate Guiné totally, for example, the

Geographical circumstances, however, determined that the struggle was waged differently in the mainland and in the islands, and the PAIGC was able to declare the independence of Guinea-Bissau long before Cape Verde. At Boé, in 1973, the newly proclaimed state of Guinea-Bissau was said to have as its primary objectives the complete liberation of the “people of Guinea and Cape Verde” and the forging of a union between the two territories for the purpose of building a strong African homeland.³⁵ The Cape Verdean islands were referred to as forming an integral and inalienable part of the national territory of the people of Guinea and Cape Verde.³⁶ It was also foreseen that, in due course, a Cape Verdean People’s National Assembly would be established, “with a view to the creation of the supreme body having full sovereignty over the people and its unified state: the Supreme Assembly of the People of Guinea and Cape Verde”.

The two territories were nevertheless kept separate during the 1974 negotiations between the PAIGC and the Portuguese government. The Algiers Agreement, while acknowledging the Cape Verdean people’s right to self-determination (Article 6), placed Cape Verde’s access to independence in the general framework of the decolonisation of the African territories under Portuguese rule (Article 7). Similarly to Angola and Mozambique (Jerónimo 2019a: 5; Jerónimo 2019b: 6), Cape Verde was therefore appointed a transitional government to prepare the elections for the Cape Verdean People’s National Assembly, and it was here that Cape Verde’s independence was finally proclaimed on 5 July 1975.³⁷

Guinea-Bissau’s 1973 Constitution made abundant references to unity with Cape Verde³⁸ and established a principle of equal treatment between Bissau-Guinean citizens and “persons originating from the Cape Verde Archipelago,” who were to enjoy the same rights and be subject to the same obligations as the citizens of the state of Guinea-Bissau and were to be considered as Bissau-Guinean citizens for all legal purposes (Article 20). Although the Constitution at one point refers to “the people of Guinea and Cape Verde” (Article 22) as if it were one single people – an idea also found in the proclamation of the state of Guinea-Bissau and in Amílcar Cabral’s writings³⁹ – the wording of Article 20 suggests that there were in fact two peoples/nationalities brought together under the umbrella of one binational state.⁴⁰ This is confirmed by the fact that Guinea-Bissau and Cape Verde went on to adopt separate

Portuguese could bombard us with air bases installed in Cape Verde” (Cabral 1979). Unity between Guinea-Bissau and Cape Verde was furthermore in line with Cabral’s broader ideological goal of fostering pan-Africanism on the basis of the solidarity ties forged among the peoples of Africa in the struggle against colonialism (Abadia 2018: 121-124, 181-183).

³⁵ The terms of the union were to be determined, after the liberation of both territories, in accordance with the will of the people.

³⁶ However, the same proclamation identified the borders of the state of Guinea-Bissau as those corresponding to the territory formerly known as the colony of Portuguese Guinea.

³⁷ Information available at <https://www.governo.cv/o-arquipelago/historia/> [09.06.2021].

³⁸ Like the ‘Proclamation of the state of Guinea-Bissau,’ adopted on the same day, the Constitution established that unity between Guinea-Bissau and the Cape Verdean Archipelago was one of Guinea-Bissau’s objectives (Article 1), and that unification would be in one state, according to the will of the people (Article 3). The Constitution also established that those who acted against the unity of the people of Guinea and Cape Verde would be deprived of the exercise of the political rights and fundamental freedoms accorded to citizens (Article 22); and included a reference to the unity of Guinea and Cape Verde in the oath to be sworn by the members of the People’s National Assembly (Article 34) and by the state commissioners and sub-commissioners (Article 48).

³⁹ Cabral talked interchangeably about the *peoples* and the *people* of Guinea and Cape Verde. There are, in any case, instances in which he very firmly stated that Bissau-Guineans and Cape Verdeans were a single folk. See e.g. lecture ‘Unity and struggle’ (Cabral 1979). See also Oliveira (2005: 186).

⁴⁰ Two other constitutional provisions point in the same direction: Article 24 referred to the representative bodies of the people of the state of Guinea-Bissau, and Article 54 established that justice was to be administered on behalf of the people of Guinea-Bissau.

nationality acts, in 1976,⁴¹ with considerable formal and substantive differences, including e.g. different criteria for the attribution of citizenship of origin, for naturalisation and loss, and for the reward of participation in the liberation struggle. Even the twinned provisions on access to Bissau-Guinean citizenship by Cape-Verdeans and to Cape-Verdean citizenship by Bissau-Guineans were phrased in slightly different terms, as Bissau-Guineans in Cape Verde were granted access to ‘acquired citizenship of origin’ (*aquisição originária*) together with two other categories of ‘foreigners’ [Article 4 (1) (a) of Decree-Law no. 71/76 of 24 July 1976], whereas Cape-Verdeans in Guinea-Bissau alone were granted access to an ‘acquired citizenship’ with all the legal effects of citizenship of origin (Articles 5 and 11 of Law no. 1/76 of 4 May 1976).

Guinea-Bissau’s 1976 Nationality Act – which entered into force on the same day as its publication in the official journal (Article 17) – started by setting a transitional regime for the benefit of those born in Guinea-Bissau prior to 4 May 1976 (and for their offspring, irrespective of place of birth), as well as for those involved in the liberation struggle. All were attributed Bissau-Guinean citizenship of origin, with the option (for those born abroad or to parents born abroad) of declaring their wish not to be Bissau-Guinean citizens within a given deadline.⁴²

For births which occurred on or after 4 May 1976, the main criterion for attribution of citizenship at birth was *ius soli* (with a diplomatic exception), since the attribution operated *ope legis* without requiring any action on the part of those interested in obtaining Bissau-Guinean citizenship. Birth in Guinea-Bissau was grounds for attribution of Bissau-Guinean citizenship of origin provided that the child was either: (a) born to a father or a mother of Bissau-Guinean citizenship; (b) born to stateless parents or to parents of unknown citizenship; or (c) born to foreign parents, not in the service of their respective state, and did not declare⁴³ his or her wish not to be Bissau-Guinean [Article 2 (1)]. New-born babies found in national territory were presumed to have been born in Guinea-Bissau, absent proof to the contrary [Article 2 (2)].

⁴¹ For Guinea-Bissau, Law no. 1/76 of 4 May 1976, available at <http://citizenshiprightsafrika.org/wp-content/uploads/1976/01/Guinea-Bissau-Lei-1.76-Lei-de-Bases-da-Nacionalidade-1.pdf> [10.06.2021]; for Cape Verde, Decree-Law no. 71/76 of 24 July 1976, available at <http://citizenshiprightsafrika.org/wp-content/uploads/2016/11/Cape-Verde-Lei-da-nacionalidade-1976.pdf> [10.06.2021].

⁴² Article 1 (1) read that a Bissau-Guinean citizen was (a) every person born in the current territory of the Republic of Guinea-Bissau before the entry into force of Law no. 1/76; (b) every person who, having been born abroad before the entry into force of Law no. 1/76, was born to a father or a mother who was entitled to Bissau-Guinean citizenship under this Article, except if he or she declared, until 31 December 1976, his or her wish not to be a Bissau-Guinean citizen; (c) every person who, while not meeting the requirements of the previous paragraphs, had given him/herself as a national to the liberation struggle earning the right to the status of fighter for the freedom of the homeland. Paragraph 2 added that individuals born in Guinea-Bissau to parents born abroad, if they did not wish to benefit from Bissau-Guinean citizenship, had to declare their renunciation until 31 December 1976. This deadline, as well as that set by Article 1 (1) (b), could be altered by government decision, if so warranted by the special circumstances of the case [Article 1 (3)]. The declarations mentioned in Article 1 (1) (b) and (2) could be made by the interested party, if he or she was of age (i.e. 18 years old) or emancipated, or by his or her legal representative, if he or she was incapacitated. Persons falling under Article 1 (1) (b) and (2), who did not acquire Bissau-Guinean citizenship due to a decision of their legal representatives, were recognized as Bissau-Guinean citizens if they declared their wish to be so, within one year after the end of their incapacity (Article 4).

⁴³ This declaration could be made by the interested party, if he or she was of age or emancipated, or by his or her legal representative, if he or she was incapacitated. If the legal representative decided to declare the person’s wish not to be Bissau-Guinean, the interested party was still entitled to be recognised as a Bissau-Guinean, provided that he or she declared his/her wish to be so, within one year after the end of his/her incapacity (Article 4).

In spite of *ius soli*'s prevalence, *ius sanguinis* was also given a role. Birth abroad to a Bissau-Guinean father or mother was grounds for attribution of Bissau-Guinean citizenship of origin provided that one of the following conditions was met: (a) the Bissau-Guinean parent was abroad in the service of the state of Guinea-Bissau; (b) the interested party declared his or her wish to be Bissau-Guinean; (c) the birth was registered in Guinea-Bissau's Civil Registry (*Registo Civil*) by means of a declaration; or (d) the interested party established voluntary domicile in Guinea-Bissau and made a declaration to that effect before the competent authorities (Article 3).⁴⁴

The chapter dedicated to citizenship acquired after birth (*aquisição da nacionalidade*), was divided into three sections – acquisition by Cape-Verdean citizens, acquisition based on marriage, and acquisition by naturalisation. Cape-Verdean citizens of origin who had their habitual residence in Guinea-Bissau could, at any time, acquire Bissau-Guinean citizenship by simple declaration made before the competent authorities, by him/herself, if capable, or otherwise by his/her legal representative (Article 5). The determination of who was a Cape-Verdean citizen of origin was dependent on the criteria set by the Cape-Verdean legislation, which, as noted earlier, differed considerably from the criteria adopted by the Bissau-Guinean lawmakers.⁴⁵ Cape-Verdean citizens who acquired Bissau-Guinean citizenship under Article 5 were not required to renounce their Cape-Verdean citizenship and, as per Article 11, were entitled to be treated in Guinea-Bissau as Bissau-Guinean citizens of origin. At this time, however, the law in Guinea-Bissau did not yet establish different entitlements for Bissau-Guinean citizens of origin and Bissau-Guinean citizens by acquisition. The first such differentiation would be introduced later that year by Decision no. 11/76 of 1 December 1976, which adopted the Electoral Law and reserved the right to be elected for citizens “enjoying citizenship of origin” (Article 3).

⁴⁴ The declarations mentioned in Article 3 (2) and (3) could be made by the interested party, if he or she was of age or emancipated, or by his or her legal representative, if he or she was incapacitated. Persons falling under Article 3 (2) and (3), who did not acquire Bissau-Guinean citizenship due to a decision of their legal representatives, were recognized as Bissau-Guinean citizens if they declared their wish to be so, within one year after the end of their incapacity (Article 4).

⁴⁵ The Cape-Verdean Nationality Act distinguished between attribution and acquisition of citizenship of origin. Attribution operated *ope legis* in cases overall similar to those foreseen for the attribution of Bissau-Guinean citizenship under Articles 2 and 3 of Guinea-Bissau's Nationality Act, with the following differences: (a) for births in Cape Verde, the father or mother had to have been born in Cape Verde, the stateless parents and parents of unknown citizenship had to be domiciled in Cape Verde, the attribution was also grounded on domicile in Cape Verde at the time of independence or established within one year of the publication of Decree-Law no. 71/76, the deadline for the declaration of the wish not to be Cape-Verdean was of one year following the publication of Decree-Law no. 71/76 and the declaration was only accepted if the interested party proved to have another citizenship (Article 1 of Decree-Law no. 71/76); (b) for births abroad to a Cape-Verdean father or mother, the declaration required was that of the wish not to be Cape-Verdean and could be made within one year of the end of the incapacity or of the birth, depending on whether the declaration was made by the interested party or by his or her legal representatives, or within one year of the publication of Decree-Law no. 71/76 if not covered by the previous paragraphs; furthermore, there was no possibility of attribution on the basis of birth registration at the Civil Registry nor on the basis of domicile in Cape Verde (Article 3 of Decree-Law no. 71/76). Acquisition of Cape-Verdean citizenship of origin was open to Bissau-Guinean citizens of origin, in terms similar to those set by Guinea-Bissau's Nationality Act for Cape-Verdean citizens of origin [Article 4 (1) (a)], but also to persons who, having been born in Cape-Verde and resident there at the time of independence, did not acquire Cape-Verdean citizenship due to a declaration made by their legal representatives, if they declared their wish to be Cape-Verdeans within one year after the end of their incapacity [Article 4 (1) (b)], and to persons born abroad but domiciled in Cape Verde at the time of independence, provided that they had at least 20 years of residence in Cape Verde and declared their wish to be Cape-Verdean within one year of the publication of Decree-Law no. 71/76. This residence requirement – reminiscent of the criteria announced by Guinea-Bissau's Minister of Justice Fidelis Almada at the time of Guinea-Bissau's independence (Obichere 1975: 215) – was lowered to 15 years, when the person was married to a Cape-Verdean citizen of origin, and to 10 years, when the person had children born in Cape Verde [Article 4 (2) and (3)].

The foreign spouse of a Bissau-Guinean man or woman could acquire Bissau-Guinean citizenship, if she or he expressly declared her/his wish to do so, after three years of marriage and after one year of residence in national territory, provided that she or he renounced her/his previous citizenship [Article 6 (1)]. The nullity or annulment of the marriage did not hinder the citizenship acquired under Article 6 (1), provided that the interested party had married in good faith and for as long as she or he remained domiciled in Guinea-Bissau [Article 6 (2)]. The Nationality Act did not widen the concept of marriage to also cover *de facto* unions, but a separate piece of legislation published in the official journal on the same day – Law no. 3/76 of 4 May 1976 – established that ‘non formalised marriages’ were to have all the legal effects of formalised marriages, provided that they were granted judicial recognition, something that was possible after three years of *de facto* union and which had retroactive effects to the start of the union [Articles 1 (2), 3 and 4].⁴⁶

Naturalisation could be granted by the government, after hearing the State Commissioner for Justice (*Comissário de Estado de Justiça*), to foreigners who met the following cumulative requirements: (a) were of age, both according to Guinea-Bissau’s law and the law of their state of origin; (b) had good moral and civic behaviour and offered political assurances of integration in Bissau-Guinean society; and (c) had resided, habitually and regularly, for at least ten years in Guinea-Bissau [Article 7 (1)]. The residence requirement could be waived by the government, if considered fair and timely, to persons who (a) claiming to be of Bissau-Guinean descent, expressed the will to integrate into the national community, provided that they expressly renounced their previous citizenship and established their domicile in Guinea-Bissau; or (b) had rendered relevant services to the people of Guinea-Bissau and Cape Verde, during or after the liberation struggle [Article 7 (3)]. Bissau-Guinean citizenship acquired by naturalisation could be extended to the interested party’s minor unmarried children if he or she so requested “in the act of naturalisation” (*no próprio acto da naturalização*) [Article 7 (2)]. It is worth noting that renunciation of a previous citizenship was only required for persons applying for Bissau-Guinean citizenship under Article 7 (3) (a) – i.e. reduced residence for a person of Bissau-Guinean descent – and not for the other applicants for naturalisation, which may or may not have been an oversight on the part of the Bissau-Guinean legislator.

