

Accessing Malagasy Citizenship

The Nationality Code and Its Impact on the Karana

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Abstract

At the time Madagascar gained independence, only those who had been naturalized French citizens had the opportunity to choose Malagasy citizenship. Foreigners who had settled in the country, but did not have French citizenship were left stateless. Many of these foreigners have been in the country for four or five generations and are still waiting to be naturalized. These individuals are mostly Muslim or of Indian/Pakistani decent. Those of Indian/Pakistani decent, called Karana, occupy a unique space in Malagasy society because the Karana are estimated to contribute close to one-third of the country's GDP. Preventing the Karana from accessing citizenship disincentives the wealthiest in the country from investing in its growth. As Madagascar develops, access to citizenship will come to the forefront of the political agenda. The government has the opportunity now to peacefully reform the citizenship system and build a strong foundation for a vibrant participatory democracy in the future. Madagascar can reform the citizenship system by amending the Nationality Code to protect against statelessness and discrimination, addressing institutional barriers to access, and promoting integration of the Muslim and Karana communities.

Keywords

Karana – statelessness – citizenship – Madagascar – Malagasy – Muslim

1 Introduction

At the time Madagascar gained independence only people who were Malagasy or who had previously been naturalized French citizens had the opportunity to

choose Malagasy citizenship.¹ Because Madagascar already had a substantial population of people who had migrated from India, but were not naturalized French citizens, this meant many people were left stateless. This problem of statelessness persists today because it is difficult to obtain citizenship without having a father or mother who is considered 'Malagasy.' Additionally, as will be discussed below, there is evidence that the law is applied in a discriminatory manner, making it more difficult to obtain citizenship if a person is Muslim and nearly impossible to obtain citizenship if a person is of Indian/Pakistani decent. There are families who have lived in Madagascar for four or five generations but have no hope of obtaining Malagasy citizenship anytime in the foreseeable future.²

Those of Indian/Pakistani decent, called Karana, occupy a unique socio-political role in Malagasy society. The Karana for generations have been very successful in business and many have become wealthy compared to the rest of the Malagasy people. This success has further perpetuated the cultural isolation of the Karana people and in some instances has resulted in targeted attacks against Karana communities. Preventing the Karana from accessing citizenship disincentives some of the wealthiest in the country from investing in its growth. As Madagascar develops, access to citizenship will come to the forefront of the political agenda. Since the coup in 2009, an unelected transitional government has been in power in Madagascar. The democratic elections taking place in 2013, will hopefully, in time, put an end to this ongoing political unrest.³ The new government has the opportunity to peacefully reform the citizenship system and build a strong foundation for a vibrant participatory democracy in the future. This article gives a brief overview of the Malagasy citizenship laws and describes how the law in operation impacts the Karana community.

1 Code De La Nationalité De Madagascar Juin 2009, arts. 90-92 (translated from French into English by Catherine Moore) (a copy of the translated text is on file with the author).

2 See generally United States Department of State, *Country Reports on Human Rights Practices for 2011: Madagascar* (Bureau of Democracy, Human Rights and Labor) 15-16.

3 See generally Lauren Ploch & Nicolas Cook, *Madagascar's Political Crisis* (United States Congressional Research Services)(18 June 2012), the article describes the military coup that took place in early 2009 ousting the president at the time, Marc Ravalomanana and formally recognizing Andry Rajoelina as president of the High Transitional Authority. With continued political unrest between these two leaders, democratic elections were postponed several times. Elections were finally held for the first time since 2009 on October 25, 2013. Neither of the formal leaders were candidates in the elections. A second round of run-off elections as well as the parliamentary elections will take place on December 20, 2013. 'Madagascar Holds Long-Awaited Political Elections' *BBC News Africa* (25 October 2013).

2 The Law: A Brief Overview

Madagascar gained its independence from France on June 26th 1960. Instead of adopting the French Nationality Code, the Malagasy people chose to create their own code that took into account the unique economic and political demographics of Madagascar.⁴ The Nationality Code, Ordinance No 60-064 was enacted on July 22, 1960 and is the law that governs access to Malagasy citizenship today.

