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Migration governance in North and West Africa: national policy frameworks

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BORDER MANAGEMENT

CONSULAR PROTECTION
AND ASSISTANCEMIGRANT AND DIASPORA
CONTRIBUTIONS

Abstract: This chapter addresses two core questions: (a) How does international migration impact national frameworks of rights and duties?; (b) What policies do States develop to deal with their expatriate nationals and the entry and stay of foreign nationals? Section 32.2 reviews legislation on nationality and the various ways it has evolved in response to ground realities created by emigration and immigration. Section 32.3 describes States' strategies to make their nationals abroad a resource for the development of their countries of origin, notably through remittances and investment. Section 32.4 is on States' efforts to organize their national communities abroad, and connect them to various aspects of their homelands' lives, while protecting them in the foreign countries where they reside. Section 32.5 deals with the reception of foreign nationals and focuses on irregular migration and its growing criminalization in countries along the Central Mediterranean Route. A common pattern emerges in North and West Africa, by which States recognize international migrants as citizens of the countries they come from more than full members of the ones where they actually live.

32.1. Introduction

The claim of a triple unity – one people, one narrative and one territory – is a founding principle of modern nations.² International migrants seem to challenge this unity: immigrants because, although they are present on the territories of the nations, they do not share the narrative of their citizens; emigrants because, although they share the narratives of their nations of origin, they are absent from their territories. At independence, all African nations established nationality laws and rules of entry and stay for foreign nationals. But it took them more time to articulate proper, identifiable migration policies. This chapter will successively review North and West African policies on nationality, expatriate nationals and irregular migration.

32.2. Defining nationals

The modern governance of migration started with nationality laws. At independence, all North and West African States defined who nationals are. They all adopted at the

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² This claim is all the more important in young nations in which complex ethno-linguistic makeups risk challenging national political constructs. Nations are "imagined communities" in the words of Anderson (1991).

beginning a principle of nationality transmission by descent (*jus sanguinis*): sons and daughters of nationals (a national father in the first nationality laws of the Maghreb) are themselves nationals.³ With the passing of time, however, numbers of immigrants and emigrants grew and States had to amend the law in order to respond to situations created by international migration. Table 32.1 summarizes the main features of nationality laws today.

Immigration raised the question of granting individuals born in the country from foreign national parents a right to nationality in virtue of their place of birth (*jus soli*). Gradually, all West African States except Côte d'Ivoire and the Gambia introduced some *jus soli* in their nationality laws. Under certain conditions, such as continuous residence in the country, children of immigrants would become eligible for nationality of their countries of birth. In Côte d'Ivoire, the permanent establishment of large numbers of immigrants in the absence of any *jus soli* has produced a sizeable proportion of non-citizens representing around one fourth of the total population.

By contrast with West Africa, Maghreb countries (apart from Mauritania) are still sticking to an almost exclusive paternal *jus sanguinis*, admitting only a few exceptions, such as in the case of orphans or children born of unknown parents. However, in order to address the situation of children born of mixed couples, all Maghreb countries except Libya have extended the principle of *jus sanguinis* to maternal descent: children born in the country of a national mother and a foreign national father now have a right to inherit nationality from their mother when the foreign father is dead or non-resident (Tunisia, 1993; Algeria, 2005; Morocco, 2007).

While dominant *jus sanguinis* in the Maghreb has made post-independence immigrants non-citizens in the countries where they live and many were born (second-generation migrants), Morocco has granted them citizenship-like rights. Article 30 of the Moroccan Constitution of 2011 stipulates that “Foreigners under Moroccan jurisdiction enjoy the fundamental freedoms recognized to Moroccan citizens” in accordance with the law. Those among them who reside in Morocco can participate in local elections by virtue of the law, of the application of international conventions or of practices of reciprocity.⁴ Recognizing some political rights of non-citizens is a considerable step towards migrants’ full inclusion.