Bissau-Guinean citizenship could be lost or withdrawn on a large number of grounds. The voluntary acquisition of a foreign citizenship was grounds for deprivation under Article 8 (1) (a) and (c), the latter subparagraph specifying the case of Bissau-Guineans who married foreigners and who adopted their spouses’ citizenship, if allowed to so do by their respective citizenship laws. The government was competent to decide, on a case-by-case basis, whether or not to deprive an individual of Bissau-Guinean citizenship, taking into consideration if the acquisition of a foreign citizenship had been determined by naturalisation directly or indirectly imposed by the foreign state on its residents [Article 8 (2) (a)], which allowed for some protection of Bissau-Guinean emigrants and their dual citizenship, albeit subject to wide discretion on the part of the government. Those who lost Bissau-Guinean citizenship following the acquisition of a foreign citizenship could reacquire it if they established their domicile in Guinea-Bissau and declared their wish to do so [Article 10 (1)]; for those whose foreign citizenship had been acquired as a result of marriage to a foreigner, reacquisition of Bissau-Guinean citizenship was only possible if the marriage was dissolved, annulled or declared null, and provided that the former citizen established his or her domicile in Guinea-Bissau and declared his/her wish to reacquire Bissau-Guinean citizenship [Article 10 (3)].

⁴⁶ Law no. 3/76 of 4 May 1976, remains in force to this day, but apparently very few couples go to court to have their *de facto* unions recognised (Oleiro 2007: 433).

Bissau-Guinean citizenship was also lost in case a citizen accepted public functions or rendered military service to a foreign state, without the government's permission, if he or she did not quit those functions or service within the deadline set by the government [Article 8 (1) (b)]. Again, the government could decide, upon weighting the particular circumstances of the case, not to withdraw the citizenship if the functions or service had only been known after they had already ceased or if the government had not yet set a deadline for their cessation [Article 8 (2) (b)].

Finally, the government could decree the loss of citizenship for Bissau-Guineans who were considered by other states as their nationals and who in fact behaved only as foreigners, as well as for Bissau-Guineans convicted in last instance for a crime against the external security of the state or who unlawfully acted on behalf of a foreign power or its agents to the detriment of Guinea-Bissau's interests (Article 9). Bissau-Guinean citizenship withdrawn by government decision could only be reacquired by special permission (*graça especial de reacquirição*) [Article 10 (2)].

Renunciation was allowed to those who had acquired Bissau-Guinean citizenship as a result of a declaration made by their legal representatives while they were underage or otherwise incapacitated, provided that they had another citizenship and declared their wish not to be a Bissau-Guinean [Article 8 (1) (d) and (e)].⁴⁷ Those who lost their Bissau-Guinean citizenship as a result of a declaration made by their legal representatives could reacquire it by means of a declaration to that effect, provided that they were domiciled in Guinea-Bissau [Article 10 (4)].

Guinea-Bissau's 1976 Nationality Act remained in force until 1992, without ever being supplemented with an implementing regulation.⁴⁸ However, it was amended in 1984, following the disintegration of the union of Guinea-Bissau and Cape Verde.

2.3. The break with Cape Verde and its impact on membership criteria

Before the end of the first decade of independence, the dream of unity with Cape Verde had been utterly shattered. There had always been sceptics, even when Amílcar Cabral was alive,⁴⁹ and the ties forged in the struggle against the common enemy were no match to the

⁴⁷ Subparagraph (d) covered persons born in Guinea-Bissau to foreign parents, who could declare their wish not to be Bissau-Guinean by themselves, if capable, or through their legal representatives, if they were incapacitated, while subparagraph (e) covered persons who, while incapacitated, had been recognised or attributed Bissau-Guinean citizenship, as a result of declaration or request made by their legal representatives, who could declare their wish not to be Bissau-Guinean after gaining legal capacity.

⁴⁸ In spite of what was required by its Article 14, on registration and proof of citizenship.

⁴⁹ In his speeches and lectures, Cabral made frequent references to these sceptics and to the resentment with which some Bissau-Guineans viewed Cape-Verdeans' better position in life. He admitted that conditions in Cape Verde were "a shade better than in Guinea," since the Indigenous Statute had never been applied to the Archipelago, but noted that Cape Verdeans suffered as much as Bissau-Guineans at the hands of the Portuguese and dismissed the (apparent) tension between the two peoples as merely the result of competition for jobs among their respective petty bourgeoisies. In his words: "The contradiction there, or the seeming contradiction, was as follows: many colonial civil servants and staff in Guiné, and some district officers in Guiné, are Cape Verdians. Given that in Cape Verde education was more developed, there is more potential for Cape Verdians to gain posts than for the Guineans themselves. This might suggest that they (the Cape Verdians) are taking into their hands the interests of the people of Guiné. They are the ones who are benefiting. But if we look carefully, there are also Guineans in the same situation as Cape Verdians and there has never been any contradiction between these folk in the cities and our folk in the bush. It is in the city that we find contradiction. [In] Cape Verde, the people are also exploited just as they are exploited in Guiné. And in some respects more harshly exploited in Cape Verde, with starvation and with the export of men as contract workers for S. Tomé and for Angola, almost like

old resentments and new rivalries that came to the surface once Guinea-Bissau became independent. Bissau-Guineans distrusted Cape-Verdeans for their former role as “colonial auxiliaries” (Chabal 2002: 52-53; Mendy 2003: 53-54) and did not take kindly to the fact that the first government of independent Guinea-Bissau was largely in the hands of politicians of Cape-Verdean origin (Chabal 2002: 49),⁵⁰ in particular since Bissau-Guineans had borne the brunt of the military effort in the war (Abadia 2018: 184-185; Namone 2014: 90; Bappah 2017: 14). For their part, Cape-Verdeans viewed themselves as a Creole society with little to no cultural affinities with the Bissau-Guineans (Namone 2014: 90; Chabal 2002: 53) and decried the PAIGC’s goal of unifying the two territories as a form of annexation (Fernandes 2007: 39).⁵¹

In 1980, with the country facing a deep economic crisis, with a disgruntled military and growing outrage at the ‘patrimonial behaviour’⁵² of his administration, the Cape-Verdean President of Guinea-Bissau, Luís Cabral, attempted to change the Constitution to widen his powers⁵³ and was ousted, on 14 November 1980, by his Bissau-Guinean Prime-Minister, João Bernardo (Nino) Vieira, in a military coup labelled the ‘Readjustment Movement’ (*Movimento Reajustador*) and supported *en masse* by the Bissau-Guinean faction of the PAIGC (Empalá & Monteiro 2020: 206). The Movement promised to solve the economic crisis by abandoning the ‘socialist development agenda’ (Bappah 2017: 15), deliver justice for the war veterans, and put an end to the abuses of the former President and his Cape Verdean clique (Sá 2012: 17). As the new President of Guinea-Bissau, Nino Vieira suspended the 1980 Constitution and appointed a Council of the Revolution, formed by civilians and members of the armed forces (Gomes 2010: 2), which went on to run the country for four years, leaving a legacy of military involvement in political life that is an enduring trait of Bissau-Guinean politics to this day. The Cape-Verdeans were side-lined by Nino Vieira (Chabal 2002: 95), in spite of his claims that the Bissau-Guineans were not opposed to a certain form of integration with Cape Verde, so long as it was not on Luís Cabral’s terms (Jauará 2006: 128).

The First Extraordinary Congress of the PAIGC of November 1981 decided to remove from the PAIGC’s statutes and programme every reference to the unity between Guinea-

animals.” Lectures ‘To start out from the reality of our land – to be realists’ and ‘Unity and struggle’ (Cabral 1979). It is commonly held that it was the Portuguese effort to stow division between Bissau-Guineans and Cape-Verdeans that led to Amílcar Cabral’s murder in Conakry, on 20 January 1973 (Chabal 2002: 16, 21).

⁵⁰ There was talk of ‘Cape-Verdean neo-colonialism’ and some equated the union between Guinea-Bissau and Cape Verde to the one forced by the rider on his horse (*cavalo-cavaleiro*), pointing out that, while there were many Cape-Verdeans in government positions in Guinea-Bissau, there were no Bissau-Guineans in similar positions in Cape Verde (Gomes 2010: 2; Namone 2014: 89-90). See also Silva (1997: 50-56).

⁵¹ One of the loudest voices was that of Cape-Verdean Leitão da Graça, leader of the Union of the People of the Cape-Verdean Islands (UPICV), who addressed letters and petitions to the UN, in 1962 and 1973, complaining against the “forced union” with Guinea-Bissau and stressing that the Cape-Verdeans and the Bissau-Guineans were separate peoples (Fernandes 2007: 39-40). Also in the opposition to the goal of unity with Guinea-Bissau were the Cape-Verdean Democratic Union, led by João Baptista Monteiro (Abadia 2018: 184).

⁵² As noted by Chabal (2002: 91), “Luiz Cabral’s administration was notorious for its patrimonial behaviour,” which was particularly shocking since Luís Cabral was Amílcar Cabral’s half-brother. Patrimonialism is taken here as meaning that power is not entrusted to autonomous state institutions, but is “personalized and dependent on transactional links between the political patron and their clientelistic followers” (Green 2016b: 8).

⁵³ The new Constitution, adopted on 10 November 1980, “established a presidential regime that increased the power of Luis Cabral and stripped the powers of his commissar and president of the People’s National Assembly comandante João Bernardo ‘Nino’ Vieira” (Bappah 2017: 15). The Constitution had been presented by the PAIGC as being common to Guinea-Bissau and Cape Verde, but the Bissau-Guinean faction of the party was not persuaded, given that there were two significant differences: the Constitution of Cape Verde specified that the President had to be a Cape-Verdean and abolished the death penalty, whereas Guinea-Bissau’s Constitution did not specify citizenship for eligibility as President and kept the death penalty in place (Jauará 2006: 128; Empalá & Monteiro 2020: 209-210; Forrest 2002: 251; Silva 2010: 192-193; Oliveira 2005: 116-118).

Bissau and Cape Verde as a response to the decision by the ‘Cape-Verdean faction’ to withdraw from the party and form a new political organisation, the African Party for the Independence of Cape Verde – *Partido Africano da Independência de Cabo Verde* (PAICV). These developments were invoked in the preamble to Law no. 1/84 of 15 February 1984,⁵⁴ which amended the 1976 Nationality Act to remove the provisions that granted Cape-Verdeans privileged access to Guinea-Bissau’s citizenship. Law no. 1/84 repealed Articles 5 and 11 of the 1976 Nationality Act and rephrased Article 7 (3) (b) to read: “all persons who, without being Bissau-Guinean, had rendered relevant services to the people of Guinea-Bissau, during or after the liberation struggle”.⁵⁵

2.4 The main changes to membership criteria since 1984

In the four years following the break with Cape Verde, the PAIGC under the leadership of Nino Vieira, worked on the text of a new Constitution, using many of the provisions of Luís Cabral’s 1980 Constitution, which had not come into effect (Bastos 2013: 3; Silva 2010: 199; Oliveira 2005: 119). The new Constitution of the Republic of Guinea-Bissau was approved by the People’s National Assembly on 16 May 1984 and entered into force on the same day. The preamble paid tribute to the genius of Amílcar Cabral, rephrased the PAIGC’s goal of unity as ‘national unity,’ and referred to the ‘Readjustment Movement’ of 14 November 1980 as a “fair and revitalising action” in defence of the rule of law and fundamental rights. The regime kept its socialist tenor (Article 3), albeit half-heartedly (Chabal 2002: 70, 95-97), and the PAIGC remained as the sole political driving force of the society and the state (Article 4).

Like its 1973 predecessor, the 1984 Constitution established that all citizens were equal before the law (Article 23), but included a much more detailed set of rules on citizenship rights and obligations, such as the rights of Bissau-Guinean citizens abroad (Article 26),⁵⁶ the protection of national citizens against extradition and expulsion (Article 34), the citizens’ obligation to take part in the defence of the country’s independence and render military service (Article 35), and the right to vote and be elected in general elections, where, for the first time, a distinction was made at constitutional level between citizens of origin and citizens by acquisition (Article 47).⁵⁷ The 1984 Constitution also included a provision on the rights of foreigners and stateless persons in Guinea-Bissau, establishing a general principle of equality, with the usual exception of rights which reflect the special ties that exist between the state and its citizens.⁵⁸

⁵⁴ Available at http://citizenshiprightsafrika.org/wp-content/uploads/2021/07/Guinea-Bissau-Lei-1_1984-modificao-nacionalidade.pdf [07.07.2021].

⁵⁵ Similarly, in Cape Verde, Decree-Law no. 31/87 of 28 March 1987 repealed Article 4 (1) (a) of the Cape-Verdean 1976 Nationality Act.

⁵⁶ Article 26 prescribed that every national citizen residing or travelling abroad enjoyed the same rights and was subject to the same obligations as all Bissau-Guinean citizens (except in what was incompatible with the absence from Guinea-Bissau), and that the citizens residing abroad benefited from the state’s care and protection.

⁵⁷ Article 47 (1) recognised the right to vote for the Regional Councils to all national citizens above the age of 18, but Article 47 (2) prescribed that the members of the People’s National Assembly were to be elected by the Regional Councils from among its members, provided that they were national citizens of origin. Paragraph (3) added that eligibility for the Regional Councils and the People’s National Assembly was restricted to citizens above the age of 21.