The Nationality Code distinguishes between those who are considered Malagasy at birth,⁵ this is called attribution of Malagasy citizenship, versus those who have to go through an administrative process prior to the age of majority (21 years).⁶ The latter is referred to as acquisition of Malagasy citizenship (*see* Table 1). Title I of the Nationality Code defines those who are considered Malagasy at birth:

Art. 9(1): A legitimate child born of a Malagasy father

Art. 9(2): A legitimate child born of a Malagasy mother and a father who does not have nationality or is of unknown nationality

Art. 10(1): A child born outside of marriage if the mother is Malagasy

Art. 10(2): A child born outside of marriage if the mother is of unknown nationality but the father is Malagasy

Art. 11: A child born in Madagascar of unknown parents when the child can be presumed to be Malagasy⁷

Additionally Title II of the Nationality Code outlines those who are eligible to acquire nationality through an administrative process. Article 16 allows a legitimate child born of a Malagasy mother and a father of foreign nationality to acquire Malagasy citizenship before the age of majority. The same opportunity is available to a child born outside of marriage whose father is Malagasy.⁸ Decree No 60-446 of October 4, 1960, issued by the president subsequent to the

4 Code De La Nationalité De Madagascar (n 2) 5. This part of the Code is introductory material that is not part of the official Nationality Code. Créons: Maison d'édition included this introduction in the version of the Nationality Code it published in French. Catherine Moore translated the introduction into English and it is on file with the author.

5 Ibid art. 12 (stating that 'a child who is Malagasy by virtue of the dispositions state[d] here is considered to have been Malagasy since birth, even if the existence of the conditions required by the law are established after his birth.').

6 Ibid art. 5.

7 *See generally* Code De La Nationalité De Madagascar 1960 (n 2).

8 Ibid art. 20.

adoption of the Code, defines the requirements that must be fulfilled prior to acquiring Malagasy citizenship. These include an examination of the applicant's character, loyalty, degree of assimilation, knowledge of the Malagasy language, physical condition, and mental condition.⁹ The Nationality Code also allows a foreign woman to acquire citizenship through marriage to a Malagasy man.¹⁰ Yet, according to the Code the government can deny applications for acquiring citizenship for certain reasons including indignity or serious physical or mental disability.¹¹

Naturalization is an entirely separate process under the Nationality Code. Article 27 states that naturalization *may* be granted to aliens fulfilling certain conditions including discretionary factors such as being in good physical condition, of good moral character, and assimilated into the Madagascar

TABLE 1 *Attribution vs. Acquisition of Malagasy Citizenship*¹²

| | Attribution of Malagasy Citizenship (At Birth) | Acquisition of Malagasy Citizenship (Prior to the Age of Majority) |
|-------------------------|---|---|
| Legitimate Child | Father is Malagasy Father is stateless and mother is Malagasy | Mother is Malagasy and father is foreigner |
| Out-of-Wedlock | Mother is Malagasy Mother is stateless and father is Malagasy | Mother is foreigner, but Malagasy father has acknowledged the child |

9 Decree No 60-446 of October 1960 art. 8 (published in conjunction with the Code De La Nationalité). Translated from French into English by Catherine Moore. A copy of the translated text is on file with the author.

10 Code De La Nationalité De Madagascar 1960 (n 2) art. 29(2).

11 Code De La Nationalité De Madagascar 1960 (n 2) arts. 18, 24.

12 *See generally* Code De La Nationalité De Madagascar 1960 (n 2). This table was created by the author to illustrate the difference between attribution and acquisition of Malagasy citizenship. Specifically, the table demonstrates the distinctions the law makes based on the gender of the respective parents and whether the child is of a legitimate marriage.

community.¹³ Even if someone fulfills the criteria under Article 27 the government is not required to grant that person's request for naturalization. As Memorandum No. 666-MJ/DIR of March 8, 1961 clearly states 'the fact that an applicant fulfills the six conditions of admissibility does not require the Government to grant him/her the request' for citizenship.¹⁴

3 The Law in Operation and the Impact on the Karana

Madagascar's Nationality Code presents inherent obstacles to accessing Malagasy citizenship. Complications in how the system functions further exacerbate the problem. A clearer understanding of how the citizenship process works helps to clarify why the Karana are not able to access citizenship.