Table 32.1. Right to nationality in North and West Africa

Country	Year of original nationality law	<i>Jus Sanguinis</i>		<i>Jus Soli</i> (Some)	Naturalization by marriage	Dual nationality	
		Father	Mother				
Algeria	1963	Y ^a	Y	N ^b	Y	Y	(1963)
Burkina Faso	1961	Y	Y	Y	Y	Y	(1989)
Côte d'Ivoire	1961	Y	Y	N	R ^c	R	(1961)
Gambia	1965	Y	Y	N	Y	R	(2001)
Guinea	1960	Y	Y	Y	R	N	–
Libya	1954	Y	N	N	R	R	(1954)
Mali	1962	Y	Y	Y	Y	Y	(1995)
Mauritania	1961	Y	Y	Y	R	R	(2010)
Morocco	1958	Y	Y	N	R	Y	(1958)
Niger	1961	Y	Y	Y	R	Y	(2014)
Senegal	1961	Y	N	Y	R	R	(1961)
Tunisia	1956	Y	Y	N	R	Y	(1975)

^a N: No right; ^b Y: Full right; ^c R: Restricted right.

Sources: Perrin, 2016; and Manby, 2010.

³ For the Maghreb countries, Parolin, 2009; Perrin, 2007:479–497. For West Africa, Manby, 2010.

⁴ Morocco's Constitution of 2011, available at www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en.

A second question raised by immigration is whether nationality can be obtained in the course of one's life, and in particular if a national can transmit it to a foreign spouse. The right to transmit nationality through the marriage bond exists in all North and West African countries. After a certain duration of marriage and residence in the country, a foreign woman can claim the nationality of her national husband. In most cases, however, there is a gender asymmetry and a woman cannot pass on her nationality to a foreign husband. In Algeria, the first nationality law (1963) provided for the transmission of Algerian nationality by marriage on condition that the naturalized woman renounce her nationality of birth (Perrin, 2016).

Marriage is not the only reason for which a foreigner can be granted nationality in North and West African countries. Nationality laws recognize other reasons, such as long-term residency, but due to strict conditions and heavy bureaucratic steps, naturalization is uncommon across the entire region. Numbers of naturalized people are in the dozens per year in Burkina Faso, Senegal, the Niger and Guinea. In Côte d'Ivoire, around 100,000 cases of naturalization since independence represent a tiny 2 per cent of the current migrant stock in the country (Manby, 2016). Things could be slightly different in Libya, where the law defines an "Arab nationality" that seems to facilitate the acquisition of Libyan nationality for nationals of other Arab States, but no empirical evidence confirming this is available.

International migration raises another issue: that of dual nationality. Over the years, long-term migrants become integrated into their host countries, the nationality of which they, or their children, might acquire. This applies in particular to sub-Saharan and Maghrebi migrants in Europe. Can migrants and their descendants keep the nationalities of their countries of origin once they have become nationals of the countries where they live? Is loyalty to a nation compatible with multiple nationalities? States of the Central Maghreb (Algeria, Morocco and Tunisia) and Senegal, which were all countries with large emigrant populations in Europe at the time of independence, have since the very beginning provided for dual nationality under specific conditions. The same applies to Côte d'Ivoire, but for opposite reasons: at independence, the country was already host to large numbers of farmers originating from Upper Volta (now Burkina Faso) and other neighbouring countries whose contribution was deemed instrumental to the economic success of Côte d'Ivoire.

32.3. Making nationals abroad a resource for the nation⁵

In the first years following independence, young African nations were fragile political, economic and social constructs. They were often crossed by divisive lines of ethnicity, language, religion and ideology in a period marked by the bipolarism of the Cold War. Several governments were not looking favourably at the emigration of their citizens. They saw those leaving as disloyal to their nations. Moreover, governments themselves were fragile and unwilling to accept democratic challenges to their power. Therefore, a number of opponents went into exile, often finding shelter in former colonial powers. In this context of distrust, several African States put barriers to the emigration of their citizens (such as unavailability of passports and exit visa requirements) and did not make efforts to maintain links with their expatriates. In an initial stage, transnational bonds of families and communities hardly benefited from the support of States.

