

Discrimination in Access to Nationality

*Statement Submitted by the Open Society Justice Initiative for
Consideration by the United Nations Human Rights Council at
its Sixth Session, on the occasion of its Universal Periodic
Review of Cote d'Ivoire
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I. INTRODUCTION

1. The Open Society Justice Initiative is an operational program of the Open Society Institute (OSI) that pursues law reform activities grounded in the protection of human rights and contributes to the development of legal capacity for open societies throughout the world. A major area of the Justice Initiative's work is the enforcement of international legal prohibitions on discrimination, statelessness and arbitrary deprivation of nationality.
2. Citizenship issues were key causes of the civil war in Cote d'Ivoire and remain unresolved. The Linas-Marcoussis Peace Accords of 2003 that brought an end to the worst of the armed conflict specified that Articles 6 and 7 of the Nationality Code should be modified, but this has yet to be done. Lack of clarity in the basic legal framework of Cote d'Ivoire governing nationality has permitted widespread discriminatory practices in relation to access to identity documents, causing nearly 30% of the population to be stateless as a matter of law or in fact.

II. COTE D'IVOIRE'S NATIONALITY LAWS FAIL TO CONFORM TO INTERNATIONAL NORMS TO PREVENT STATELESSNESS AND DISCRIMINATE ON THE BASIS OF PHYSICAL DISABILITY

A. Scope of international obligations

3. Côte d'Ivoire is a party to several international and regional treaties that provide legal standards with respect to statelessness and the right to nationality.¹ Cote d'Ivoire's international obligations under the International Convention on the Elimination of All Forms of Racial Discrimination must be understood in terms of the general comment of the Committee on the Elimination of All Forms of Racial Discrimination to the effect that states must "[r]ecognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of States' Parties obligations to ensure non-discriminatory enjoyment of the right to nationality."²
4. Côte d'Ivoire is not a party to either of the two international conventions on statelessness: the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). These instruments suggest criteria for naturalization and safeguards against arbitrary deprivation of nationality, as well providing for the protection of stateless individuals. Côte d'Ivoire should consider accession to these two treaties.

¹ Acceded to the International Covenant on Civil and Political Rights on June 26, 1992; acceded to the Convention on the Elimination of All Forms of Racial Discrimination on February 3, 1973; ratified the Convention on the Elimination of All Forms of Discrimination Against Women on January 17, 1996; ratified the Convention on the Rights of the Child on March 6, 1991; ratified the African Charter on Human and Peoples' Rights on January 6, 1992; and ratified the African Charter on the Rights and Welfare of the Child on March 1, 2002.

² CERD, General Recommendation No. 30: Discrimination Against Non-Citizens, October 1, 2004, para. 14.

B. Constitutional and legislative framework

5. Citizenship law in Côte d'Ivoire is governed by the nationality code, made up of law 61-415 of 14 December 1961, modified by law 72-852 of 21 December 1972 (hereafter the "nationality code"). These laws have been subject to further minor modifications in 2004 and 2005.³
6. Pursuant to this legislation, citizenship is chiefly governed by *jus sanguinis*. Article 6 of the nationality code purports to grant Ivoirian nationality to everyone who is born on the territory of Cote d'Ivoire who has at least one "Ivoirian" parent. Individuals born in Cote d'Ivoire of non-Ivoirian parents have no right to citizenship at all, even if they are the second or third generation born in the country. Because Cote d'Ivoire only came into existence in 1960, the meaning of "Ivoirian" in Article 6 is problematic: no one was legally "Ivoirian" prior to this date, since all were French subjects. Thus, the grounds on which anyone was granted Ivoirian nationality are not clear. The ambiguity of these provisions has been explicitly recognized by the 2003 Linas-Marcoussis Peace Accords, which put an end to the worst fighting of the civil war, as posing significant difficulties for "regularization of status", i.e. recognition of citizenship.⁴ To date, no suitable amendment of these provisions has been adopted.

Citizenship of children

7. The nationality code provides for the acquisition of Ivorian nationality by birth for an abandoned infant found in Cote d'Ivoire until and unless the infant is proven to have another nationality. However, the law fails to provide for the acquisition of Ivorian nationality for stateless children born on its territory who have *not* been abandoned. Thus, children born to identifiable but stateless parents in Cote d'Ivoire will remain stateless, in violation of article 7 of the Convention on the Rights of the Child (CRC), which calls for states to grant citizenship to children born on their territory where the child would otherwise be stateless.⁵ This also violates Cote d'Ivoire's obligations under the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right of '[e]very child...to acquire a nationality'⁶, and under articles 6(3) and 6(4) of the African Charter on the Rights and Welfare of the Child (ACRWC) which provide that States Parties should grant a child the nationality of the State in the territory of which he has been born "if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."

³ Law n°2004-662 of 17 December 2004 modifying the law related to the Code de la Nationalité

⁴ Linas-Marcoussis Accords, 23 January 2003, Annex, I(1)(2).

⁵ Convention on the Rights of the Child, article 7(2)

⁶ International Covenant on Civil and Political Rights, article 24(3).

8. Cote d'Ivoire should amend its nationality law to guarantee the acquisition of Ivorian nationality for stateless children born on its territory, in accordance with its international obligations.