3.1 *Accessing Citizenship: The Scope of the Problem*

The naturalization process seems to be largely ineffective and has even been suspended at points in Madagascar's history. From 1960 to 1984, there were 1,314 applications for naturalization recorded. Of these, 255 received a favorable response. About 100 of them were Karana applicants.¹⁵ Many people who applied for naturalization in 1960, or soon thereafter, are still waiting to be naturalized. From 1998-2001, President Didier Ratsiraka suspended the naturalization process altogether. When President Marc Ravalomanana took over he said the process was going to restart in 2002, but in reality President

13 Code De La Nationalité De Madagascar 1960 (n 2) art. 27(4); Memorandum No. 666-MJ/DIR (8 March 1961) s III (this text was published in conjunction with the Code De La Nationalité and was translated from French into English by Catherine Moore, a copy of which is on file with the author). For the required physical examination the applicant must visit a physician designated by the District Chief and the applicant has to pay for the cost of the medical examination. The certificate prepared by the physician is not issued to the person but sent directly to the government.

14 Memorandum No. 666-MJ/DIR (n 14) sec. II; The Chef du Service Affaire Civil et Nationalité, further explained that citizenship is a matter of sovereignty and a person does not have a right to citizenship merely because his family has been in the country for a very long time. Even if the applicant meets all the conditions the government and the president of the republic can still turn down the application and they do not have to justify the reason why they turned down the application. Interview with the Chef du Service Affaire Civil et Nationalité, in Antananarivo, Madagascar (10 January 2013)(simultaneous translation conducted by Tefinjanahary Tantelinirina).

15 Sophie Blanchy, *Karana Et Banians: Les Communautés Commerçantes D'origine Indienne À Madagascar* (L'Harmattan 1995) (translated from French into English by Holly Runde, a copy of which is on file with the author) 266.

Ravalomanana officially never granted citizenship to anyone. The transitional president, Andry Rajoelina, also did not grant anyone citizenship.¹⁶ Even people who claim to be close to the president do not get citizenship. The Chef du Service Affaire Civil et Nationalité of the Ministry of Justice suggested that there may have been one or two people at most who have received Malagasy citizenship through the naturalization process since 1998. The dossiers tend to receive a favorable decision at the Ministry of Justice, but they are denied at the cabinet level.¹⁷

The ineffectiveness of the naturalization process presents an acute problem for those who are stateless and for non-Malagasy foreigners hoping to access citizenship. The most recent census was completed in Madagascar in 1993, reporting a population of 12.3 million. At that time, two percent of the population was reported to be non-Malagasy. Of the foreign population, about nine percent were estimated to be stateless.¹⁸ It is not clear exactly what percentage of stateless individuals is Karana. As of 2008, the UN estimated that the population of the island was around 20 million.¹⁹ Because the Malagasy government has not taken steps since 1993 to address the issue of statelessness or access to citizenship, the number of people affected has likely increased. As more people who are foreigners or are stateless have children, the population of individuals in the country who do not have access to Malagasy citizenship grows. The only real mechanism for breaking this cycle is to marry a Malagasy person, thereby providing the children of the marriage a path to citizenship through the Malagasy spouse, or for a woman to marry a Malagasy man and obtain Malagasy citizenship through him.²⁰

The Karana are less likely than the broader Muslim community to seek citizenship through marital paths.²¹ Within the Karana communities there are

16 Rajoelina was the president of the High Transitional Authority after the military coup. Following international pressure, an electoral court disqualified him from running in the elections that took place on October 25th, see Agence France Presse, 'Madagascar Sets October 25 Presidential Poll Date' *Capital News* (22 August 2013).

17 See Interview with the Chef du Service Affaire Civil et Nationalité (n 15).

18 Institut National de la Statistique 'Recensement General de la Population et de L'Habitat: Volume 2 Rapport D'Analyse' (January 1997).