Later, when States lost some of their grip on economies and implemented International Monetary Fund-inspired programmes of neoliberal economic reform while facing high levels of youth unemployment, they started to reconsider emigration. Understandingly, no government would openly advocate the emigration of their citizens, as this would be admitting their own failure. Yet, many saw it as a safety valve, as the departure of young people would bring relief on the labour markets, unless emigrants had skills in heavy demand, in which case governments would qualify their leaving as "brain drain" or "brain flight". Moreover, a sense developed that émigrés could be resources for their countries of origin. One after the other, all African States established institutions to deal with their expatriate nationals (Table 32.2). In Economic Community of West African States (ECOWAS) Member States, it consists of a

⁵ On the early period of diaspora policies in North Africa, see Brand (2002) and Fargues (2013). On sub-Saharan Africa, see ICMFD and IOM (2015).

Directorate of the “Ministry of African Integration and (Burkinabe, Ivoirians, Malians, Nigériens, Senegalese) Nationals Abroad”, a designation that highlights the African dimension of international migration. On its side, Morocco created three institutions for its nationals living abroad: a Ministry, a Council and a Foundation.

A common concern of States over recent decades has been to make expatriate nationals effective actors in the economic development of their countries of origin. In particular, fostering remittances and inciting migrants to invest in their homeland became part of African development policies. In 2018, migrant workers' remittances represented a range between a relatively low 0.8 per cent of gross domestic product (GDP) in Côte d'Ivoire (a predominantly migrant-receiving country), and 1 per cent in Algeria (a middle-income oil-rich country), to a very high 6.2 per cent in Morocco, 9.1 per cent in Senegal and 15.1 per cent in the Gambia, making emigration a highly profitable export for several African economies.⁶

Table 32.2. State institutions linking expatriates and their countries of origin

Country	Remittances, percentage of GDP (2018)	Institutions
Algeria	1.0%	Delegate Ministry in charge of the National Community Established Abroad – Consultative Council for the National Community Abroad
Burkina Faso	3.1%	Ministry of African Integration and Burkinabè Abroad
Côte d'Ivoire	0.8%	Ministère de l'Intégration Africaine et des Ivoiriens de l'Extérieur - Direction Générale des Ivoiriens de l'Extérieur
Gambia	15.3%	Ministry of Foreign Affairs, International Cooperation and Gambians Abroad
Guinea	0.4%	Ministère des Affaires étrangères, de la Coopération, de l'Intégration africaine et des Guinéens de l'étranger; Haut Conseil des Guinéens de l'étranger
Libya	n/a	n/a
Mali	5.1%	Haut Conseil des Maliens de l'Extérieur, Ministère des Maliens de l'Extérieur et de l'Intégration Africaine
Mauritania	1.5%	Ministry of Economic Affairs and Development; specific governmental committees dealing with migration management
Morocco	6.2%	Ministry in Charge of Moroccans Living Abroad; Council of the Moroccan Community Living Abroad; Hassan II Foundation for Moroccans Living Abroad
Niger	3.0%	Ministère des Affaires Étrangères, de la Coopération, de l'Intégration Africaine et des Nigériens à l'Extérieur, Haut Conseil des Nigériens à l'Extérieur
Senegal	9.1%	Ministère des Affaires étrangères et des Sénégalais de l'extérieur; Direction générale des Sénégalais de l'Extérieur; Fonds d'Appui à l'Investissement des Sénégalais de l'Extérieur
Tunisia	4.9%	Office of Tunisians Abroad

States understood that migrants will remit and invest in their countries of origin all the more readily when they trust their financial systems. Generating national expatriates' confidence for attracting their money was one of the reasons that prompted the relaxation of exchange controls and currencies convertibility in the Maghreb countries. Allowing traceable bank transfers at no or low cost for migrants became States' response to the spread of illegal “suitcase

⁶ See www.worldbank.org/en/topic/labormarkets/brief/migration-and-remittances.

