Over the past century, governments around the world have greatly expanded civil registration and the issuance of identity documents of all kinds. The process of identifying and registering individuals is sometimes called establishing their ‘legal identity’. Establishing a legal identity is crucial for people to access many rights. It is also a basic prerequisite for establishing a nationality. A legal identity is also important for governments to surveil their populations.

Yet, as more research is done on the legal identity of nomadic and mobile peoples, it is emerging that establishing a legal identity is not easy for them, nor is it a panacea that automatically helps them access their rights. Instead, it can lead to their assimilation. This comment summarises my recent research into the establishment of legal identity for nomadic and mobile peoples, uncovering important and disturbing new insights into this fraught process.

Problems with establishing the legal identity of nomads stretch back to the colonial period. The end of the colonial period saw the rapid introduction of laws creating identity documents and centralised registration around the world. However, the short time frame in which these systems were created meant that mass registration was in many cases never done and most rural peoples, including many nomads, entered decolonisation with no identity documents of any kind. Because nomads often lacked a fixed residence, colonial administrators struggled to register them and keep them within their designated, administrative zones. Meanwhile, colonial empires vested settled and urban rulers with enormous, centralised powers, including the power to issue documents, while marginalising nomadic leaders. Nomad territories, usually labelled by the colonial powers as

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5 ibid.

6 European colonisation was a political and economic phenomenon marked by the invasion and domination of non-European societies by Europeans. It began in the 1500s and continued in many parts of the world until the 1960s.
‘remote’, were often divided by borders, calling into question the proper authority to register nomads.

In British North Borneo, for example, few inhabitants received documents or any official acknowledgement of their status until just before the end of the colonial period, leaving mass civil registration, including a determination of the status of populations in border zones, for the post-colonial period. In many Gulf states, British colonial administrators vested power to issue British documents with urban Sultans and Emirs, rather than nomadic Bedouin leaders. Urban rulers could establish legal identity and even issue British identity documents to groups over whom they arguably had no jurisdiction, like the Bedouin.

In French West Africa, colonial administrators began registering the sedentary population following the enactment of the 1946 Constitution of the French Republic, but they administrated nomadic populations separately and struggled to control their movements. While separate administration appeared to offer nomads more autonomy, it left them out of the developing administrative state. According to the governor of French Soudan, which would become Mali, ‘such [registration] … could be accomplished only for the sedentary part of his population, step by step, and at high cost’.

Colonial independence would see a continuation of problems for nomadic communities in establishing their legal identity, including widespread discrimination against nomads and the division of nomad territories by borders. Undocumented nomads risked being labelled as foreigners or as stateless persons. Registration committees set up by the Kuwaiti government, for example, closely interrogated Bedouin claims to Kuwaiti civil registration, even as the settled, urban population easily qualified under the law. Some Bedouin with documents showing that they owned property in Kuwait were prevented from registering.

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9 ibid 281–83.


11 ibid arts 76, 78.


13 Kuwaiti independence was achieved by the termination of the Anglo–Kuwait Agreement of 1899 by the Kuwaiti Emir and Britain over a number of years, ending in 1961. James Crawford, The Creation of States in International Law (2nd edn, Oxford University Press 2006) 319. See also Michael Casey, The History of Kuwait (Greenwood Publishing Group 2007) 21.


After colonial independence, registration in what is now Sabah, Malaysia, focused almost exclusively on settled Sama and Bajau villages, while ignoring the nomadic Sama Dilaut (Bajau Laut) population. This created a ‘major division’ at independence in Semporna between villagers and nomads. In 1972, the government instituted registration drives in rural areas but, unlike many settled groups, the Sama Dilaut did not have a recognised village headman who could vouch for their residence. In 2008, the government issued identity documents to some stateless persons in Sabah, but this program made no attempt to assist the Sama Dilaut. Today, ID in Malaysia is critical and the introduction of biometric ID cards has made living undocumented in Sabah increasingly difficult. Many Sama Dilaut in Malaysia are treated as aliens even when using their traditional fishing zones, meaning that they had to register as temporary workers in order to practice their way of life.

In some places, the question of legal identity for nomads is linked to bitter conflicts over belonging and inclusion, leading to armed conflict. For example, the Malian government swiftly enacted comprehensive legislation on civil registration following independence, but the question of Tuareg separatism and their inclusion in the Malian state would devolve into civil war by 1962, impeding Tuareg registration for generations. Armed conflict continues, despite reforms to the civil registration laws in 2006.

The above paragraphs summarise some of the many problems nomads have had in obtaining a legal identity and some of the negative consequences caused by their lack of legal identity. Yet, crucially, obtaining a legal identity has not necessarily led to the protection of the human rights of nomads. In fact, in many places, a legal

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identity for nomads has gone hand in hand with settlement and assimilation or with statelessness and exclusion.\textsuperscript{23} Between 1960 and 1987, the descendants of nomadic Bedouin in Kuwait who had no nationality papers were issued identity documents with the official status of \textit{bidoon jinsiyya}, or ‘without nationality’, under a special administrative process.\textsuperscript{24} In 1965, the Kuwaiti government made issuance of a birth certificate compulsory, yet this only entrenched \textit{bidoon} status for many former Bedouin.\textsuperscript{25} Other Bedouin were naturalised by the Kuwaiti government, but given an inferior nationality status in exchange for settlement in urban areas and service in the military or jobs at oil fields.\textsuperscript{26} The steady erosion of human rights for many former Bedouin and their descendants soon followed, accompanied by a rapid collapse of nomadism.\textsuperscript{27}

As this comment has shown, obtaining a legal identity remains a serious problem for nomads in many countries. Solutions may include, for example, mobile registration clinics and other programs to ease registration for nomads\textsuperscript{28} and eliminating bias against nomadism from civil registration laws, policies and procedures. Yet, as my recent research has also uncovered, establishing a legal identity has also negatively impacted many nomads, leading to their assimilation and raising serious questions of how legal identity and human rights intersect for nomads.

\textsuperscript{23} See generally Alexander, ‘The Open Sky or a Brick-and-Mortar School?’ (n 4).
\textsuperscript{24} Ang Nga Longva, ‘Citizenship in the Gulf States: Conceptualization and Practice’ in Nils August Butenschon, Manuel Sarkis Hassassian and Uri Davis (eds), \textit{Citizenship and the State in the Middle East} (Syracuse 2000) 187. See also Al-Nakib (n 14) 12.
\textsuperscript{25} Claire Beaugrand, \textit{Stateless in the Gulf: Migration, Nationality and Society in Kuwait} (Tauris 2018) 88. See also Beaugrand, \textit{Statelessness and Transnationalism} (n 14) 129.