19 'Atelier Régional des Nations Unies pour le traitement des données RGPH du 3 au 7 novembre 2008 Bamako-Mali' (Troisième Recensement Général de la Population et de l'Habitat, November 2008) <http://unstats.un.org/unsd/demographic/sources/census/country_impl.htm#M> accessed 23 October 2010.

20 See generally Code De La Nationalité De Madagascar 1960 (n 2).

21 Sophie Blanchy, 'Indians in Madagascar: Religion, Ethnicity and Nationality', in Adesh Pal (ed) *Critiquing Nationalism, Transnationalism and Indian Diaspora* (Creative Books 2006) 94.

different marriage rules based on socio-religious groups. The most liberal rules are those of the Sunni Muslims. The Sunni Muslims can get married within their own community or within other Muslim Malagasy communities. Some Sunni Muslims have married non-Muslims and have produced mixed Indo-Malagasy children, who are not identified as Indian or Karana.²² For the Shiite Muslims the endogamic pressures are strong. Possible spouses are limited to the community within Madagascar, other countries within the Indian diaspora, or India itself. In the past, marriages between close or distant cousins happened frequently because the communities in Madagascar were small, and young men did not have the money to go back to India to find a spouse.²³ Hindus are supposed to marry within their caste. Getting married to someone from a different caste is already a kind of mixing. Marriages with mixed Hindu-Malagasy are generally not accepted, except for poorer families.²⁴

Some Muslim individuals are able to break through the barriers to citizenship by marrying a Malagasy person and hoping their children can acquire citizenship through the administrative process. The distinction within the Nationality Code between the naturalization process and attribution or acquisition of Malagasy citizenship often differentiates access to citizenship for the Muslim population from access to citizenship for the Karana community. Broadly speaking, many of the Muslim communities within Madagascar have been more willing to intermarry which has allowed the children of these couples to access citizenship either by acquisition or attribution. On the other hand, the Karana have traditionally married within their own communities,²⁵ meaning that neither parent is Malagasy, and their children remain aliens under the Code. These children's only ability to access citizenship is through the naturalization process. As stated above, that process is largely non-existent.

3.2 *Living in a State of Limbo: Discrimination Against the Karana Community*

The judicial status of foreigners in Madagascar is divided into three categories: non-immigrants who are in the country for less than three months, immigrants who are in the country for more than three months, and stateless

22 Sophie Blanchy, *Karana Et Banians* (n 16) 283.

23 Ibid 284-85.

24 Ibid 288-90.

25 Sophie Blanchy, 'Indians in Madagascar' (n 22) 94, 'The Karana do not try to convert outside, but also do not agree that members of their community leave it. They refuse marriages with a member of another Indian community or with a Malagasy.'

people.²⁶ Although the Karana have been in the country for many generations, they fall into the last two categories.²⁷ All foreigners who stay more than three months need a stay permit and in the case of the Karana most have to renew their permits indefinitely.²⁸ Often, fourth or fifth generation Karana request stay visas.²⁹

Foreigners are required to carry their papers on them at all times. The *Surveillance du Territoire* are police who stop foreigners during the day and night to check them for valid ID papers. If they stop a person and his visa has expired, the person gets sent to the border, or if it is considered a major infraction, then he is sent to court and may go to prison for up to two years. A major infraction could be overstaying a visa by six months, but it depends on the case. The police take a case-by-case approach when determining what should qualify as a major infraction.³⁰

In addition to needing to renew their visas, the Karana who are not Malagasy citizens cannot vote, work for the government, or buy land. The right to own land seems to be the biggest obstacle to extending citizenship to the Karana community. There is a fear among the Malagasy people that allowing the Karana to become Malagasy citizens will allow them to become too powerful and own too much land. This fear is exacerbated in certain cities where the Karana already have a great deal of power because of their successful businesses.³¹

Because the Karana are in this indeterminate state they conduct business and affairs as foreigners, keeping in the back of their minds a place of refuge in case they are thrown out of the country.³² Karana who have lived in Madagascar their whole lives, and whose families have been in the country for several generations will never be able to buy land to be buried in without citizenship.³³

26 Sophie Blanchy, *Karana Et Banians* (n 16) 266.

27 Ibid 265.

28 Ibid 266.

29 Interview with an official from the Ministère De La Sécurité Intérieure, in Antananarivo, Madagascar (7 January 2013) (simultaneous translation conducted by Tefinjanahary Tantelinirina).