trading” between Maghreb and Europe. This practice, which was particularly common among Algerian émigrés, consisted of having consumer goods smuggled into their countries of origin in lieu of money transfers. It fostered the emergence of large-scale illegal cross-border trade, resulting in considerable tax losses (Tarrius, 2010). Suitcase trading had not developed the same way in sub-Saharan Africa, where the CFA franc, the currency of the West African Economic and Monetary Union (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, the Niger, Togo and Senegal), was pegged to the French franc, then the euro, and enjoyed an unlimited guarantee for convertibility (the CFA franc is poised to end in 2020 and be replaced by the “eco”).

Remittances benefit migrants and their families in the first instance. As a way to make them profitable to the broader economy of origin countries, State and non-State actors in Africa launched investment programmes and opened banks targeting expatriate nationals. For example, the Government of Senegal has established a Support Fund for Investments of Senegalese Nationals Residing Abroad,⁷ with a mandate for promoting productive investments by expatriate Senegalese “with sufficient resources and a desire to carry out projects at national level”, in other words to expand the developmental impact of remittances beyond the migrant’s family circle.⁸ The Fund grants loans up to CFAF 15 million (USD 25,000) for developing projects in all sectors except commerce, transport and real estate. It includes a special programme (Financement des Femmes de la Diaspora) dedicated to the promotion of female entrepreneurship. Moreover, the Housing Bank of Senegal has developed a financial product (Pack Diaspora) intended for Senegalese nationals residing abroad. Similar programmes now exist in most African countries.

In Guinea, the High Council of Guineans Living Abroad in 2008 organized the first forum for mobilizing Guinean expatriates to contribute innovative financing of development in Guinea (Diallo, 2015). In Burkina Faso, the Government incites its citizens living abroad to invest in a “Diaspora City”, a special real estate investment fund.⁹ In the Gambia, the West African country most dependent on migrant remittances, the Gambia Diaspora Directorate coordinates the Government’s work in “optimizing diaspora input and contributions to national development, removing unnecessary bureaucratic barriers, and assisting individuals in the diaspora and organizations to implement their projects”.¹⁰

32.4. Organizing national communities abroad

While fostering remittances and investment is a core dimension of diaspora policies of African States, taking care of cultural links between members of the diaspora and their homeland has gained importance for North African States of origin for a permanent emigration to Europe. These States see maintaining a sense of belonging to their nations of origin among second-generation migrants as a challenge. In order to rouse an Arab and Muslim identity among their diasporas in Europe, they have supported schools providing language courses and religious education to children of migrants in European cities, as well as holiday camps in the Maghreb to accommodate students for summer vacations. Article 16 of Morocco’s Constitution of 2011 states that “The Kingdom of Morocco works for the protection of the rights and legitimate interests of Moroccan citizens abroad ... It is committed to the maintenance and to the development of their human ties, notably cultural, with the Kingdom, and the preservation of their national identity”.¹¹ On 1 November 2018, the Ministry of Foreign Affairs and Cooperation created a hotline for Moroccans living abroad directly accessible from their main countries of residence (Medias24, 2018).

Organizing the diaspora is on all States’ agendas in West Africa. Making their communities abroad part of the administrative and political life of their homelands and protecting them in the countries where they live is the goal. The situation of migrants originating from Burkina Faso in Côte d'Ivoire is a case in point. For decades, people from Burkina Faso had lived in harmony with locals in Côte d'Ivoire. In the late 1990s, however, the invention of “Ivority” – an identity that indigenous peoples of Côte d'Ivoire would share – and the civil war that broke out in 2002

⁷ Decree 2008-635 of 11 June 2008 creating the Fonds d'Appui à l'Investissement des Sénégalais de l'Extérieur (FAISE). See <http://faise.sn>.

⁸ FAISE “vise à promouvoir les investissements productifs des Sénégalais de l'Extérieur disposant d'un minimum de ressources financières et désireux de réaliser leurs projets sur l'ensemble du territoire national”. See <http://faise.sn>.