Disability and naturalization

9. Ivorian nationality law provides that naturalization is available to persons who are free of any mental or physical handicaps. This provision is discriminatory on grounds of disability. Although Cote d'Ivoire has signed but not yet ratified the Convention on the Rights of Persons with Disabilities, it nevertheless has an obligation to ensure that its laws are not discriminatory on grounds of disability under article 2 read in conjunction with article 15 of the Universal Declaration of Human Rights; article 26 of the International Covenant on Civil and Political Rights; article 2 in conjunction with article 3 of the African Charter on Human and Peoples' Rights; and in the case of children, article 2 in conjunction with article 7 of the Convention on the Rights of the Child; and, article 3 in conjunction with article 6 of the African Charter on the Rights and Welfare of the Child.

III. IVOIRIAN STATE PRACTICE PERPETUATES DISCRIMINATORY STATELESSNESS

A. Implementation of international human rights obligations

Migrants, refugees, asylum-seekers and stateless persons

10. Up to 30% of the population of Cote d'Ivoire is *de facto* or *de jure* stateless. There are two main causes of statelessness in Cote d'Ivoire.
11. First, many individuals living in Côte d'Ivoire at the time of independence failed to receive citizenship. Article 105 of the nationality code of 1961 provided that those whose "habitual residence" was in Cote d'Ivoire prior to independence were entitled to Ivorian nationality provided that they applied for citizenship within a period of one year of the law being passed.⁷ Many people missed the deadline due to a host of obstacles, including unawareness of the time limit and ignorance of the procedures for applying for citizenship. Adherence to the *jus sanguinis* principle means that generations of individuals born since independence to parents who failed to attain citizenship at that time are now stateless, unless they obtained citizenship through naturalization, or married Ivorian citizens.
12. Second, immigrants to Cote d'Ivoire since independence and their descendants born in Côte d'Ivoire have failed to gain Ivorian citizenship. During the presidency of Houphouët-Boigny (1960-1993), immigration was actively encouraged. Although in principle individuals are eligible for naturalization if they can prove "habitual residence" in Cote d'Ivoire for the preceding five years,

⁷ Law n° 61-415 of 14 December 1961.

most immigrants did not complete the procedure because they were treated as citizens without naturalizing; their children born in Cote d'Ivoire assumed that they were Ivoirian by birth and, indeed, were treated as such until after Houphouët-Boigny's death. Most of these individuals have no effective links⁸ with any country other than Côte d'Ivoire, and now that Cote d'Ivoire insists that they are not citizens, they are effectively stateless.

13. A disproportionate number—indeed, a large majority—of individuals lacking Ivoirian citizenship are “Dioulas”, a term applied to Muslims of various ethnicities in the north of the country. Insofar as there exists no objective and reasonable justification for this differential treatment of Muslims in access to citizenship, it constitutes unlawful ethnic discrimination.
14. Due to lack of citizenship, Dioulas lack access to employment, health care and education and are deprived of political rights such as voting in national elections. Denial of citizenship is a prominent feature of the policies of ethnic polarization and heightened discrimination that have targeted Dioulas; those who do not have citizenship lack the protection of the law and are especially vulnerable to physical attacks. The legal disenfranchisement of Dioulas was a key cause of the civil war; failure to secure their rights through citizenship will threaten the long-term success of the current peace process.
15. Although the authorities launched a country-wide initiative in 2007 to register the births of inhabitants across the country (known as the *audiences foraines*), the certificates issued through this process do not confer citizenship; they merely register births of citizens and non-citizens alike born on the Ivorian territory. While the *audiences foraines* mark a first step in addressing the issue of voter registration for citizens of Côte d'Ivoire, it does nothing to regularize the status of the 30% of the population who remain in legal limbo, despite being born on the Ivoirian territory and having no citizenship in another country.

IV. RECOMMENDATIONS TO THE HUMAN RIGHTS COUNCIL

16. The Justice Initiative calls on the UPR Working Group and other States to ask the Cote d'Ivoire state representatives:
 - What steps will Cote d'Ivoire take to guarantee citizenship to children born on its territory to parents who are stateless?
 - What steps will Cote d'Ivoire take to guarantee non-discrimination in cases of naturalization?
 - What steps is Cote d'Ivoire taking to amend articles 6 and 7 of its Nationality Code?

⁸ Recent international treaties have employed the principle of ‘genuine and effective link’ as a criterion for granting nationality. See, e.g., the *European Convention on Nationality*, 6 November 1997, Article 18.2(a).

17. The Justice Initiative urges the UPR Working Group to recommend that Cote d'Ivoire:

- Consider accession to the two treaties on statelessness;
- Amend articles 6 and 7 of the nationality code in such a way as to recognize as citizens of origin those whose habitual residence was in Côte d'Ivoire prior to 7 August 1960;
- Place the burden of proof of residency on Ivoirian territory at the time of Independence fall on the state rather than the individual, where such proof is required for the evaluation of these individuals' claims for citizenship;
- Recognize as citizens by birth children born of foreign parents in Côte d'Ivoire, or at a minimum that articles 17 to 23 of the Nationality Code regulating the right these children to acquire citizenship by declaration – a possibility which was repealed by the 1972 amendment of the nationality code - be reinstated;
- Ensure that in the rare instances where another nationality can allegedly be established, the nationality in question be documented with the co-operation of Côte d'Ivoire;
- Amend articles 6 and 7 of the nationality code to be amended such that those born of two foreign parents prior to the nationality reforms of 1972;
- Amend naturalization laws in such a way that facilitates the regularization of individuals' status both in law *and* in practice. To this effect, the authorities should commit to establishing a body specifically mandated to process naturalization claims, rather than it being governed by Presidential discretion.

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The Open Society Justice Initiative, an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in the following priority areas: anticorruption, equality and citizenship, freedom of information and expression, international justice, and national criminal justice. Its offices are in Abuja, Budapest, London, New York, and Washington DC.

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