⁵⁸ Article 27 (1) provided that foreigners (subject to reciprocity) and stateless persons residing or travelling in Guinea-Bissau enjoyed the same rights and were subject to the same obligations as Bissau-Guinean citizens, except for political rights, access to public functions and other rights and obligations expressly reserved by law to national citizens. Paragraph 2 added that the exercise of public functions by foreigners could only be allowed

Formally, the 1984 Constitution is the one still in force, since the constitutional acts adopted in rapid succession in the 1990s [1991 (twice), 1993, 1995, and 1996] were enacted as mere amendments to this text. However, the changes introduced by Constitutional Law no. 1/93 of 21 February 1993 were so extensive that many in the literature refer to the outcome of the 1993 amendment as a separate Constitution (Bastos 2013: 3-4; Gouveia 2014: 487; Medeiros 2011: 19-20; Silva 2010: 257-259). Constitutional Law no. 1/91 of 9 May 1991 was nevertheless the one which, under pressure from international donors (Chabal 2002: 96, 125), broke the socialist single-party mould and set the country on course to become a market economy and a democratic multiparty system, ahead of what would be Guinea-Bissau's first multiparty elections in 1994. Besides changing the preamble of the Constitution to its current wording⁵⁹ and deleting all references to the revolution, the popular masses and the like, Constitutional Law no. 1/91 also acknowledged the freedom to establish political parties, adding a new distinction between citizens of origin and citizens by acquisition (Article 4);⁶⁰ adopted the principles of market economy as grounds for the economic and social organisation of the country (Article 11); forbade the members of the security forces from engaging in any political activity (Article 20-A);⁶¹ set requirements for the validity of legal restrictions to individual freedoms [Article 29 (2)]; and added a number of fundamental rights, including the right to a citizenship (Article 34-A), the workers' rights to unionise (Article 36-A) and to go on strike (Article 37-A), and the right to freedom of the press (Article 44-A). There were a few remnants of the single-party system left in the text,⁶² some of which were repealed later that year by Constitutional Law no. 2/91 of 4 December 1991. The 1993 amendment would erase the rest.⁶³

2.4.1 The 1992 Nationality Act: The adoption of a *ius sanguinis* regime

The PAIGC went grudgingly into the process of preparing the 'democratic transition' (Chabal 2002: 96, 125-126; Ture 2017: 132-133) and, in the run-up to the first multiparty elections, the still PAIGC-controlled People's National Assembly enacted a new Nationality Act – Law no. 2/92 of 6 April 1992⁶⁴ – to address, according to the preamble, certain “ambiguous acts,” associated with “multiparty situations” that could impinge on the exercise by Bissau-Guinean

if said functions were of a predominantly technical nature – e.g. as university professor or administrative clerk, not as a judge, a member of the armed forces or a diplomat (Espírito Santo 2019b: 75) –, except for an international agreement or convention to the contrary.

⁵⁹ Where e.g. the 'Readjustment Movement' is now merely referred to as having redirected the PAIGC's action to correct the mistakes that were blocking the building of a united, strong and democratic society, and where the party is congratulated for the “brave and timely decision [to] address the challenge of democratic openness towards the construction of a plural, fair and free society”.

⁶⁰ Per Article 4 (6), which remains in force to this day, the top leaders (*dirigentes máximos*) of political parties have to be Bissau-Guinean citizens of origin.

⁶¹ A transitional provision was added, however, to allow for the members of the security and defence forces then acting as members of the People's National Assembly to continue with their mandates until the upcoming general elections (Article 103).

⁶² That was e.g. the case with Article 48, which read that the People's National Assembly organised and controlled the implementation of the political, economic, social, cultural and defence guidelines set by the PAIGC, and of Articles 66 and 71, which included in the oath to be sworn by public officials the expression of “absolute loyalty to the principles of the PAIGC”. Articles 66 and 71 were amended by Constitutional Law no. 2/91, of 4 December 1991, to cut the PAIGC references.

⁶³ Or so one would assume. It has been pointed out in Bissau-Guinean literature that Article 35, which sets limits on the exercise of individual freedoms, is reminiscent of the Marxist inspiration of the 1973 Constitution and should be interpreted restrictively as not to hinder the exercise of fundamental rights (Pires & Pereira 2019: 91-92).

⁶⁴ Available at http://citizenshiprightsfric.org/wp-content/uploads/1992/04/Guinea-Bissau-Lei-2_1992-da-nacionalidade-BO.pdf [07.07.2021].

citizens of their civil and political rights. The preamble also mentioned that, given Guinea-Bissau's history and geographic location, it was necessary to ensure that the Bissau-Guinean identity did not get confused with the identities of neighbouring countries.

Law no. 2/92 repealed and replaced Laws no. 1/76 and no. 1/84 (Article 27), and brought important changes to Guinea-Bissau's citizenship regime. As this is still, to a large extent, the regime in force – and will, therefore, be analysed in detail in the next section – a brief summary of the main innovations vis-à-vis the 1976 Nationality Act will suffice at this stage. These are the adoption of *ius sanguinis* as the main criterion for attribution of citizenship of origin (Article 5); the addition of adoption as grounds for acquisition (Article 7); the removal of the residence requirement for those who, having acquired Bissau-Guinean citizenship on the basis of marriage, have their marriage annulled (Article 8); the removal of the waiver of the residence requirement for naturalisation of persons of Bissau-Guinean descent; the introduction of a waiver of the cultural integration and residence requirements for the naturalisation of persons who render or are called to render relevant services to the state “in the national development process” [Article 9 (3)]; the acceptance of economic reasons tied to emigration as justification for the voluntary acquisition of a foreign citizenship and as safeguard against loss [Article 10 (1) (a)]; the addition of fraud as grounds for loss [Article 10 (3) (c)]; the removal of the ‘special governmental grace’ as grounds for reacquisition (Article 11); the introduction of grounds for opposition to acquisition and reacquisition of Bissau-Guinean citizenship (Articles 12 and 13); and the inclusion of provisions on registration and proof of citizenship (Articles 14 to 20) and on citizenship litigation (Articles 21 and 22).

The 1992 Nationality Act was directly amended by Law no. 6/2010 of 21 June 2010⁶⁵ and indirectly amended by Law no. 6/2008 of 27 May 2008, which approved the Refugee Status Act (*Estatuto do Refugiado*),⁶⁶ and Law no. 7/2008 of 27 May 2008, which approved the Lusophone Citizen Status Act (*Estatuto do Cidadão Lusófono*).⁶⁷ No implementing regulation⁶⁸ for the 1992 Nationality Act was adopted until Decree-Law no. 6/2011 of 23 February 2011.⁶⁹ In breach of the Constitution, Decree-Law no. 6/2011 was not limited to procedural matters, but effectively attempted to amend the 1992 Nationality Act, for example by changing the rules for citizenship acquisition based on marriage and making renunciation the only grounds for loss.

2.4.2 The 2010 amendment: Dual citizenship and safeguards against statelessness

In 2010, the 1992 Nationality Act was amended to permit dual nationality and re-introduce safeguards against statelessness for those born in Guinea-Bissau. The 2010 amendments were explained, in a detailed preamble, as arising out of the need to keep up with globalisation and

⁶⁵ Available at <http://citizenshiprightsafrika.org/wp-content/uploads/2010/06/Guinea-Bissau-Lei-da-nacionalidade-2010.pdf> [07.07.2021].

⁶⁶ Available at <https://www.refworld.org/docid/49fff8e72.html> [07.07.2021].

⁶⁷ Available at <http://citizenshiprightsafrika.org/guinea-bissau-lei-no-7-2008-de-27-de-maio-estatuto-do-cidadao-lusofono/> [07.07.2021]. It was clearly copied from the Lusophone Citizen Status Act adopted in Cape Verde in 1997 (Law no. 36/V/97). The wording of the provisions is literally the same throughout. The only difference is that the Bissau-Guinean version has a preamble, in which the Act is explained as arising from the need to facilitate mobility within the Community of Portuguese Speaking Countries (CPLP) and to address concerns of the Bissau-Guinean diaspora. The text of the Cape Verdean Act is available at <https://cidadanialusofona.wordpress.com/2009/10/05/estatuto-do-cidadao-lusofono/> [16.06.2021].

⁶⁸ The regulation of the Nationality Act was supposed to have been enacted within 180 days of the date of publication, per Article 25 of Law no. 2/92.

⁶⁹ Available at <http://citizenshiprightsafrika.org/wp-content/uploads/2021/07/Guinea-Bissau-Decreto-Lei-6-2011-regulamento-da-nacionalidade.pdf> [07.07.2021].

meet Guinea-Bissau's obligations as a country of emigration and of immigration. The country's large diaspora,⁷⁰ in particular migrants' associations based in Portugal (Sá 2012: 39), lobbied hard against what was then referred to as the "political racism" of treating Bissau-Guineans as foreigners just because they had another citizenship (Quintino 2010: 83-84) and was a driving force behind this legal reform.⁷¹

The preamble of Law no. 6/2010 noted that Bissau-Guinean citizens were living abroad in very high numbers and that they often had to acquire the citizenship of their host states as a means to better integrate into their host societies and protect their rights. As a country of emigration, Guinea-Bissau "had to create the conditions necessary for a better integration of those of its citizens who chose to live abroad, including the conditions required to allow them to acquire a foreign citizenship without losing their status as Bissau-Guinean citizens." This meant that, like other countries of emigration, Guinea-Bissau's legal system had to "accept dual citizenship, in a totally open manner and without restrictions of any kind". Article 10 of the 1992 Nationality Act was therefore amended to delete the acquisition of a foreign citizenship from the list of grounds for loss,⁷² and Article 8, which the preamble (wrongly) indicated as *the* provision which forbade dual citizenship, was changed to take out the requirement that foreign spouses of Bissau-Guinean citizens renounce their previous citizenship before acquiring Bissau-Guinean citizenship. The acceptance of dual citizenship was not immediately internalised in all its consequences by the national authorities of Guinea-Bissau, as Bissau-Guinean citizens with dual citizenship continued to be required to apply for visa in order to enter the country, even though this visa requirement was precisely one of the aspects most criticised by the diaspora in the years prior to the 2010 amendment (Quintino 2010: 83-84). The visa requirement was only 'waived' in 2019, with Joint Order no. 1/2019 of 28 October 2019, which did not acknowledge that the previous practice was mistaken, but instead justified the waiver as a way to "value Bissau-Guinean citizens in the diaspora as full citizens and to provide incentives for their involvement in the country's economic, social and cultural development," by facilitating their entry and stay in Guinea-Bissau. It should be pointed out, however, that Bissau-Guineans with dual citizenship should not be required to apply for a visa to enter Guinea-Bissau, since they are entitled to enter the territory of their state of citizenship, under well-established international human rights law, such as Article 12 (4) of the UN Covenant on Civil and Political Rights, which Guinea-Bissau signed in 2000 and ratified in 2010.⁷³

The preamble to Law no. 6/2010 also noted that Bissau-Guinean society "had to open itself to the full integration of foreigners who chose Guinea-Bissau to live," and that, if these

⁷⁰ Present e.g. in Senegal, Portugal, Gambia, France, Cape Verde and Guinea-Conakry. According to the IOM Migration Data Portal, the total number of emigrants from Guinea-Bissau at mid-year 2020 was 111,800. See https://migrationdataportal.org/data?i=flows_abs_emig1&t=2013&cm49=624 [31.03.2021]. This is probably an underestimation since it does not take into account the Bissau-Guineans who have in the meantime acquired the citizenship of their host state, most commonly Portuguese or French citizenship (Abreu 2011: 155-157).

⁷¹ The authorities in Guinea-Bissau had, for a long time, paid little attention to the Bissau-Guineans abroad, most of whom were seen as traitors to the homeland (Pires 2013: 167-169) or as part of the opposition to the government (Sá 2012: 36). An Institute for the Assistance of Emigrants (IAE) was created by Decree-Law no. 37/86 of 2 December 1986 and legislation on a general emigrant status was enacted by Decree-Law no. 38/86, of 4 December 1986, but real change only came with the creation of the office of State Secretary for the Communities by Presidential Decree no. 39/2009, which took on IAE's goals and attributions (Có 2011: 136-137). As the economic weight of emigrants' remittances grew (Roque 2009: 5; Iheduro 2011: 183; Có 2011: 136), so did the diaspora's political pull in Bissau.

⁷² The wording of Article 10 was furthermore thoroughly revised to eliminate the redundancies of the previous version, which had two different sub-paragraphs for forms of renunciation and four different sub-paragraphs for variations of services rendered to a foreign state and detrimental to the interests of Guinea-Bissau.

⁷³ Information available at <https://indicators.ohchr.org/> [20.06.2021].

foreigners wished to acquire Bissau-Guinean citizenship, the state should make it easier (not harder) for them to do so. As a consequence, and taking a cue from other countries of immigration, the residence requirement for naturalisation was lowered from ten to six years [Article 9 (1) (c)].

The 2010 amendment was also used to (re)introduce safeguards against statelessness, by adding two new grounds for attribution of Bissau-Guinean citizenship of origin in Article 5, an arguable redundancy, as the new sub-paragraph (c) covers all persons born in Guinea-Bissau who would otherwise be stateless, overlapping with new subparagraph (d), which covers persons born in Guinea-Bissau to stateless parents or to parents of unknown citizenship who reside in Guinea-Bissau.

Regrettably, the 2010 amendment did not take the opportunity to incorporate in the 1992 Nationality Act the changes in the meantime brought to the citizenship regime by the Refugee Status Act and by the Lusophone Citizen Status Act, which would have provided much needed clarity and consistency to the regime. In 2008, the Refugee Status Act provided that, by derogation of Article 9 (1) (c) of the Nationality Act, the Bissau-Guinean authorities would facilitate the naturalisation of refugees who had been living in Guinea-Bissau on a regular and continued basis for a period of seven years, provided that all other naturalisation requirements were met (Article 34 of Law no. 6/2008). At that time, seven years was an improvement on the ten-year general residence requirement for naturalisation, but the provision lost its meaningful effect once the 2010 amendment lowered the general residence requirement to six years. It can certainly be argued that the spirit of the provision is still binding on Bissau-Guinean authorities and that they remain under the obligation to facilitate the naturalisation of refugees, but without clear markers as to how this facilitation is to be achieved, it is difficult to see how this provision can still work to the benefit of the refugees in the country. The 2010 amendment should have explicitly repealed Article 34 of Law no. 6/2008 – to make sure that the authorities do not continue to require seven years of residence for the naturalisation of refugees, in contradiction with the spirit of the law – and should have added a new provision to the 1992 Nationality Act to reflect the goal of facilitating the naturalisation of refugees, by lowering or waiving some of the naturalisation requirements that apply to all other foreign residents. It should be noted in this regard that Guinea-Bissau is a party to the UN and African Union Refugee Conventions (of 1951 and 1969, respectively) and is committed to provide protection and assistance to refugees by means of a “dignified, safe and sustainable asylum system,” as stated in the preamble to Decree no. 7/2018, of 7 January 2018.⁷⁴ This Decree was concerned with the integration of long-term refugees in Guinea-Bissau, through a process involving the naturalisation of the refugees falling under a number of categories established by the government⁷⁵ and the operationalisation of projects and programmes of the Effective Local Integration Strategy. The terms in which this initiative was presented suggest that previous attempts to facilitate the naturalisation of refugees by lowering the residence requirements were not very successful, since the initiative was targeted at long-term refugees, mostly originating from the Casamance region of Senegal, who had resided in Guinea-Bissau for over 25 years and had “assimilated Bissau-Guinean cultural and linguistic identity”.