⁹ See <https://lefaso.net/spip.php?article84447>.

¹⁰ See <http://gambiadiaspora.net>.

¹¹ See www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/Const-Morocco_2011.pdf.

suddenly challenged their integration in society. Many migrants fell victim to xenophobic acts, prompting their (or their parents') State of origin to entrust a dedicated institution, the General Directorate of Burkinabe Living Abroad (DGBE), with protecting and organizing their community (Loada, 2006). At present, DGBE manages a community directory and convenes a General Assembly of Burkinabe Living Abroad.¹² In Côte d'Ivoire, where the large Burkina Faso community had been structured for many years along the lines of traditional chiefdoms in Burkina Faso, DGBE has worked to reorganize the community in accordance with administrative structures in Burkina Faso by granting traditional delegates a modern administrative function (Les Echos du Faso, 2019). Similar institutions were created by all ECOWAS countries (Schöfberger, Chapter 33 of this volume).¹³

32.5. Criminalizing irregular migration

In parallel with efforts to incorporate expatriate nationals into their citizenry, African States have built up instruments to remove undocumented foreign nationals from their territories. In addition, during the last two decades, African States of origin or transit of irregular migration to European States have become increasingly involved in the remote control of the European Union's external border.

Laws on entry and stay passed soon after independence had defined punishments for unlawful status of foreign nationals. However, when irregular migration and cross-border smuggling gained momentum in the early 2000s, one after the other States along the Central Mediterranean Route amended laws to include new categories of offences and tighten sanctions (Table 32.3). On the other side, it is during this period that several European States, then the European Union, started to rely on third countries of origin and transit to control Europe's external borders. Stopping clandestine migration became for African States on migratory routes to Europe a bargaining chip at the negotiating table, in exchange for more flexible visa regimes.

Table 32.3. Instruments to combat irregular migration, smuggling and human trafficking

Country	Irregular migration	Human trafficking
Algeria	Law No. 08–11 of 2008 governing the entry, stay and circulation of foreign nationals; Law No. 09–01 of 2009, modifying the Criminal Code to add the offence of irregular exit from its territory for its citizens and foreign residents, the offence of marriage of convenience and the crime of migrant smuggling and trafficking in persons (Art. 303)	Law No. 09–01 of 25 February 2009 modifying the Criminal Code
Burkina Faso	Law No. 029-2008/AN Art. 10; Art. 11; Art. 12: Smugglers, as well as those who falsify visas, travel documents and permits of stay, are subject to penalties of 5 to 10 years' imprisonment	Law No. 029–2008/AN to Combat Trafficking in Persons and Related Practices
Côte d'Ivoire	Law No. 2004–303, Citizens from non- ECOWAS States must have a permit of stay; citizens from ECOWAS States are eligible for a resident card. Art. 15: Irregular stay constitutes a criminal offence. Art. 16: Facilitating the stay of foreigners in an irregular situation is punishable by imprisonment and a fine	Law No. 2016–1111 to combat trafficking in persons; Law No. 2010-272 pertaining to the Prohibition of Child Trafficking and the Worst Forms of Child Labour - Bill adopted by Parliament 24 May 2018

¹² Direction Générale des Burkinabè de l'extérieur 19/10/2019. Available at www.integration.govbf/ministere/services/details/tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontrollier%5D=News&tx_news_pi1%5Bnews%5D=69&cHash=d7f4f3a7b6edb691c3859e86afc8009d.

¹³ See <http://gambiandiaspora.net/thematic-box/gambia-house-model-diaspora-diplomacy/>.