30 Ibid. The regular police check the papers of the Malagasy people and usually a person has to pay a fine if he does not have his papers on him. If the person cannot present his papers he is locked up and an investigation takes place.

31 Sophie Blanchy, *Karana Et Banians* (n 16) 266; See also, Interview with Ny Fikambanana Silamo Malagasy (The Malagasy Muslim Association), in Antananarivo, Madagascar (3 January 2010) (simultaneous translation conducted by Tefinjanahary Tantelinirina).

32 Sophie Blanchy, *Karana Et Banians* (n 16) 266.

33 Interview with AKAMA (Association des Amis Malagasy), in Antananarivo, Madagascar (8 January 2013). AKAMA is a Karana social services organization in Madagascar. The

The history of discrimination against the Karana in Madagascar is extensive. Large-scale riots against the Karana communities do not occur anymore, but there is still a great racial divide between the Karana and the Malagasy communities.³⁴ An informal survey of Karana individuals in the jewelry district in the capital city of Antananarivo, where many Karana own shops, revealed that peoples' experiences varied regarding the extent to which they felt discriminated against. For the most part, no one reported physical violence, but reports of verbal abuse were common. Particularly common is to use the term 'karana' in a pejorative manner.³⁵ Kidnappings of Karana individuals continue to occur frequently. In many cases these are schemes to extort money from wealthy business owners and the victims are returned unharmed, but that is not always the case.³⁶

3.3 *The Relative Success of the Karana Community*

The difficulty the Karana face in their daily lives as a result of their inability to access Malagasy citizenship is limited in scope for several reasons. Madagascar does not have social service programs like universal healthcare or social security. Because social safety mechanisms are lacking in Madagascar, the Karana are not being precluded from accessing any specific government services as a result of not having citizenship. Malagasy citizenship is not necessary to attend the public schools. Even so, many of the Karana will pay for their children to go to a private school. Many of the Karana can afford to do this because the Karana are some of the most successful business owners in Madagascar. The relative

Karana individual interviewed, whose family had been in Madagascar for several generations, indicated that a foreigner can rent land for 99 years but a foreigner cannot buy land in his own name without citizenship.

34 Sophie Blanchy discusses the anti-Karana riots which started in Madagascar in 1987, see Sophie Blanchy, *Karana Et Banians* (n 16) 265.

35 Sophie Blanchy, 'Indians in Madagascar' (n 22) 93.

36 On 23 February 2008, *Madagascar Tribune* reported a kidnapping. An Indo-Pakistani merchant was taken around the time his shop was supposed to close. He was among the Karana who received kidnapping threats at the end of the year. Manou, 'Un Karana d'Andravoahangy enlevé' *Tribune Madagascar* (Antananarivo, 23 February 2008); *Madagascar Tribune*, reports that a 9 year old child of Indo-Pakistani decent was kidnapped outside a mosque in Mahajanga. A ransom of 3 billion ariary (a little over 1 million USD) was demanded. 'Kidnapping Karana à Mahajanga' *Tribune Madagascar* (Antananarivo, 2 February 2010); *La Gazette de la Grand Ile*, reported on the kidnapping of the 5th Karana in a month and the 2nd in a week. Not all these victims have been rich. 'L'insécurité règne: 5ème kidnapping de Karana' *La Gazette de la Grande Ile* (14 January 2012).

wealth among the Karana community helps to ease their situation. Additionally, much of the work in Madagascar occurs in the informal economy. There were a few reports that it may be more difficult to get a job if you are a foreigner, but most people that were interviewed reported no real difficulties. If the job does require identification a foreign passport is usually sufficient.³⁷