⁷⁴ Available at http://citizenshiprightsfrica.org/wp-content/uploads/2021/07/Guinea-Bissau-Decreto-7_2018-refugiados.pdf [07.07.2021].

⁷⁵ Article 1 of Decree no. 7/2018 mentions “clauses in an annex”, where the categories of refugees to be covered by the “effective local integration” were supposed to be listed, but the annex was not published in the Official Journal. News items published at the time indicate that 7000 refugees obtained Bissau-Guinean citizenship under Decree no. 7/2018. See e.g. ‘Complete equality: Refugees find a home – and citizenship – in Guinea-Bissau’, *The Guardian*, 10 October 2018, available at <https://www.theguardian.com/world/2018/oct/10/guinea-bissau-refugee-naturalisation-scheme> [22.06.2021].

As for the 2008 Lusophone Citizen Status Act, the changes brought to the citizenship regime consisted of establishing a right to Bissau-Guinean citizenship for persons born in Guinea-Bissau to Lusophone⁷⁶ parents (Article 4) and of allowing Lusophone citizens to acquire Bissau-Guinean citizenship without having to renounce their previous citizenship (Article 5). It is not entirely clear if Articles 4 and 5 apply to the same cases and whether the citizenship to which Lusophone descendants born in Guinea-Bissau are entitled is citizenship of origin or acquired citizenship. Article 5 may apply to the same cases as Article 4 or to the cases of acquired citizenship listed in the 1992 Nationality Act (i.e. on the basis of filial ties, marriage, adoption or naturalisation). If Article 5 applies to the cases of Article 4, there is the question of the use of the term ‘acquire,’ which, if we assume that the lawmakers were deliberate in their choice of words, may be taken to mean that the citizenship granted under Article 4 is only ‘acquired citizenship’ and not ‘citizenship of origin.’ If we disregard the use of the term ‘acquire’ in Article 5 or consider that the two provisions are not related, we can interpret Article 4 as granting citizenship of origin to persons born in Guinea-Bissau to Lusophone parents. Such an interpretation would seem to be in line with the general spirit of the law, given that, under the Act, Lusophone citizens enjoy, in Guinea-Bissau, the same fundamental freedoms and are subject to the same obligations as Bissau-Guinean citizens, with the usual exceptions (Article 8),⁷⁷ and are even entitled to political rights usually not accessible to foreigners, since Article 3 ascribes to Lusophone citizens domiciled in Guinea-Bissau the right to vote and be elected in local elections, and to take part in political activities connected with their political rights. Again, the 2010 amendment to the 1992 Nationality Act could have helped to clarify these points.

3. The current citizenship regime

The current citizenship regime in Guinea-Bissau results from a combination of Law no. 2/92 of 6 April 1992, as amended by Law no. 6/2010 of 21 June 2010 (Nationality Act), and Decree-Law no. 06/2011 of 23 February 2011, which regulated the application of the Nationality Act (Nationality Regulation). As will be detailed below, the Nationality Regulation often goes beyond its role of regulating (i.e. detailing the procedures for implementing) the regime established by the Nationality Act, with problematic results that appear to amend the law. However, in matters of citizenship, the Council of Ministers (which adopts Decree-Laws) is only competent to provide details for implementation of the law adopted by the People’s National Assembly, not change the underlying rules [Article 86 (a) of the 1993 Constitution]. Attention must also be paid to Article 4 of Law no. 7/2008 of 27 May

⁷⁶ Per Article 2 of the Act, Lusophone citizens are persons holding the citizenship of a Member State of the CPLP, i.e. Angola, Brazil, Cape Verde, Equatorial Guinea, Mozambique, Portugal, São Tomé and Príncipe, and Timor-Leste.

⁷⁷ Besides this general equality principle, the Lusophone Citizen Status Act explicitly lists a number of rights for the exercise of which Lusophone citizens are on an equal footing with Bissau-Guinean citizens, such as the right of access to public functions of a predominantly technical character and elected public office at local level (Article 9); the right to exercise an economic activity and to invest in Guinea-Bissau (Articles 10 and 11); the right to tax exemptions and benefits (Article 12); and the right to access public services (Article 13). Lusophone citizens are furthermore entitled to receive/transfer money from abroad (Article 14), to multiple-entries and long-term visas, as well as visa waivers, if not resident in Guinea-Bissau (Article 6), and to family reunion with the spouse and underage children (Article 7).

2008 (Lusophone Citizen Status Act)⁷⁸ and to Article 34 of Law no. 6/2008 of 27 May 2008 (Refugee Status Act).

Unlike its Lusophone African counterparts, Guinea-Bissau never set the criteria for attribution or acquisition of Bissau-Guinean citizenship in the Constitution. It nevertheless came to ascribe constitutional relevance to citizenship, by explicitly providing that the right to a citizenship is a fundamental right, in the first 1991 amendment to the 1984 Constitution, supplemented in the 1993 Constitution by a provision that deprivation of citizenship may only occur in the cases and under the terms prescribed by law, and may not be based on political motives (Article 34-A, after the 1991 amendment; renumbered as Article 44 in 1993). The 1993 Constitution furthermore stressed the importance of citizenship as a fundamental right, by including it in the list of rights that may not be hindered in case of an emergency declaration [Article 31 (2)], and also the importance of citizenship as a legal subject, by placing it at the top of the list of subjects over which the People's National Assembly has exclusive legislative competence [Article 86 (a)]. This latter provision is key to the discussion of the constitutionality (i.e. validity) of a number of provisions in the Nationality Regulation, approved by the Council of Ministers in 2011, which attempted to amend (not just regulate) the Nationality Act.

3.1 Modes of attribution and acquisition of Bissau-Guinean citizenship

The Nationality Act differentiates between attribution and acquisition of Bissau-Guinean citizenship, as is made apparent *inter alia* by the use of the two terms side by side in Articles 1 and 3. Attribution refers to the automatic granting of citizenship by operation of law (usually at birth), termed 'citizenship of origin' (*nacionalidade de origem*), whereas acquisition refers to the granting of citizenship (usually discretionary) by the competent authorities following an application process. In some contexts, an application process can result in the retroactive granting of the status of citizen of origin. The distinction has importance in the context of political rights and deprivation of citizenship (see headings 3.2 and 3.4).

However, the use of the terms is not always consistent throughout the Act.⁷⁹ Article 4, for instance, regulates the 'effects of citizenship attribution,' as per its heading, but paragraph 2 refers to 'acquired citizenship' when it should be referring to the attribution of citizenship of origin. Like other Lusophone nationality laws, such as Angola's (Jerónimo 2019a: 23), Guinea-Bissau's Nationality Act provides that the subsequent attribution of citizenship of origin operates retroactively to the date of birth [Article 4 (1)],⁸⁰ while safeguarding that this does not hinder the validity of legal relations previously established on the basis of a different citizenship [Article 4 (2)]. The Nationality Act does not include a similar provision on the effects of acquisition, loss and reacquisition, but it can be deduced *a contrario sensu* from Article 4 that these effects are not retroactive to the date of birth. The Nationality Regulation confirms this, to some extent, since Article 9 provides that citizenship acquisition only produces effects from the date of its registration.

⁷⁸ Article 5 of Law no. 7/2008 of 27 May 2008 lost its relevance after the 2010 amendment to the 1992 Nationality Act, since all foreigners – not just Lusophone foreigners – became entitled to acquire Bissau-Guinean citizenship without having to renounce their previous citizenship.

⁷⁹ The Nationality Regulation is more explicit, by prescribing, in Article 1 (1), that Bissau-Guinean citizenship may be based on *attribution*, by effect of the law or of will, or on *acquisition*, by effect of will, adoption or naturalisation.

⁸⁰ The same is provided for in Article 2 of the Nationality Regulation.

3.1.1 Attribution based on birth to a Bissau-Guinean parent, either in Guinea-Bissau or abroad if the parent is in the service of the state

Article 5 (1) (a) of the Nationality Act attributes Bissau-Guinean citizenship of origin to persons born to a Bissau-Guinean parent – irrespective of whether it is the father or the mother or both – either in Guinea-Bissau or abroad, provided in the latter case that the Bissau-Guinean parent is abroad in the service of the state of Guinea-Bissau. The attribution is automatic, by operation of law (Article 3 of the Nationality Regulation), but the birth must be registered at Guinea-Bissau’s Civil Registry, as per Article 14 of the Nationality Act.

Proof of citizenship of origin attributed on the basis of birth in Guinea-Bissau under Article 5 (1) (a) of the Nationality Act is made by means of the birth registration, provided that the registration does not include any evidence to the contrary [Article 19 (1) of the Nationality Act]. For births abroad falling under Article 5 (1) (a), proof of citizenship of origin is made by means of the evidence included in the birth registration submitted at Guinea-Bissau’s Civil Registry [Article 19 (2) of the Nationality Act], i.e. evidence that the father or the mother was abroad in the service of Guinea-Bissau at the time of birth [Article 3 (b) of the Nationality Regulation]. Article 5 of the Nationality Regulation adds that the ‘special circumstance’ of one of the parents being abroad in the service of the state must be mentioned in the birth registration as an ‘identification element’ of the interested party (paragraph 1), and that the person requesting the birth registration must provide a document attesting to that special circumstance, issued by the state department to which the service abroad was being rendered (paragraph 2).⁸¹

3.1.2 Attribution based on birth abroad to a Bissau-Guinean parent combined with declaration or birth registration

Article 5 (1) (b) of the Nationality Act attributes Bissau-Guinean citizenship of origin to persons born abroad to a Bissau-Guinean father or mother, provided that they declare their wish to be Bissau-Guinean or register the birth at Guinea-Bissau’s Civil Registry. The attribution is not automatic, as it is dependent on an expression of will on the part of the interested party.

Under Article 15 (1) of the Nationality Act, citizenship declarations may be made before diplomatic and consular agents and are registered *ex officio* on the basis of the required documents, which are then forwarded to the Central Registry Office (*Conservatória dos Registos Centrais*).⁸² Article 7 (1) of the Nationality Regulation adds that the birth registration can be made at Guinea-Bissau’s consular posts or at the Central Registry Office.⁸³ The birth registration can be requested by the interested party, if legally capable, or by his/her legal representatives, if he/she is legally incapacitated [Article 6 (1) (b) of the Nationality Regulation]. Both the declaration and the registration have to be accompanied by proof of the Bissau-Guinean citizenship of one of the parents [Article 6 (2) of the Nationality Regulation]. Article 7 (2) of the Nationality Regulation provides, somewhat intriguingly, that when the interested party is older than 14 years of age and does not provide sufficient identity documents nor a certified copy of his or her foreign birth registration, it is necessary that two

⁸¹ Article 5 (3) of the Nationality Regulation waives the obligation under paragraph 2 whenever the civil servant has official knowledge that the parent was abroad in the service of the state of Guinea-Bissau.

⁸² Article 15 (2) of the Nationality Act adds that the consular registration in itself is not a title attributing Bissau-Guinean citizenship.

⁸³ Paragraph 3 of Article 7 of the Nationality Regulation adds that the declarations required for registration of births at the Central Registry Office are submitted through the mediation of the Bissau-Guinean consular services and civil registry offices.

witnesses intervene and, if possible, that a document is presented to confirm the accuracy of the declaration, with the registrar having the prerogative of conducting the necessary enquiries to ascertain the alleged facts.⁸⁴

Proof of citizenship of origin attributed under Article 5 (1) (b) of the Nationality Act is made by means of the registration of the declaration of the wish to be Bissau-Guinean or by means of the mentions included in the birth registration submitted at Guinea-Bissau's Civil Registry [Article 19 (2) of the Nationality Act].

3.1.3 Attribution based on birth in Guinea-Bissau when otherwise stateless

In line with Guinea-Bissau's international commitments in the fight against statelessness,⁸⁵ the Nationality Act attributes Bissau-Guinean citizenship of origin to persons born in Guinea-Bissau when they do not have another citizenship [Article 5 (1) (c)]. In its broad phrasing, this provision covers cases where the identity of the parents is unknown, cases where the identity of the parents is known but the parents are stateless, as well as cases – often overlooked (Manby 2016: 4) – where the identity and the citizenship of the parents are known, but the citizenship laws of the parents' state of origin do not allow them to pass on their citizenship to their children when the children are born abroad. The reach of Article 5 (1) (c) is sufficiently wide to make subparagraph (d) redundant, as the latter provision attributes Bissau-Guinean citizenship of origin to persons born in Guinea-Bissau to stateless parents or to parents of unknown citizenship who reside in Guinea-Bissau. Article 5 (2) of the Nationality Act adds that new-born babies found in Guinea-Bissau are assumed to be Bissau-Guinean citizens of origin, absent proof to the contrary, a classic safeguard against statelessness, which is arguably also made redundant by Article 5 (1) (c).

The attribution of citizenship of origin based on Article 5 (1) (c) (d) and (2) of the Nationality Act is automatic, by mere effect of the law, as is made clear by Article 3 (c) of the Nationality Regulation. It is nevertheless necessary that the birth is registered and that the birth registration includes the 'special mention' that the person to be registered does not have another citizenship.⁸⁶ Article 4 of the Nationality Regulation, under the heading 'statelessness', adds that the registration of births occurred in Guinea-Bissau of individuals who prove not to have another citizenship includes a special mention to this circumstance, as an 'identification element' of the interested party (paragraph 1), and that the registrar must

⁸⁴ Article 25 of the Nationality Regulation prescribes that a default (*supletivo*) means of verifying the identity of the author of a declaration for citizenship purposes is by witness testimony from two reputable witnesses, who are required to present their respective identification documents. Besides the persons considered by law as reputable witnesses, Article 25 (4) allows testimony by family members of the interested party and of the official taking the declaration.