Country	Irregular migration	Human trafficking
Gambia	No domestic law penalizing the smuggling of migrants	Trafficking in Persons Act (2007) - National Agency Against Trafficking In Persons (NAATIP)
Guinea	Law 2016–59-Criminal Code Act. Art. 334 Penalizing the smuggling of migrants	Criminal Code Act. Art. 339 Penalizing violent acts, inhuman treatment and exploitation of migrants
Libya	Law No. 02 of 2004 and Law No. 19 of 2010 to combat irregular migration, providing for prison penalty and fine for the facilitation of irregular entry or exit	Law No. 10 (2013) concerning the Criminalization of Torture, Forced Abduction and Discrimination
Mali	Law 2012-023 to Combat Trafficking in Persons and Related Practices. Art. 4: illegal trafficking in migrants includes organizing the travel, accommodation or transit of clandestine migrants originating, transiting or destined to Mali's national territory	Law 2012-023 to Combat Trafficking in Persons and Related Practices
Mauritania	Law 2010-021 relating to the fight against trafficking: defines illegal entry (Art. 1) and illegal residence (Art. 8), and penalizes those facilitating such offences	Law 2010–021 relating to the fight against trafficking
Morocco	Law No. 02-03 of 11 November 2003 on the entry and stay of foreign nationals into Morocco, emigration and irregular immigration: strengthens repression against people who facilitate or organize irregular entry or exit; penalizes irregular immigrants or emigrants, should they be foreign or national citizens; introduces legal rights and protective instruments	Law 27–14 of 25 August 2016 relating to the fight against trafficking in human beings
Niger	Law 2015–36 to punish smuggling and trafficking in migrants; protect the rights of trafficked migrants; facilitate international cooperation to prevent trafficking in migrants. Penalizes smugglers facilitating illegal entry or exit (Art. 10) or stay (Art. 12) of a non-Nigerien, non-resident. Penalizes any carrier who omits to verify that each passenger has the proper documents to enter the State of destination or transit (Art. 20)	Law 2015-36 to punish trafficking in migrants. Aggravating circumstances, among others: inhuman treatment of the migrant, the migrant is a minor, a pregnant woman, etc.
Senegal	Law 2005-06 to Combat Trafficking in Persons and Related Practices. Art. 4 punishes clandestine migration by land, sea or air, originating from, transiting through or destined for the national territory	Law 2005–06 on Trafficking in Persons and Related Practices and the Protection of Victims
Tunisia	Organic Law 2004–6 modifying and completing Law 75–40 on passports and travel documents. Law 2004–6 reinforces penal sentences against assistance to irregular migration: up to 3 years in prison and 8 000 dinars fine for people who contribute, even without profit, to irregular migration; up to 4 years in prison for hosting a “clandestine”. A non-denouncement is also punished	Organic Law 2016-61 to prevent and punish trafficking in persons

Morocco was the first country to introduce a specific law against irregular migration. In the context of escalating numbers of undocumented migrants across the Gibraltar Strait, its Government issued Law 02–03 of November 2003 penalizing not only migrants with irregular status entering or living in the country, but also for the first time undocumented migrants exiting the country, nationals as well as foreigners, and persons involved in accommodating irregular migrants or facilitating their travel. At the time of writing (early 2020), an estimated 70,000–80,000 irregular migrants from sub-Saharan Africa lived in Morocco, where many of them were probably stuck for lack of a European visa. In 2013–2014 and 2017–2018, the Government conducted two large-scale amnesties by which around 50,000 undocumented migrants were regularized, representing 85 per cent of all applicants.¹⁴ With migratory routes gradually shifting from the western to central Mediterranean Sea, all Maghreb countries soon followed Morocco regarding the criminalization of irregular migration.