The Karana are very successful in business in Madagascar because they have built close networks within their communities. When the Karana immigrated to Madagascar they brought with them a tradition of developing business networks that overlapped with family and social ties.³⁸ A boss would recruit among villagers in India, who would then become his network in Madagascar. Often a young business owner was able to start his own shop after an apprenticeship because of a loan he received from his previous boss.³⁹ Family networks and economic networks were closely intertwined. One reason is that business owners recruited from their own village in India, which was usually made up of extended families.⁴⁰ Additionally, a strong tradition of endogamy and joint family residences strengthened the familial communities the Karana formed in Madagascar.⁴¹

Therefore, the success of the Karana community is both a blessing and a curse. The Indian community has a strong presence in industrial life and the economic dynamics of the country, but not in formal political life. As of 2007, the Indian community was estimated to contribute one-third of the Malagasy GDP.⁴² Because the Karana do not have access to Malagasy citizenship and do not feel welcome, some Karana may be less willing to invest in Madagascar.⁴³ Preventing the Karana from accessing citizenship perpetuates the community's isolation and the violence against the community. Madagascar needs to do more now to build the democratic nation it hopes to have in the future by making the citizenship process more accessible for everyone. Giving the Karana a viable path to citizenship would help to ease some of the social tensions and foster integration. Granting Karana citizenship would also align these powerful business leaders with the growth of Madagascar and encourage them to invest in the nation and its future.

37 *See generally*, Interview with AKAMA (n 34).

38 Sophie Blanchy, *Karana Et Banians* (n 16) 271-72.

39 *Ibid*.

40 *Ibid* at 275.

41 *Ibid* at 280.

42 Bhapoo, 'La minorité Indienne de Madagascar' *Temoignages* (3 January 2007).

43 Sophie Blanchy, *Karana Et Banians* (n 16) 266; Interview with the African Muslim Agency, in Antananarivo, Madagascar (5 January 2013) (simultaneous translation conducted by Tefinjanahary Tantelinirina), suggesting that some wealthy Karana live in very small apartments and choose to invest elsewhere; *See generally*, Interview with AKAMA (n 34).

4 Concluding Remarks

Madagascar should re-examine its Nationality Code and its approach to granting citizenship. The law should do more to protect against statelessness and discrimination. But, that alone will not be enough. Initiatives to educate the public and make the citizenship system more accessible would help to create a more participatory democracy in the future that is representative of the population of the island. Muslim and Karana communities should work together to fight for these reforms, and the country should focus on efforts at achieving a more integrated society as a whole.

Change is necessary because individuals have a right to be able to access citizenship and participate in the government that rules them. As Madagascar develops and a Malagasy birth certificate becomes necessary to access certain jobs and services, the minority communities will grow agitated. As a leader of the African Muslim Agency explains:

[The] concern is not so much for the current generation but for the future, because with this atmosphere of rejection and seclusion, sooner or later a generation will come of extremist, and they will resort to violence to obtain something they think should be given to them. And only then we will have to go back to the situation now and try and correct things.⁴⁴

Improving the citizenship system is also in the best interest of Madagascar's growth because it creates incentives for those with the wealth to invest in the country.

Reforming the system will not be easy because it is grounded in deep racial tensions that have a long history in Madagascar. The Government has the opportunity now to ensure that reform is peaceful and that it has the support of the Malagasy people. If the Government works for reform now, then there will be a strong foundation for a vibrant participatory democracy in the future.

5 Acknowledgements

This article is an abbreviated version of the research paper 'Citizenship Laws of Madagascar: Future Challenges for a Developing Nation' which was written by the author as part of her studies at the University of Virginia School of Law and was honored with the 2013 UNHCR Statelessness Research Award Best Paper in

44 See Interview with the African Muslim Agency (n 44).

the Graduate Category. Details of this Award can be found at <<http://www.tilburguniversity.edu/research/institutes-and-research-groups/statelessness/unhcr-award/>>.

The author's research is in part based on fieldwork conducted in Madagascar in January of 2013. She is grateful to her advisor, Professor David Martin, for his assistance throughout the research process.