⁸⁵ Guinea-Bissau is one of the signatories of the Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness, of 25 February 2015; text available at <https://www.refworld.org/docid/54f588df4.html> [20.06.2021]. In 2016, following a recommendation by the UN Committee on the Rights of the Child, Guinea-Bissau accessed the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; information available at <https://treaties.un.org/pages/Treaties.aspx?id=5&subid=A&clang=en> [20.06.2021]. Besides, Guinea-Bissau is under the obligation to ensure that every child has the right to acquire a citizenship, per Article 24 (3) of the UN Covenant on Civil and Political Rights and Article 6 (3) of the African Charter on the Rights and Welfare of the Child, which Guinea-Bissau ratified in 2008; information available at <https://www.acerwc.africa/ratifications-table/> [20.06.2021].

⁸⁶ Article 17 of the Nationality Act prescribes specifically for the birth registration of children born in Guinea-Bissau to foreign parents or to parents of unknown citizenship, requiring that the registration includes a mention to that 'quality' and that, whenever possible, the foreign or unknown citizenship of the parents should be proven by document attesting that none of the parents is Bissau-Guinean.

collect the proof of statelessness and forward it, with an opinion on its merits, to the registrar at the Central Registry Office, who is competent to authorise or reject the annotation, and who may order further enquiries if necessary (paragraph 2).⁸⁷

Guinea-Bissau's safeguards against statelessness can be considered well above average as regards persons born in the country, but it is important to note – with Manby (2016: 45) – that these are of little use until birth registration is significantly improved throughout the territory of the state. As discussed in section 4, Guinea-Bissau's record in this matter is still quite poor, a point which has been stressed time and again by international human rights supervisory bodies.⁸⁸ In 2013, the UN Committee on the Rights of the Child expressed concern over the absence of any administrative policy designed to prevent statelessness and protect stateless children (§ 34), and recommended that Guinea-Bissau should accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness, which Guinea-Bissau did in 2016, and also that it should amend the Nationality Act “to bring it into line with the 1954 and 1961 Conventions”,⁸⁹ which still remains to be done. Since Article 5 (1) (c) of the Nationality Act goes as far as possible in preventing statelessness for persons born in Guinea-Bissau, any future amendments will likely touch upon naturalisation requirements/proceedings and upon grounds for loss, as will be discussed below.

3.1.4 Attribution (or acquisition) based on birth in Guinea-Bissau to Lusophone parents

As noted above, the 2008 Lusophone Citizen Status Act established that children born in Guinea-Bissau to a Lusophone father and a Lusophone mother are entitled to Bissau-Guinean citizenship (Article 4 of Law no. 7/2008 of 27 May 2008). It did not clarify, however, whether this citizenship is a ‘citizenship of origin’ or an ‘acquired citizenship’. From the wording of the provision, what is clear is that both parents have to be Lusophone citizens (even if from different Lusophone countries) and they do not have to be habitually resident in Guinea-Bissau at the time of birth. There is no mention of the need for a declaration expressing the wish to be Bissau-Guinean, which suggests that the attribution (or acquisition) operates by mere effect of the law. As with other cases of automatic attribution, it is nevertheless necessary that the birth is registered at Guinea-Bissau's Civil Registry, as per Article 14 of the Nationality Act. It is also to be assumed that, by analogy with similar cases, the ‘special

⁸⁷ Article 27 of the Nationality Regulation adds, in this regard, that statelessness is proven by the means establishes in international convention and, in its absence, by documents issued by the countries with which the interested party has relevant connections, namely his or her country of origin or the country of his/her last citizenship or of his/her parents' citizenship.

⁸⁸ Consider, for instance, the concluding observations of the UN Committee on the Rights of the Child on Guinea-Bissau's combined second to fourth periodic reports: “32. The Committee is deeply concerned that birth registration has declined from 39 per cent in 2006 to 24 per cent in 2010, and that 61.1 per cent of children under 5 years of age are not registered. The Committee is concerned at the lack of access to functioning birth registration centres at the regional level; that civil registration authorities in the regions do not have adequate materials, workspace nor transport to carry out their work; and that the cost of registration after 5 years of age is too expensive for many families. 33. The Committee strongly urges the State party to implement the Birth Registration National Action Plan promptly, and to establish intersectoral collaboration within the Government, eliminate fees and improve governance of birth registration units, to ensure that all children born within the national territory, including those living in rural and remote areas, are registered. Furthermore, the Committee urges the State party to ensure that institutional structures at all levels are accessible in all regions and free of charge, and are adapted to local realities, especially with regard to internally displaced persons and children in refugee camps. The Committee further suggests that the State party explore possibilities with the Ministry of Justice to introduce birth registration in public, private and community schools.” CRC/C/GNB/CO/2-4, of 8 July 2013, available at <https://undocs.org/en/CRC/C/GNB/CO/2-4> [21.06.2021].

⁸⁹ CRC/C/GNB/CO/2-4, of 8 July 2013, *cit.*, §§ 34 and 35 (d) and (e).

circumstance’ of both parents being foreign Lusophone citizens must be mentioned in the birth registration as an ‘identification element’ of the interested party and that the person requesting the birth registration must provide documents attesting to the Lusophone citizenship of the parents [see Article 17 of the Nationality Act and Articles 4 and 5 of the Nationality Regulation].

3.1.5 Acquisition by children following acquisition by one of the parents

Under Article 6 of the Nationality Act, Bissau-Guinean citizenship may be granted to the minor or legally incapacitated⁹⁰ children of a father or a mother who acquires Bissau-Guinean citizenship. They only have to request (*solicitar*) it and are entitled to opt for a different citizenship after reaching majority (i.e. 18 years of age).⁹¹ Article 10 (1) of the Nationality Regulation phrases this slightly differently, as it mentions a declaration (*declaração*) of the wish to be Bissau-Guinean, which has to be made by the interested party’s legal representatives.⁹²

The Nationality Regulation’s reference to a ‘declaration’ might suggest that the procedure is non-discretionary and that there is no room for the Public Prosecutor to oppose the acquisition under Article 6 of the Nationality Act. This would also be consistent with the principle of unity of citizenship statuses within the family (Rei 1995: 319). This interpretation is, however, ruled out by Articles 19 (6) and 43 of the Nationality Regulation. According to the former, the ‘application’ for acquisition based on filial ties follows the naturalisation procedure, while the latter explicitly entitles the Public Prosecutor to oppose the acquisition. The grounds for opposition are those listed in Article 12 of the Nationality Act: (a) ostensive lack of any ties with the national community; (b) conviction for a crime which is punishable under Guinea-Bissau’s law with a prison sentence of more than six years; (c) conviction for a crime against the external security of the state of Guinea-Bissau; (d) unauthorised exercise of sovereign functions or public functions of a political character on behalf of a foreign state; and (e) rendering of non-mandatory military service to a foreign state.

This list is problematic in many ways, and the Nationality Regulation’s version of it is even more so, as it tries to ‘amend’ Article 12 of the Nationality Act in breach of the Constitution, as will be discussed in detail below. At this point, it is enough to focus on the first of the grounds listed, since the age and lack of legal capacity of the persons covered by Article 6 of the Nationality Act make it unlikely that the Public Prosecutor will oppose acquisition other than on the grounds provided in Article 12 (a) of “manifest lack of any ties with the national community”.⁹³ It is worth noting, in this regard, that the Nationality Regulation adopts a different (and potentially less favourable) phrasing from the one in the Nationality Act. Article 43 (2) (a) of the Nationality Regulation reads “lack of *effective ties*

⁹⁰ In Guinea-Bissau, legal incapacity can result from age but also from other factors such as dementia, blindness, deafness, and muteness, as per Articles 122 et seq. of the Portuguese 1996 Civil Code, which was kept in force after independence by Law 1/73, published in the Official Journal on 4 January 1975.

⁹¹ The age of majority was set at 18 years by Law no. 5/76, of 3 May 1976. As noted by Rei (1995: 319-320), Article 6 is to be interpreted extensively so as to also cover the possibility of option for another citizenship after the end of the incapacitation, for persons who were incapacitated at the time when they acquired Bissau-Guinean citizenship.

⁹² The declaration is made at the services of the Central Registry Office and must be accompanied by (a copy of) the registration of the parent’s acquisition of Bissau-Guinean citizenship, per Articles 23 (1) and 10 (2) of the Nationality Regulation.

⁹³ Applicants are, in any case, required to make a statement, not only about the existence of effective ties to the national community, but also about the existence or not of prior convictions and the prior exercise (or not) of public functions or military service to a foreign state, per Article 44 (1) of the Nationality Regulation.

with the national community”, which suggests a widening of the possibilities for opposition, since the existence of ‘any ties’ is no longer enough to protect persons from opposition by the Public Prosecutor and the concept of ‘effective ties’ is sufficiently vague to allow a considerable margin of discretion.

3.1.6 Acquisition based on adoption

Under Article 7 of the Nationality Act, those who are fully adopted (*adoptado plenamente*) by a Bissau-Guinean citizen acquire Bissau-Guinean citizenship. As explained in Guinea-Bissau’s 2011 report to the UN Committee on the Rights of the Child, the Civil Code establishes two modalities of adoption – full and restricted adoption – requiring in both cases that the child to be adopted is not older than 14 years of age (Article 1974 of the Civil Code). Full adoption applies when the child who is being adopted is placed in the same position as that of a son or a daughter, including as heir to property. By law, this option is only available for orphaned children or for children of unknown parents, and the adopting parents must not have biological children (Article 1982 of the Civil Code). Restricted adoption applies when the biological parents are known and alive, and the adoption does not sever the legal ties between the child and his/her biological family.⁹⁴

The wording of Article 7 of the Nationality Act suggests that the acquisition is an automatic effect of the completion of the legal adoption process, which would leave no room for the Bissau-Guinean authorities to oppose or reject the acquisition under this provision. Article 13 of the Nationality Regulation seems to confirm this, as it prescribes that those who are fully adopted by a Bissau-Guinean citizen acquire Bissau-Guinean citizenship by operation of law (*mero efeito da lei*). This would be entirely consistent with the purported goal of placing the adopted children in the same position as biological children. It would also be the reading most consistent with the principle of unity of citizenship statuses within the family (Rei 1995: 319). However, this interpretation is contradicted by the fact that acquisition based on adoption is made to follow the naturalisation procedure, as per Article 19 (6) of the Nationality Regulation, and can be opposed by the Public Prosecutor, as per Article 43 of the Nationality Regulation. As with acquisition based on filial ties to a person who acquires Bissau-Guinean citizenship, the young age of the potential beneficiaries of Article 7 of the Nationality Act excludes all grounds for opposition except that of ‘manifest lack of any ties with the national community,’ which may be used to oppose the acquisition of Bissau-Guinean citizenship whenever the child is adopted and/or resides abroad.⁹⁵

Article 14 (1) of the Nationality Regulation adds that proof of the Bissau-Guinean citizenship of the adopting person must be enclosed with the adoption application, and that mention to this citizenship must be made in the ruling or act where the adoptive filial ties are established. The phrasing of Article 14 (1) is a bit convoluted, but a likely interpretation is that notice of the ruling/act establishing the adoption must be forwarded for annotation in the birth registration. Article 14 (2) further adds that the mention to the citizenship of the adopting person must be included, as an ‘identification element’ of the interested party, in the annotation pertaining to the adoption on the child’s birth registration. As per Article 14 (3),

⁹⁴ The report adds that the difficulties in adopting through legal channels often make people resort to illegal means, such as the forgery of the biological parents’ identification, which has led to conflicts witnessed by the registrar and civil court employees. See CRC/C/GNB/2-4, of 7 December 2011, *cit.*, §§ 34-35.

⁹⁵ Applicants are, in any case, required to make a statement about, not only the existence of effective ties to the national community, but also about the existence or not of prior convictions and the prior exercise (or not) of public functions or military service to a foreign state, per Article 44 (1) of the Nationality Regulation.

these rules also apply, with the necessary adjustments, whenever a restricted adoption is converted into full adoption.

3.1.7 Acquisition based on marriage

Foreigners married to Bissau-Guinean citizens may acquire Bissau-Guinean citizenship if they expressly show (*manifestar*) the wish to do so after three years of marriage and one year of residence in national territory [Article 8 (1) of the Nationality Act].⁹⁶ The annulment of the marriage does not hinder the citizenship acquired under Article 8 (1), provided that the person who acquired the Bissau-Guinean citizenship married in good faith [Article 8 (2)]. As noted above (section 2.2), judicially recognised unions have all the legal effects of formalised marriages under Law no. 3/76 of 4 May 1976, which means that a foreigner in a recognised union with a Bissau-Guinean citizen should be able to make use of the possibility offered by Article 8 (1).

The Nationality Regulation seems to do away with the one-year residence requirement, since Article 11 (1) provides that “the foreigner married for more than three years to a Bissau-Guinean citizen who, during the marriage, wants to acquire Bissau-Guinean citizenship, must declare it”.⁹⁷ This may have resulted from oversight on the part of the legislator or may have been deliberate. Either way, this ‘amendment’ to Article 8 of the Nationality Act is of no consequence, since the primary legislation prevails. The one-year residence requirement is therefore still applicable.

As noted in the case of adoption, although the use of the term ‘declaration’ in the Nationality Regulation implies that persons falling under this category are entitled to acquire Bissau-Guinean citizenship as of right, this is not the case in practice. Acquisition based on marriage follows the general naturalisation procedure and the Public Prosecutor can lodge its opposition. Here, all grounds for opposition listed by Article 12 of the Nationality Act are applicable. It should be noted, however, that the list of grounds in Article 43 (2) of the Nationality Regulation has one important – and arguably unconstitutional – difference, as it lowers the prison sentence threshold from six years to one year [subparagraph (b)], considerably widening the opportunities for the Public Prosecutor to oppose acquisition. Since Article 43 (2) (b) ‘amends’, rather than regulates, Article 12 of the Nationality Act, it is invalid, for the reasons already given above, and the Public Prosecutor can therefore only oppose acquisition if the foreign spouse was convicted of a crime which is punishable under Guinea-Bissau’s law with a prison sentence of more than six years.

Other changes brought by the Nationality Regulation were the removal of the conviction for crimes against the external security of the state from the list of grounds for opposition and the combination in the same subparagraph of the exercise of public functions and rendering of non-mandatory military service on behalf of a foreign state [Article 43 (2) (c)]. Again, ideally, these changes should have been made by means of an Act of Parliament. However, they are less problematic, since the listing of a separate grounds for crimes against the external security of the state, in Article 12 (c) of the Nationality Act, is redundant vis-à-vis paragraph (b) of Article 12, and the two grounds combined in Article 43 (2) (c) of the Nationality Regulation are closely interlinked, as they reflect the same concern with the potential for conflicting loyalties. Furthermore, the phrasing of Article 43 (2) (c) has the

⁹⁶ Rei (1995: 320) points out that, although Article 8 is not explicit in this regard, it is to be assumed that the one-year residence in Guinea-Bissau has to have occurred after the celebration of the marriage.