In 2004, Tunisia adopted Law 2004-6 punishing with heavy penalties irregular migrants and migrant smugglers, as well as any persons who would wittingly refrain from reporting to the police an act of irregular migration or migrant smuggling committed by others (Art. 45).¹⁵ In 2008, Algeria in turn issued Law No. 08–11, which added marriage of convenience, with the aim of regularizing migrants to the list of offences. Law 08-11 was invoked by Algeria in recent years (from 2014 to the present) to deport many tens of thousands of sub-Saharan migrants, including second-generation children born in the country, a mass expulsion heavily criticized by the United Nations Special Rapporteur on the Human Rights of Migrants during a 2018 visit to the Niger.¹⁶ In February 2009, Algeria amended its criminal law to include the offence of irregular exit for nationals and foreign residents (Art. 303).¹⁷ The law, however, was not able to curb the flow of Algerians irregularly departing by sea to Europe, which remains significant to this day (early 2020).¹⁸ Libya was the last country of the Maghreb to adopt a law penalizing clandestine exit (Law No. 19 of 2010). Law No. 10 of 2013 on the Criminalization of Torture, Forced Abduction, and Discrimination includes provisions to specifically protect migrants in detention.¹⁹

In West Africa, Senegal issued a law against migrant smuggling and human trafficking as early as 2005, at a time when the most perilous sea route to a European State, linking Senegal to the Canary Islands, started to be used by migrant smugglers to bypass the Gibraltar Strait. Law 2005-06 punishes irregular migration by land, sea or air, originating from, transiting through or destined for the national territory.²⁰ The law, however, did not prevent the number of migrants travelling this route to peak in the three following years, with around 50,000 crossings from 2006 to 2008. Then Mauritania, another point of departure for clandestine migration by sea to the Canary Islands, issued Law 2010–021 relating to the fight against trafficking in migrants, which makes no clear distinction between smuggling and trafficking.²¹ Mali issued Law 2012-23, of which Art. 4 penalizes organizing the travel, accommodation or transit of irregular migrants originating from, transiting through or destined for Mali. In 2020, however, this law remained little known to the judiciary in the country.²²

The Niger went a step further with Law 2015–36 relating to trafficking in migrants, which explicitly criminalizes both irregular entry and exit of any person who is not a national or a legal resident of the Niger, and penalizes the migrant person as well as the smuggler.²³ The Guinea Criminal Code Act of 2016 penalizes migrant smuggling (Art. 334) and violent acts, inhuman treatment and exploitation of migrants (Art. 339).²⁴ The Gambia is at present the only country in the region with no domestic law criminalizing migrant smuggling.²⁵ Côte d'Ivoire is a case in point. A major destination for migrants from within the ECOWAS area of free circulation, it had no specific legislation on

¹⁴ Kingdom of Morocco, Ministry of Foreign Affairs African Cooperation and Moroccan Expatriates. Available at www.diplomatie.ma/en/node/1680.

¹⁵ *Journal Officiel de la République Tunisienne*, No. 11. 6 February 2004, pp. 252 and following.

¹⁶ Voice of America Afrique. 9 October 2018. Available at www.voaafricque.com/a/l-onu-appelle-l-algerie-a-cesser-immEDIATEMENT-les-expulsions-de-migrants-africains/4605757.html.

¹⁷ Loi n° 09-01 du 25 février 2009 modifiant et complétant l'ordonnance n° 66-156 du 8 juin 1966 portant Code pénal, *Journal officiel*, 2009-03-08, n° 15. Available at www.ilo.org/dyn/natlex/natlex4.detail?p_lang=fr&p_isn=81146&p_country=DZA&p_count=1086.

¹⁸ Algeria-Watch, Criminalisation de la migration. Available at <https://algeria-watch.org/?cat=198>.

¹⁹ Available at www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=96439&p_country=LBY&p_count=150.

²⁰ Loi n° 2005-06 du 10 mai 2005 relatif à la lutte contre la traite des personnes et pratiques assimilées et à la protection des victimes. Available at www.unodc.org/res/cld/document/loi-no--2005-06-du-10-mai-2005_html/Loi_No_2005-06_FR.pdf.

²¹ Loi n° 2010- 021 du 10 février 2010 relative à la lutte contre le trafic illicite de migrants. *Journal Officiel de la République Islamique de Mauritanie*, 30 April 2010. Available at <http://anac.mr/ANAC/JOI/2010/1214%20fr%20%20sc.pdf>.

²² See www.maliweb.net/societe/traites-des-personnes-et-traffic-illicite-de-migrants-des-crimes-negliges-qui-rongent-le-mali-2857967.html.