⁹⁷ Article 11(2) adds that the declaration must be accompanied by copies of the marriage certificate and of the Bissau-Guinean spouse’s birth registration.

advantage of doing away with the reference to “the government’s authorisation” in Article 12 (d) of the Nationality Act, which made little sense, given that there would be no reason for a foreigner (as yet with no ties to Guinea-Bissau) to ask for authorisation by the Bissau-Guinean government to render services to a foreign state.⁹⁸

3.1.8 Acquisition by naturalisation

At the proposal of the Minister of Justice, the government may grant Bissau-Guinean citizenship, by naturalisation decree, to foreigners who: (a) are adults or are considered as such, both according to Guinea-Bissau’s law and the law of their country of origin; (b) have a minimum of knowledge about Bissau-Guinean culture and identify with it; and (c) have resided, habitually and legally, for at least six years in the national territory [Article 9 (1) of the Nationality Act].

Again, the Nationality Regulation offers a different version of these requirements, since the age of majority in the applicants’ country of origin is no longer relevant, the residence in Guinea-Bissau only has to be legal (not habitual), and the knowledge of Bissau-Guinean culture is equated with a minimum knowledge of Guinea-Bissau’s official language (i.e. Portuguese) or of Guinea-Bissau Creole (Kriol) [Article 16 (1) (a)(b)(c)]. These changes are not problematic, as they do not depart significantly from the letter and the spirit of the Nationality Act and can be considered to fall within the scope of a regulation of an Act of Parliament. The same cannot be said about Article 16 (1) (d) of the Nationality Regulation, since this provision adds a new naturalisation requirement, namely that applicants must not have any prior conviction in the final instance for crime punishable under Guinea-Bissau’s law with a prison sentence of three years or more. It might be argued that this requirement was ‘implicit’ in the Nationality Act, since prior convictions are grounds for opposing acquisition under Article 12 (b) and (c). However, even if we disregard the technical differences between ‘naturalisation requirements’ and ‘grounds for opposition’, there is still the fact that the Nationality Regulation sets a lower prison sentence threshold than the one in the Nationality Act. For the reasons already mentioned, Article 16 (1) (d) of the Nationality Regulation should be considered invalid and inapplicable.

Regarding the naturalisation procedure, the Nationality Regulation clarifies that the application is addressed to the Minister of Justice and submitted at the Central Registry Office [Article 15 (1)]. If the applicant has legal capacity, he or she may submit the application directly or through his/her attorney; if not, the application is submitted by the interested party’s legal representatives [Article 15 (2)]. The application must be written in Portuguese and include *inter alia* information about the applicant’s current residence and profession, a list of the countries where the applicant has previously resided, and the reference number of the applicant’s residence permit [Article 15 (3)]. The application must also enclose a copy of the applicant’s birth certificate, a document issued by Guinea-Bissau’s immigration services attesting that the applicant is legally residing in the country for at least six years, a document attesting that the applicant has minimal knowledge of Portuguese or Kriol,⁹⁹ and the

⁹⁸ For a similar take on the oddity of Article 12 (d) of the Nationality Act, see Rei (1995: 326).

⁹⁹ Article 17 (2) of the Nationality Regulation adds that proof of knowledge of Portuguese or Kriol may be made by means of a certificate issued by an education institution recognised in any of the countries where Portuguese is the official language, or by means of a declaration issued by the General Directorate for Culture attesting that the applicant speaks Kriol and has a minimal knowledge of the Bissau-Guinean culture. If the applicant is younger than 10 years of age or is a person unable to read nor write, the proof of knowledge of Portuguese or Kriol must be adjusted to his or her ability to acquire or demonstrate the knowledge of these languages [Article 17 (3)].

applicant's criminal record,¹⁰⁰ issued by the competent services in Guinea-Bissau, in the country of origin and of citizenship, and in the countries where the applicant had his/her previous residence [Article 16 (2)].¹⁰¹

Within 30 days of being received at the Central Registry Office, the application is subject to a preliminary assessment by the registrar to check whether all the required information and documents are enclosed [Article 19 (1)]. If the application is incomplete, the registrar informs the interested party of the impending rejection and gives him/her 15 days to reply [Article 19 (2)]. In case the application is not rejected at this stage, the Central Registry Office has another 30 days to issue an opinion on the verification of the naturalisation requirements and to send the file to the Director-General for Civil Identification, Registrations and Notary, who then issues his or her opinion [Article 19 (4)]. If the Director-General's opinion is favourable, the file is immediately forwarded to the Minister of Justice who then forwards it to the presidency of the Council of Ministers for a decision by the Government [Article 19 (5)]. Article 19 is not entirely clear about who actually decides, since paragraphs (5) (6) (8) and (9) refer to a decision by the Minister of Justice. Importantly, the interested party is informed about the different opinions and decisions throughout the procedure and is entitled to appeal against a negative decision to the administrative courts, under Article 48 of the Nationality Regulation.

3.1.9 Acquisition by facilitated naturalisation for services rendered to Guinea-Bissau

The government may waive some of the naturalisation requirements for foreigners who have rendered or who may be called to render relevant services to the state of Guinea-Bissau. Article 9 of the Nationality Act distinguishes two categories in this regard, presumably to reflect the importance of the services rendered. The measure of importance seems to be associated with the beneficiary of the services, since the fastest track is reserved for persons who rendered services to the state, as opposed to those who rendered services to the people of Guinea-Bissau. According to Article 9 (2), the Government may grant Bissau-Guinean citizenship to foreigners who do not meet the six-year residence requirement but who have rendered relevant services to the people of Guinea-Bissau, either during or after the national liberation struggle. As for persons who render or are called to render relevant services to the state of Guinea-Bissau "in the national development process", the Government may grant them Bissau-Guinean citizenship without requiring that they meet either the residence or the cultural integration requirements [Article 9 (3)]. The procedure is entirely discretionary, as suggested by the phrasing "when deemed fair and timely" in Article 9 (2), and follows, with the necessary adjustments, the sequence set out by Article 19 of the Nationality Regulation, even though the Regulation is utterly silent on these or any other grounds for expedited naturalisation.

3.1.10 Acquisition by facilitated naturalisation for refugees

The Refugee Status Act creates an obligation for the Bissau-Guinean authorities to facilitate the naturalisation of refugees. As noted above, when the Refugee Status Act was enacted, this

¹⁰⁰ The fact that Article 16 (1) (d) of the Nationality Regulation is invalid does not preclude the possibility of requiring that the application is accompanied by the applicant's criminal record, since prior convictions are grounds for opposition by the Public Prosecutor, under Article 12 (b) and (c) of the Nationality Act.

¹⁰¹ The presentation of any of these documents may be waived by the Minister of Justice, at the request of the applicant, provided that there is no questions about the fulfilment of the requirements that the documents were meant to attest (Article 18).

was achieved by derogation of Article 9 (1) (c) of the Nationality Act, which at that time required ten year's legal residence in Guinea-Bissau, by establishing that refugees would only be required to have resided in Guinea-Bissau for seven years at the time of the application, provided that they met the remaining naturalisation requirements (i.e. age and cultural integration).

With the 2010 amendment to the Nationality Act, which lowered the general residence requirement to its current six years, Article 34 of the Refugee Status Act lost most of its substantive effect, but the procedural aspects of the provision can still be of use to facilitate the naturalisation of refugees, since refugees are only required to submit a written request to the Executive Secretariat of the National Commission for Refugees and Displaced Persons, which will then submit the application on their behalf before the competent authorities. This is arguably a meagre outcome, even assuming that the procedure in Article 34 of the Refugee Status Act is in effect less cumbersome. A new provision or set of provisions needs to be added to the Nationality Act to reflect the goal of facilitating the naturalisation of refugees, by lowering or waiving some of the general naturalisation requirements, by detailing the procedure (without making it more cumbersome) and/or by exempting refugees from the naturalisation fees.

3.2 Modes of loss of Bissau-Guinean citizenship

Loss of Bissau-Guinean citizenship is governed by Article 10 of the Nationality Act. The Nationality Regulation attempted to amend this provision by establishing that the loss of Bissau-Guinean citizenship can only occur by means of renunciation [Article 1 (2)], but since this provision goes beyond a mere regulation (i.e. detailing the procedures for implementation) of the regime set by Article 10 of the Nationality Act, it must be considered invalid for breach of the Constitution (see first paragraph of section 3). If lawmakers want to protect Bissau-Guineans against the coercive deprivation of their citizenship and prevent statelessness this would certainly be welcome, but they will have to do it by means of an Act of Parliament. Until such amendments to the Nationality Act are properly enacted, all the grounds for loss in Article 10 of the Nationality Act continue to stand, and are listed below, even if we can assume a change in the government's approach to citizenship deprivation as signalled by the adoption of the Nationality Regulation.

3.2.1 Renunciation

According to Article 10 (1) of the Nationality Act, Bissau-Guinean citizenship is lost by those who, having the citizenship of another state, declare their wish not to be Bissau-Guinean. The Nationality Regulation has a similar provision (Article 20), adding that the declaration for these purposes has to be accompanied by proof that the interested party has another citizenship [Article 21 (3)]. Although unnecessary, Article 21 (2) of the Nationality Regulation provides that Bissau-Guinean citizens who acquire a different citizenship are entitled to keep their Bissau-Guinean citizenship, unless they make a declaration to the contrary.

3.2.2 Loss of acquired citizenship following conviction for crime against the security of the state

According to Article 10 (2) of the Nationality Act, acquired Bissau-Guinean citizenship is withdrawn if the citizen is convicted in ‘final instance’ (i.e after all appeals have been exhausted) for a crime against the external security of the state of Guinea-Bissau. Crimes against the security of the state are listed in the Criminal Code,¹⁰² and consist of treason (Article 215), service or collaboration with enemy armed forces (Article 216), sabotage of national defences (Article 217), breach of state secrets (Article 219), diplomatic disloyalty (Article 220), attempts to interfere with the rule of law (Article 221), attempts against the Head of State (Article 222), crime against person enjoying international protection (Article 223), and insult against national symbols (Article 224). For the reasons mentioned above, the Nationality Regulation provides no details of the procedure in these cases. There is no indication, for instance, of whether or not a final instance court which convicts a Bissau-Guinean citizen for a crime against the security of the state is under the obligation to send a copy of the judgment to the Central Registry Office ordering the cancelation or amendment of the registration of the acquisition of Bissau-Guinean citizenship, as is foreseen for the administrative courts in Article 50 of the Nationality Regulation. What is certain is that there is no safeguard against statelessness.

3.2.3 Loss of acquired citizenship following service to a foreign state or its agents

Article 10 (2) of the Nationality Act also determines the withdrawal of acquired Bissau-Guinean citizenship if the citizen engages in activities contrary to the interests of Guinea-Bissau and in favour of a foreign state or its agents. Again, the Nationality Regulation provides no details of the procedure in these cases. By analogy with the procedure for opposition to acquisition or reacquisition of Bissau-Guinean citizenship, it may be assumed that the initiative rests with the Public Prosecutor, upon receiving information about the activities engaged in by the Bissau-Guinean citizen, and that the case must be lodged with the administrative courts (Articles 43 to 50 of the Nationality Regulation, with the necessary adjustments). Article 10 (2) of the Nationality Act provides no safeguard against statelessness.

3.2.4 Loss of citizenship obtained by fraudulent means

Finally, Article 10 (2) of the Nationality Act determines the withdrawal of Bissau-Guinean citizenship for those who obtained it by fraudulent means. The wording of this segment of Article 10 (2) is not very clear, but it seems that this particular mode of loss applies to both ‘acquired citizenship’ and ‘citizenship of origin.’

Like the previous mode, in the absence of regulatory provisions on this matter, it can only be assumed that the procedure would be somewhat similar to that which the Nationality Regulation prescribes for opposition to acquisition and reacquisition. The competence of the administrative courts can be deduced with more certainty from Article 42 (2) of the Nationality Regulation, which provides that, in case of doubt as to the identity of a person whose registration is subject to rectification, annulment or cancelation, and where this person’s citizenship is at stake, the competence to assess the matter rests with the administrative courts. There is no safeguard against statelessness.

¹⁰² Guinea-Bissau’s Criminal Code was approved by Decree-Law no. 4/93 of 13 October 1993 and was last amended by Law no. 16/2010 of 13 October 2010.

3.3 Reacquisition of Bissau-Guinean citizenship

Reacquisition of Bissau-Guinean citizenship is allowed under the conditions set out by Article 11 of the Nationality Act, which establishes different rules depending on the grounds on which the citizenship was lost. None of the grounds of Article 10 (2) of the Nationality Act are included, which means that those who were involuntarily deprived of Bissau-Guinean citizenship under this provision are not entitled to reacquire it.

Bissau-Guinean citizenship may be reacquired by those who lost it involuntarily as a consequence of their acquisition of a foreign citizenship, provided that they establish their domicile in Guinea-Bissau and declare their wish to reacquire Bissau-Guinean citizenship [Article 11 (1) (a) of the Nationality Act]. The Nationality Regulation exempts persons in these circumstances from the obligation to provide information and evidence concerning potential grounds for opposition [Article 44 (2)], which can be taken to mean that the Public Prosecutor is not at liberty to oppose reacquisition under Article 11 (1) (a) of the Nationality Act. The Nationality Regulation does not include any specific provision on reacquisition, but it can be assumed that the procedure will be similar to that which is set in Article 19 for naturalisation, with the necessary adjustments.

The same can be said for the second mode of reacquisition, i.e. reacquisition by those who lost their Bissau-Guinean citizenship as a consequence of having acquired a foreign citizenship through marriage. In this case, Article 11 (1) (b) of the Nationality Act requires not only that the applicant establishes his or her domicile in Guinea-Bissau and declares his/her wish to reacquire Bissau-Guinean citizenship, but also that the marriage be broken or annulled, which is a problematic remnant of the previous regime and should be removed from the provision, by an amendment to the Nationality Act.

The third mode of reacquisition covers those who lost their Bissau-Guinean citizenship due to a declaration made by their legal representatives. Article 11 (1) (c) of the Nationality Act requires that they establish their domicile in Guinea-Bissau and declare their wish to reacquire Bissau-Guinean citizenship. The Nationality Regulation merely adds that the declaration must indicate the reference for the registration of the loss and provide proof that the interested party has legal capacity (Article 12). Given that Article 42 (2) of the Nationality Regulation does not exempt this type of cases from the obligation to provide information and evidence concerning potential grounds for opposition, it is to be assumed that the Public Prosecutor may oppose reacquisition on the grounds listed in Article 12 of the Nationality Act and following the procedure set in Articles 44 to 47 of the Nationality Regulation.

3.4 Political rights of citizens of origin and citizens by acquisition

The 1993 Constitution of the Republic of Guinea-Bissau only differentiates between citizens of origin and citizens by acquisition on two occasions: when ruling that the top leaders (*dirigentes máximos*) of political parties have to be Bissau-Guinean citizens of origin [Article 4 (6)] and when making eligibility for the office of President of the Republic dependent on the candidates being Bissau-Guinean citizens of origin *and* born to parents who are both also Bissau-Guinean citizens of origin [Article 63 (2)].

The Political Parties Framework Act (*Lei Quadro dos Partidos Políticos*)¹⁰³ includes a provision [Article 8 (2)] which is similar to Article 4 (6) of the Constitution but does not provide any clarification about who is to be considered a party leader for these purposes. The use of the plural (*dirigentes*) suggests that it is not limited to the head of the party, while the principles of equality and non-discrimination – both in the Constitution (Article 24) and in the Political Parties Framework Act (Article 6) – advise against an excessively broad interpretation of the term.

As for the ‘double requirement’ in Article 63 (2) of the Constitution,¹⁰⁴ it was first introduced by Luís Cabral’s failed 1980 Constitution and is explained in the Bissau-Guinean literature (Monteiro 2019: 164) as a legacy of the “Cape-Verdean question” which marked the birth of Guinea-Bissau as an independent state. As noted by Monteiro (2019: 164), it is excessive and anachronistic to require not only that the candidates, but also both of their parents, be Bissau-Guinean citizens of origin, since most of the parents of persons running for President today were born when Guinea-Bissau did not yet exist as an independent country. Monteiro (2019: 164) does not argue, however, that the requirement should be disregarded, only that it should be given an “updated interpretation.” In all likelihood, the candidates’ parents’ citizenship of origin is determined by reference to the criteria for attribution set in the 1976 Nationality Act. A stronger stance against the ‘double requirement’ in Article 63 (2) is that of Oliveira (2005: 189-190), who dismisses the ‘historical reasons’ behind the provision and simply views it as discriminatory and dangerous.

Meanwhile, in the absence of a constitutional provision explicitly authorising other distinctions in the rights enjoyed by citizens of origin and by citizens by acquisition, ordinary law cannot establish other forms of discrimination against citizens by acquisition, nor can it impose any incapacities, even if temporary, on persons who reacquire Bissau-Guinean citizenship under Article 11 of the Nationality Act. Any such differentiation among Bissau-Guinean citizens would be contrary to the constitutional principles of equality and non-discrimination, according to which all citizens are equal before the law, entitled to the same rights and subject to the same obligations (Article 24 of the Constitution).¹⁰⁵ The Nationality Act nevertheless differentiates between citizens of origin and citizens by acquisition for purposes of loss, since only the latter can be deprived of their Bissau-Guinean citizenship following a conviction for crime against the security of Guinea-Bissau or as a consequence of rendering services to a foreign state [Article 10 (2)].

Bissau-Guinean citizens in the diaspora have been entitled to vote abroad in the legislative elections since the adoption of Law no. 4/93 of 24 February 1993,¹⁰⁶ but, after the 1994 election,¹⁰⁷ they were not allowed to exercise their right to vote for many years (Sá

¹⁰³ Approved by Law no. 2/91 of 9 May 1991 and amended by Law no. 4/91 of 26 August 1991.

¹⁰⁴ Which is mirrored in Article 10 (1) of the Electoral Act, approved by Law no. 10/2013 of 25 September 2013.

¹⁰⁵ It is worth noting that the legislation covering fields where such a differentiation could be deemed warranted by lawmakers does not discriminate against citizens by acquisition, who are eligible on a par with citizens of origin to the People’s National Assembly [Article 10 (2) of the Political Parties Framework Act], to the diplomatic career [Article 11 (1) of Decree-Law no. 3/2013 of 16 July 2013], to the judiciary [Article 24 (1) (a) of Law no. 1/99 of 27 September 1999], and to the Armed Forces [Article 20 (1) of Law no. 6/99 of 7 September 1999].

¹⁰⁶ Article 9 of Law no. 4/93 set requirements for the recognition of the right to vote in legislative elections to Bissau-Guinean residents abroad. They had to either (a) have been away from national territory for 19 years or more, at the time of the publication of Law no. 4/93; (b) reside abroad in the service of Guinea-Bissau or be the spouse or child of such a person; or (c) be in Guinea-Bissau per chance, irrespective of time of residence abroad, provided that he or she was duly registered.

¹⁰⁷ At which time they elected a member of the RGB-MB party – Guinea-Bissau Resistance – Bah Fatah Movement (*Resistência da Guiné-Bissau – Movimento de Bah Fatah*) – to the People’s National Assembly (Sá 2012: 38).

2012: 38). A new electoral law was enacted in 2013, entitling the diaspora to vote in both legislative and presidential elections [Article 8 (2) of Law no. 10/2013 of 25 September 2013] and since then electors have been able to register and cast their ballots abroad, as was the case in the 2019 elections.

3.5 The competent authorities to decide eligibility for citizenship

The competence to decide on applications pertaining to acquisition, reacquisition and loss of Bissau-Guinean citizenship rests with the government, although it is not always clear whether this means the Council of Ministers or the Minister of Justice (see Articles 9 and 25 of the Nationality Act and Articles 15 to 19 of the Nationality Regulation). The applications for acquisition based on filial ties, adoption, marriage, and naturalisation, which follow the standard naturalisation procedure,¹⁰⁸ are submitted at the Central Registry Office and the registrar is competent to make a first preliminary assessment before forwarding the file to the Minister of Justice (Article 19 of the Nationality Regulation).

The competence to adjudicate judicial appeals, which the Nationality Act attributed to the Supreme Court (Article 22), was moved to the administrative courts by Articles 43 to 50 of the Nationality Regulation. The appeals may be lodged by the interested parties or by the Public Prosecutor, as per Article 21 of the Nationality Act and Article 48 of the Nationality Regulation. The Public Prosecutor can oppose acquisition for all categories of acquired citizenship by lodging an appeal with the administrative courts within one year of the fact on which the acquisition is based (Article 13 of the Nationality Act and Article 43 of the Nationality Regulation). The opposition procedure is quite brief. Once the opposition is lodged by the Public Prosecutor, the ‘defendant’ (*réu*) is notified to contest, after which the case goes to judgment, unless the judge determines that further enquiries are necessary. If the opposition is successful, the court orders the cancellation of the citizenship registration (Articles 45 and 46 of the Nationality Regulation).

All the facts that determine the attribution, acquisition and reacquisition of Bissau-Guinean citizenship, as well as the declaration of its loss, are subject to mandatory registration at the Central Registry Office, at the request of the interested parties, with the exception of the cases of attribution based on birth registration at Guinea-Bissau’s Civil Registry (Article 14 of the Nationality Act).¹⁰⁹ Every registration pertaining to the attribution, acquisition, loss or reacquisition of Bissau-Guinean citizenship is annotated in the interested party’s birth record (Article 16 of the Nationality Act). Proof of attribution and of acquisition of Bissau-Guinean citizenship is made by means of the registration of the relevant facts, as per Articles 19 and 20 of the Nationality Act. Citizenship certificates may be issued by the Central Registry Office, at the request of the interested parties, on the basis of their citizenship registration or, absent that, their birth registration (Article 32 of the Nationality Regulation).

If a person is a citizen of more than one state, Articles 23 and 24 of the Nationality Act apply. These contain standard conflict of laws rules. When one of the competing citizenships is Bissau-Guinean citizenship, only this citizenship status is relevant in Guinea-Bissau (Article 23). If the competing citizenships are all foreign, Article 24 prescribes that the

¹⁰⁸ Article 19 (6) of the Nationality Regulation actually uses the term naturalisation to encompass all grounds of citizenship acquisition, referring to “naturalisation based on marriage, filial ties and adoption.”

¹⁰⁹ This obligation is restated by the Nationality Regulation, which details the formalities required for the citizenship registration and the birth registration (Articles 33 to 42).

prevailing citizenship will be that of the state where the foreigner has his or her habitual residence or, if not applicable, that of the state with which the foreigner has stronger ties.

3.6 Civil registration, proof of citizenship and identity documents

As is the case for other African countries with porous borders and ineffective state bureaucracies, Guinea-Bissau faces serious challenges in the implementation of its statutory provisions on access to citizenship. Proof of entitlement is extremely difficult in the absence of a comprehensive network of civil registries able to ensure universal birth registration and the issuance of identity documents. In a clear separation between the law in the books and the reality on the ground (Oliveira 2005: 188), Article 14 of the Nationality Act requires registration at the Central Registry Office of all the facts that determine the attribution, acquisition and reacquisition of Bissau-Guinean citizenship, as well as the declaration of its loss, and Article 19 provides that proof of citizenship of origin is made by means of a birth registration, something many (if not most) Bissau-Guineans are not familiar with. This means that, even in case of attribution of citizenship by operation of law, registration is required for the status to have effect.

The rate of birth registrations in Guinea-Bissau is one of the lowest in the world – currently at 24%,¹¹⁰ down from 38,9% in 2006¹¹¹ – in spite of several birth registration campaigns conducted with international assistance over the years. National authorities blame the situation on the mismatch between the legal framework inherited from the Portuguese and the country's socio-cultural reality, since the rules governing birth registration favour children born in wedlock and at a hospital,¹¹² but proposals for an in-depth amendment to the Code of Civil Registration have not yet come to fruition.¹¹³ To address the problem, national authorities have been making small legal adjustments to extend the grace period during which birth registration is free of charge (up to three years after birth, in 2004; up to five years, in 2006) and organising periodic campaigns for the free registration of children up to ten years of age.¹¹⁴ These have had little impact, however, due to the limited number of registration facilities around the country¹¹⁵ and to the fact that the parents themselves are often not

¹¹⁰ 2019 data from UNICEF. See <https://www.unicef.org/guineabissau/press-releases/despite-significant-increase-birth-registration-quarter-worlds-children-remain> [22.04.2021].

¹¹¹ See <https://data.worldbank.org/indicator/SP.REG.BRTH.ZS?locations=GW> [22.04.2021].

¹¹² See Guinea-Bissau's First Implementation Report of the African Charter on the Rights and Welfare of the Child (2008-2018), *cit.*, § 150. The same argument was put to the United Nations Committee on the Rights of the Child, in 2009. See Combined second, third and fourth periodic reports of states parties due in 2007, CRC/C/GNB/2-4, of 7 December 2011, § 135, available at <https://undocs.org/en/CRC/C/GNB/2-4> [25.04.2021]. By law, birth registration is mandatory to every child born in Guinea-Bissau and should be made within 30 days after birth at the registry office located in the administrative area where the child was born. See DLA Piper's 2016 Comparative Report on Birth Registration, prepared for UNICEF, p. 43, available at http://citizenshiprightsafrika.org/wp-content/uploads/2016/08/UNICEF-Comp-laws-Birth-Registration2_2016.pdf [25.04.2021].

¹¹³ Guinea-Bissau's 2009 report to the Committee on the Rights of the Child, *cit.*, § 74, mentions that "in-depth changes were proposed to the Code, ranging from the way births are declared, the composition of names, the relevant authorities, the rates and the actual validity of the provisional registries," but there is no further reference to these proposals, neither here nor in the country's 2018 report to the African Commission. The Code still in force is the one adopted, under Portuguese rule, by Decree-Law no. 47678 of 5 May 1967 and amended, also under Portuguese rule, by Decree-Law no. 49054 of 12 June 1969.

¹¹⁴ See Guinea-Bissau's First Implementation Report of the African Charter on the Rights and Welfare of the Child (2008-2018), *cit.*, §§ 151-153.

¹¹⁵ There has been progress in this regard, with the gradual integration of birth registration services into health facilities, for instance, but these are yet to reach most rural and remote areas. According to UNICEF, by the end

registered and/or are unable to present the identification document required for the registration of the child.¹¹⁶

Bissau-Guinean civil registrars, interviewed in 2019, pointed to the impossibility of replacing the identification document of the person requesting the registration by witness testimony as a major obstacle to an increase in birth registrations.¹¹⁷ This is puzzling since the Code of Civil Registration still in force actually requires the presence of two witnesses for any act of civil registration (Article 58) and, for birth registrations in particular, only requires the presentation of the child's parents' identity documents "if possible" [Article 128 (2)]. It seems that the Bissau-Guinean authorities are disregarding the flexibility allowed by this provision and enforcing stricter guidelines to birth registrations, even though this is not required by law and is counterproductive in practice. The Code of Civil Registration also provides for the possibility of obtaining the birth registration by court order (Articles 121 and 122), but there are no data available as to whether or not these provisions are used in practice and, if so, under which circumstances.

In any case, although birth registration is nominally required for enrolment at schools, there are Bissau-Guineans who manage to complete 12 years of schooling without it and many who go through their whole lives without ever being registered and issued an identification document.¹¹⁸ For those in remote rural areas, in particular, proof of a formal link to the state is largely irrelevant for daily life and, all over the country, the link itself is devalued in the eyes of the citizenry by the state's inability to provide essential goods and services, a role that Bissau-Guineans have come to expect not from the state but from international donors (Temudo 2009: 61; Roque 2009: 8; Shaw 2015: 343). Citizenship and proof thereof probably matter most to Bissau-Guineans who are internationally mobile, given the toughening of international borders and the mobility rights enjoyed in Lusophone and ECOWAS countries by those who hold a Guinea-Bissau passport or ID.¹¹⁹

of 2019, there were 20 birth registration centres operating at national and regional hospitals and in some health centres. See <https://www.unicef.org/guineabissau/press-releases/despite-significant-increase-birth-registration-quarter-worlds-children-remain> [23.04.2021]. Besides these registration services, Guinea-Bissau has three civil registry offices and one Central Registry Office, all in Bissau, eight registry offices and 28 registration posts in the regions to the interior of the country. Information retrieved from news-item entitled 'Registo civil de crianças na Guiné-Bissau é difícil e pais não são registados' [Civil registration of children in Guinea-Bissau is difficult and parents are not registered], *Diário de Notícias*, 4 February 2019, available at <https://www.dn.pt/lusa/registo-civil-de-criancas-na-guine-bissau-e-dificil-e-pais-nao-sao-registados--10531054.html> [23.04.2021].