²³ See www.unodc.org/res/cld/document/ner/2015/loi_relative_au_trafic_illicite_de_migrants_html/Loi_N2015-36_relative_au_trafic_illicite_de_migrants.pdf.

²⁴ See www.refworld.org/pdfid/44a3eb9a4.pdf.

²⁵ See <http://thepoint.gm/afrika/gambia/article/lack-of-domestic-laws-on-trafficking-gives-girls-way-to-middle-east-naatip-director>.

irregular migration until the political crisis of the early 2000s, which stirred up xenophobia in the country. In 2004, the country adopted Law 2004-303, penalizing irregular stay and its facilitation (Art. 16), and punishing foreigners threatening public order with deportation.²⁶ But it was not until 2016 that a full law on trafficking in persons similar to other ECOWAS Member States' was passed in Côte d'Ivoire.²⁷

On the other side, the development of the European Union as an area of freedom of movement (Treaty establishing the European Economic Community (Treaty of Rome), 1957) and residence for persons with European Union citizenship (Treaty on European Union (Maastricht Treaty), 1992), and the phasing-out of internal borders between States parties to the Schengen Agreement, had a great impact on the governance of migration in Africa. Tightening controls at the European Union's external border has since then been regarded a necessary corollary of their removal at internal borders between Member States. Two complementary approaches emerged to tackle irregular migration of third-country nationals: remotely controlling the external border in order to prevent unauthorized entries, and passing readmission agreements with third countries, in order to address the issue of unauthorized stays.

Negotiating readmission at the bilateral level, either as part of broader cooperation agreements or as a specific clause of migration agreements, has long been a practice between African and European States. Under these agreements, each party commits to readmit to its territory its nationals who have illegally entered or are residing without authorization in the other country. Expanding readmission agreements, however, comes up against two deadlocks. First, the European Union, which is one area in terms of movement of persons, tries to pass readmission agreements as one bloc. But partner countries reject an asymmetric approach that would at once commit a single State to a bloc of 28 (now 27) States. Second, the European Union is keen to return migrants who entered irregularly to the countries from which they departed for Europe, whether they are nationals from that country or not. But while partner countries accept the readmission of their own nationals, they reject that of third-country nationals who had transited through or temporarily resided in their territories. The European Union's strategy out of the deadlock consists of bunching four lines of action in one Global Approach to Migration and Mobility: better organizing legal migration, preventing and combating irregular migration, maximizing the development impact of migration, and enhancing the external dimension of asylum.²⁸

32.6. Conclusion

International migration has challenged nation-building processes in Africa. A common legal approach has consisted of giving precedence to blood over territorial bonds. Migrants belong as much, or more, to where they come from than to where they actually live. Nationality laws are more lenient with dual citizenship of those who left than with naturalization of those who arrived. Full inclusion of immigrants is an exception. By contrast, States have all worked at reincorporating expatriate nationals, first in the economy, then in the citizenry of their countries of origin. Making emigrants' money, business networks and knowledge a resource for the country, and organizing their communities abroad, are typical components of African migration policies. At the same time, irregular migration has become a legal offence severely punished: not only irregular entry and stay of foreign nationals, but also irregular exit of nationals as well as non-nationals. New categories of offences linked to irregular migration have made an appearance in legislation. Regional, but also extraregional policy frameworks, notably those of the European Union, have played a key role in these developments. The time has arrived to reap the benefits of helping the European Union to guard its external borders, and negotiate opportunities for legal migration and support to make migration work for development.

²⁶ See www.gouv.ci/doc/accords/1512497039CODE-D-IDENTIFICATION-DES-PERSONNES-2004-303.pdf.

²⁷ Loi n° 2016-1111 du 8 décembre 2016 relative à la traite des personnes. *Journal Officiel de la République de Côte d'Ivoire*, 6 February 2017. Available at www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=104190&p_count=3&p_classification=03.

²⁸ See https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en.

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