¹¹⁶ Adult registration has mostly taken place in the context of electoral processes, with considerable logistic obstacles and narrow outcomes (see e.g. Ferreira 2004: 50). Voter registration is mandatory and the electoral roll must be updated on a yearly basis, per Articles 2 and 5(a) of Law No. 11/2013 of 25 September 2013, available at <http://www.cne.gw/images/docs/legislacao.pdf> [25.04.2021]. However, ahead of the last elections (2018-2019), the roll had not been updated since the previous electoral cycle of 2014, and there were considerable practical difficulties, such as out-of-date software and equipment and lack of trained personnel, as reported by the European Commission in its Action Document for Support to the Electoral Cycles of Guinea-Bissau 2018-2019, available at https://ec.europa.eu/international-partnerships/system/files/amendment-guinea-bissau-c20196830-action_document.pdf [25.04.2021]. It is worth noting that, according to Article 22 of Law No. 11/2013, in the absence of documentary evidence of the voter's identity, voter registration can be made on the basis of witness testimony by registered Bissau-Guinean citizens, a flexibility apparently not shown when it comes to the registration of children.

¹¹⁷ Reported in the news item entitled 'Registo civil de crianças na Guiné-Bissau é difícil e pais não são registados', *cit.*

¹¹⁸ Information retrieved from news-item entitled 'Guiné-Bissau tem pessoas que vivem a vida toda sem estarem registadas' [Guinea-Bissau has people who live all their lives without being registered], *Diário de Notícias*, 12 December 2017, available at <https://www.dn.pt/lusa/guine-bissau-tem-pessoas-que-vivem-a-vida-toda-sem-estarem-registadas-8979533.html> [25.04.2021].

¹¹⁹ Bissau-Guineans enjoy 'Lusophone privileges' (e.g. visa exemptions, easier naturalisation, political rights, equality statuses) in Portuguese-speaking countries such as Brazil, Cape Verde and Portugal, as well as mobility

The issuance of Bissau-Guinean citizens' identity document (*bilhete de identidade*) is regulated by Decree no. 10/2006 of 17 August 2008, which sets the template and fees to be applied, with the purported goal of preventing forgeries and extending documentation to as many citizens as possible. The identity document is issued by the Civil Identification Service (*Serviço de Identificação Civil*) of the Ministry of Justice and includes, besides the name and digital photograph of its holder, information on date and place of birth, identity of both parents, civil status, profession, current occupation, and residence. Decree no. 10/2006 does not provide any clarification as to how the applicants are expected to prove their identity in order to obtain their identity documents, although it can easily be assumed that a copy of the birth registration will be required. In March 2018, it was announced that a new biometric identity document would be introduced to replace the ECOWAS passport, in order to facilitate mobility in the ECOWAS region,¹²⁰ but the new template does not seem to have yet been published in the official journal.

The issuance of passports is regulated by Decree-Law no. 2-A/2001 of 7 August 2001, which sets the template for the different types of passport – diplomatic, service, regular, for foreigners – and regulates their respective validity, application procedure, and fees. Bissau-Guinean citizens (*cidadãos de nacionalidade guineense*) are entitled to own a regular passport, as per Article 16. If the application for a regular passport is made in Guinea-Bissau, the applicants are required to prove their identity by presenting their identity card [Article 20 (1)], whereas proof of identity abroad is made by means of the applicant's consular registration card [Article 20 (2)]. The application must include a copy of the birth registration (*certidão narrativa completa de nascimento*), copy of the criminal record if the applicant is between 18 and 55 years of age, and an authenticated copy of the applicant's *bilhete de identidade* [Article 21 (1)]. Applicants with acquired citizenship must also enclose an official document (or authenticated copy thereof) attesting to the legality of the acquisition of Bissau-Guinean citizenship [Article 21 (3)]. Failure to submit all the documents required is grounds for refusing to issue the passport (Article 23). Loss of Bissau-Guinean citizenship results in the annulment (*nulidade*) of the passport (Article 29).

opportunities under multilateral agreements adopted in the framework of the Portuguese Speaking Countries Community (CPLP) (Jerónimo 2008: 219-237). They are also ECOWAS citizens – unless they hold the citizenship of a non-member state of the Economic Community of West African States, per Article 1 of Protocol A/P.3/5/82 relating to the definition of community citizen – and enjoy the freedom of movement, residence and establishment that come with it, under Protocol A/P.1/5/79 relating to free movement of persons, residence and establishment. Protocol A/P.3/5/82 is available at <http://citizenshiprightsafrika.org/wp-content/uploads/2016/06/ECOWAS-Protocol-Relating-to-the-Definition-of-Community-Citizen.pdf> while Protocol A/P.1/5/79 is available at <https://www.refworld.org/docid/492187502.html> [27.04.2021].

¹²⁰ Information retrieved from news-item entitled 'Guiné-Bissau começou a emitir novo bilhete de identidade que substitui passaporte na CEDEAO' [Guinea-Bissau started issuing new identity document which replaces ECOWAS passport], *Diário de Notícias*, 28 March 2018, available at <https://www.dn.pt/lusa/guine-bissau-comecou-a-emitir-novo-bilhete-de-identidade-que-substitui-passaporte-na-cedeao-9220629.html> [30.03.2021].

4. Current political debates and reforms required to the Nationality Act

The ground rules for attribution, acquisition, loss, and reacquisition of Bissau-Guinean citizenship have remained remarkably stable over the years, against a background of political turmoil. As noted throughout this report, although the elites often try to exploit the country's ethnic diversity for political gain, the citizenship regime does not seem to play a particularly important role (if any) in the political disputes. So far, the amendments to the 1992 Nationality Act were made mainly under pressure from the diaspora or at the suggestion of international donors and human rights supervisory bodies. It should also be kept in mind that the instability in the country – with long periods during which the People's National Assembly does not convene – is hardly conducive to frequent or thorough legal reforms.

The 'constitutional transition' operated by Constitutional Law no. 1/93 of 26 February 1993 established a semi-presidential system, along the lines of the one in the 1976 Portuguese Constitution. The goal was to separate and balance the different sovereign powers, but the "constitutional complexity" (Bappah 2017: 13) of the system has been exploited by the elites to erase parliamentary intervention, strengthen the role of the President (Bastos 2013: 14), and generally "make the government unworkable" (Bappah 2017: 27).¹²¹ Constitutional reform has been on the country's (and the international donors') agenda for more than two decades, but is yet to come about.¹²² It is, in any case, doubtful that a new constitution will solve all of Guinea-Bissau's political and institutional problems.¹²³

The opening of the political space – with the creation of a myriad of new political parties from 1991 and the holding of the first multiparty elections in 1994 – did not result in a consolidation of democratic culture within Guinea-Bissau's public institutions (Ferreira 2004: 47; Forrest 2002: 252-254) and did not put an end to the "temptation to change political power through undemocratic means" (Bastos 2013: 14). Recurring military coups or attempted coups, politically motivated assassinations and a brief but brutal civil war, combined with widespread corruption, failed economic policies and elite involvement in drug

¹²¹ As observed by Garvey (2020: 5), "[in] a three-year period between 2015 and 2018, Guinea-Bissau went through seven different prime ministers" and the People's National Assembly was shut down for two full years, until a prime minister was agreed upon in 2018.

¹²² Articles to amend the 1993 Constitution (and reduce the powers of the President) were approved on 7 July 1999, shortly after the end of the 1998-1999 civil war, but were not ratified by then acting interim President, Malam Bacai Sanhá (Bastos 2013: 4). These articles were used as basis for the Constitution adopted by the People's National Assembly on 5 April 2001, which never entered into force because President Kumba Yalá refused to ratify it. Another attempt at constitutional reform was made following the 2014 general elections, with the setting up of an *ad hoc* commission to address the matter, but the works of the commission had not advanced much when they were forced to a halt by the 2015 political crisis. The UN Integrated Office for the Consolidation of Peace in Guinea-Bissau (UNIOGBIS), established by a Resolution of the Security Council in 2009, is currently mandated to *inter alia* assist national authorities in the process of amending the Constitution, in pursuance of the Conakry Agreement of 14 October 2016 and the ECOWAS road map (UNIOGBIS 2018: 1, 12). It should be noted that the 1993 Constitution was amended in 1995 and 1996, as mentioned earlier in this report, but these were minor amendments, touching upon local administration and the 'economic constitution,' respectively. There were also a few 'exceptional' and 'transitional' amendments, designed to allow general elections outside the four-year deadline set by Article 79 of the Constitution. That was the case with Constitutional Law no. 1/2008 of 18 April 2008 – which was declared unconstitutional by the Supreme Court in judgment no. 4/2008 of 31 July 2008 (Pires 2019: 291-292) –, and with Constitutional Law no. 1/2018 of 17 April 2018. Bastos (2013: 4) mentions a Constitutional Law of 28 November 2012, which was allegedly adopted with the same purpose.

¹²³ As Bastos (2013: 14) points out, "the inadequacies of the constitutional text are not the main reason for the malfunctioning of the political system of Guinea-Bissau" and it is unlikely that the governability of the country will significantly improve with the enactment of a new Constitution.

trafficking (Shaw 2015: 339-361) have all contributed to damaging the functioning and legitimacy of state institutions and to alienate the population (Rudebeck 2011: 9-10). Elections do take place at semi-regular intervals and have overall been deemed free and fair by international observers,¹²⁴ but the exercise of political rights – like other human rights – has been hindered by many factors, among them the continued military interference in the country’s political life (Bastos 2013: 12)¹²⁵ and the weakness of the judicial and legislative authorities (Ferreira 2004: 53).¹²⁶

A new amendment to the 1992 Nationality Act might in any case be in the pipeline, in order to bring the Nationality Act into line with the 1954 and 1961 Conventions on Statelessness, as recommended by the UN Committee on the Rights of the Child in 2013. This could mean changes to the rules on naturalisation, since Article 32 of the 1954 Convention requires that states facilitate the naturalisation of stateless persons as far as possible, including by expediting proceedings and reducing the charges and costs of such proceedings. It could also mean changes to the rules on loss, since Article 8 of the 1961 Convention requires that states do not deprive a person of their citizenship if such deprivation would render the person stateless, even though the Convention safeguards the states’ prerogative to retain grounds for deprivation such as the ones currently included in Article 10 (2) of the Nationality Act in their domestic legislation.

If the Bissau-Guinean lawmakers do take up the challenge of reforming the 1992 Nationality Act, it would be advisable that this is not another piecemeal reform, like that of 2010, and instead is used as an opportunity to give Guinea-Bissau’s citizenship regime a much-needed update. Besides removing redundancies [e.g. Article 5 (1)(d)] and inconsistencies [e.g. the requirement that the marriage be over, in Article 11 (1)(b), or that the services to foreign states were not authorised by the Bissau-Guinean government, in Article 12 (d)], there is the need to integrate and clarify the terms under which citizenship is granted to children born in Guinea-Bissau to Lusophone parents, to include a provision or set of provisions on the facilitation of the naturalisation of refugees, to revise the rules on acquisition based on marriage to remove the residence requirement, and – even if not strictly required by the 1961 Convention – to revise the rules on loss to make renunciation the sole

¹²⁴ Often with some misgivings (Rudebeck 2011: 11, 15; Ferreira 2004: 50-51), and with internal contestation of the results, as was the case with the recent 2019 elections, which were marred by several breaches of constitutional order, including the fact that Umaro Sissoco Embaló (Movement for Democratic Change MADEM-G15) proclaimed himself President, in a self-investiture ceremony with members of the armed forces present, while the Supreme Court was still deciding on a complaint lodged by his opponent, Domingos Simões Pereira (PAIGC). A detailed description of the events is given by the UN Secretary General in his latest report on the ‘progress made with regard to the stabilization and restoration of constitutional order in Guinea-Bissau,’ of 20 August 2020, S/2020/818, available at <https://www.undocs.org/en/S/2020/818> [20.06.2021].

¹²⁵ Which has, over the years, prompted a number of UN resolutions calling on the military to “refrain from any interference in political issues of Guinea-Bissau” (Embaló 2012: 277). The UN Secretary General’s report mentioned in the previous footnote regrets that, after having remained apolitical for several years (since the 2012 coup and throughout the legislative and presidential elections of 2014 and 2019), “in the context of the contested 2019 presidential election, the armed forces took actions that were not consistent with their professional and apolitical role” (§ 4).

¹²⁶ Not surprisingly, Guinea-Bissau ranks low in international democracy monitoring indexes. It ranked 41 of 54 for overall governance in the 2020 Ibrahim Index of African Governance, where it is the worst scoring country in Western Africa (while Cape Verde is the best scoring country). Report available at <https://mo.ibrahim.foundation/iiag/downloads> [30.03.2021]. V-DEM’s 2020 Democracy Report classified it as an *electoral democracy*-, ranking 93 of 179 in the Liberal Democracy Index. Report available at <https://www.v-dem.net/en/publications/democracy-reports/> [30.03.2021]. The Economist Intelligence Unit Democracy Index 2020 classified it as an *authoritarian regime*, ranking 147 of 167. Report available at <https://www.eiu.com/n/campaigns/democracy-index-2020/> [30.03.2021].

grounds for loss, as was attempted, in breach of the Constitution, by the Council of Ministers in 2011.

The Nationality Regulation is also greatly in need of a reform, not only to remove provisions which are inconsistent with the Nationality Act – except, of course, if the Nationality Act is in the meantime amended by an Act of Parliament and adopts provisions similar to those in the Regulation which are currently unconstitutional – but also to avoid repetitions, add provisions on aspects which are still missing, and reorganise the different sections in a more streamlined way.

Another legal reform that has been long overdue is that of the Code of Civil Registration, which is often blamed for the low levels of birth registrations in the country, even though, as noted above, the Bissau-Guinean civil registration authorities seem to be using a stricter interpretation of the legal provisions than would be required by the letter of the law. The new Code of Civil Registration should provide explicitly for the possibility to replace, when necessary, the parents' identification documents by witness testimony in the birth registration procedure, similarly to what is already allowed by Article 25 of the Nationality Regulation for the verification of the identity of persons making declarations for purposes of citizenship attribution. As mentioned to the UN Committee on the Rights of the Child in 2009, the new Code should also change the way births are declared, the composition of names, the relevant authorities, the rates and the validity of provisional registries, in order to better reflect the reality on the ground and address the specific needs of the population of Guinea-Bissau.

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