

Open Society Justice Initiative vs Côte d'Ivoire, Communication 318/06
African Commission on Human and Peoples' Rights

Expert opinion on remedies

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Scope of this opinion

1. This expert opinion considers the Communication brought against Côte d'Ivoire by the Open Society Justice Initiative from the perspective of nationality law and the right to recognition of legal status under Article 5 of the African Charter on Human and Peoples' Rights, central to the other violations alleged to have been perpetrated by Côte d'Ivoire. The opinion aims to provide an overview of the legal regime covering nationality and legal status from independence through the present day, and recommendations that are tailored to the legal framework in Côte d'Ivoire.
2. The principles on which this communication is based are of importance not just for Côte d'Ivoire but generally for the recognition of the right to legal status, including a nationality, on the continent. Côte d'Ivoire's nationality code is one of the most closed in Africa to the integration of migrants and to the grant of nationality rights based on birth in the territory; however, the same issues arise in almost all African (and many non-African) countries. While the temporary procedures for acquisition of nationality by declaration introduced by the current government are welcome, they do not address the underlying gaps in the law. President Alassane Ouattara reaffirmed his commitment to ending statelessness in Côte d'Ivoire at the February 2015 regional ministerial conference on statelessness in West Africa held in Abidjan.¹
3. The vast majority of those affected by the discrimination described in the communication and by Côte d'Ivoire's restrictive nationality and identification laws have historical or current links to neighbouring West African countries, in particular Burkina Faso, but also Mali, Guinea and others. For the purpose of making recommendations for reform of nationality law, however, it is important to draw some distinctions among this broad category of people, known pejoratively in Côte d'Ivoire as "Dioula". Côte d'Ivoire should be urged, firstly, to ensure that it does not discriminate among those who are its nationals on grounds of ethnicity or religion; secondly to reform the nationality code and other relevant laws on identification to bring them into compliance with international standards on the right to a nationality and the prevention of statelessness, including the African Charter on the Rights and Welfare of the Child as well as the existing jurisprudence of the Commission; and finally, to provide access to nationality in some circumstances based on birth in the territory or long residence, even if the person concerned would not otherwise be stateless. In particular, Côte d'Ivoire should be encouraged to restore the right to opt for Ivorian nationality for a person born in the country and still resident there at majority and to consider adopting the rule known as double jus soli, which exists in all other francophone West African countries, by which a child born in the territory of one parent also born there automatically acquires nationality at birth by operation of law.
4. The report is divided into the following sections:
 - a. Analysis of Côte d'Ivoire's law in comparative and international perspective: An outline of the systems for recognising legal status in Côte d'Ivoire, including nationality law, civil registration, identification and voter registration, and analysis of their content with reference to the rules in place in other African countries and to international standards.
 - b. Groups affected: An outline of the categories of people affected by the discrimination alleged to have been committed by the Ivorian government.

¹ All documents from the conference are available at <http://www.unhcr.org/ecowas2015/>.

- c. The significance of the communication: The importance of the Ivorian case for nationality law generally on the continent.
- d. Recommendations for law reform and practical action: A detailed set of recommendations, complementing those in the argument on the merits and arguing for comprehensive reform of the nationality law and practice in present-day Cote d'Ivoire.

Credentials of the author

5. I am the author of two books on nationality law in Africa: *Struggles for Citizenship in Africa*, published by Zed Books in 2009, and *Citizenship Law in Africa: A Comparative Study*, 3rdnd Edition, Open Society Foundations, 2016, as well as a number of other published works on questions related to nationality and statelessness on the continent, including *Nationality, Migration and Statelessness in West Africa*, prepared for the February 2015 regional ministerial conference on statelessness in Abidjan, and then revised and published later that year by UNHCR and IOM. I was awarded a doctorate for my thesis on comparative African nationality law by Maastricht University Faculty of Law in October 2015. I am also the author of a chapter on Articles 1-7 of the African Charter on Human and Peoples' Rights included in Malcolm Evans and Rachel Murray (eds.) *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2006*, CUP, 2008.
6. I am currently an independent consultant and visiting fellow at the London School of Economics and Political Science Centre for the Study of Human Rights. I am regularly invited to contribute to international conferences and discussions on nationality and statelessness, and to prepare reports for international agencies on statelessness and nationality.
7. I was previously a senior adviser on Africa with the Open Society Foundations and before that I was a researcher and subsequently deputy director of the Africa division of Human Rights Watch, where, among other things, I supervised work on Côte d'Ivoire from around 1999 to 2003. I was trained as a lawyer and practised as a solicitor in England and Wales from 1987 to 1990.
8. The following information is based on Côte d'Ivoire's own laws and on the information on nationality laws in other African countries derived from my other work, as well as the study *The Right to Nationality in Africa* prepared for the African Commission by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons.² I have also benefited greatly from review of a draft report for UNHCR on statelessness in Côte d'Ivoire, prepared by Mirna Adjami. The report also draws on relevant African and international human rights standards applied to nationality.

"Recognition of legal status" in Côte d'Ivoire: nationality law, civil registration, identification and voter registration

9. Article 5 of the African Charter on Human and Peoples' Rights provides that :

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

10. There are four main elements to the recognition of legal status in Côte d'Ivoire: the nationality law, civil registration, the requirements to carry identification (as a national or foreigner) and

² *The Right to Nationality in Africa*, African Commission on Human and Peoples' Rights, Study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, pursuant to Resolution 234 of April 2013 and approved by the Commission at its 55th Ordinary Session, May 2014.

voter registration. All four are closely linked, and in each case there are potential problems both with the law and with its administration in practice that should be addressed.

Côte d'Ivoire's nationality law in comparative and international perspective

11. In summary, despite recent reforms, the Ivorian nationality code remains very closed to the integration of new migrants or to the grant of nationality rights based on birth in the territory: indeed, Côte d'Ivoire is among the countries in Africa whose nationality is most difficult to access. The rules on nationality of origin are ambiguous, especially in relation to those who became Ivorian at independence, and, by contrast especially to other countries of francophone west Africa, provide no rights based on birth in the territory. It is one of the few nationality laws in Africa that does not even provide for nationality for abandoned infants found in the territory. In this and in other respects, especially the failure to provide for children who cannot obtain another nationality at birth, it does not comply with the requirements of Article 6 of the African Charter on the Rights and Welfare of the Child in relation to the nationality of children, on which the African Committee of Experts responsible for oversight of the treaty has recently adopted a General Comment. Temporary naturalisation procedures adopted in 2013 do not address these issues, and are in any event unlikely to reach more than a minority of those potentially eligible, leaving still in doubt the status of those whose nationality was not recognised during the crisis period that is the subject of this communication.

The Ivorian Nationality Code

Provisions on nationality of origin at independence

12. Côte d'Ivoire, like other African countries, had as one of the first post-independence tasks to determine who would qualify to be a national of the new state. The Nationality Code was adopted by *Loi no.61-415 du 14 décembre 1961*, almost eighteen months after independence on 7 August 1960, a gap that left room for confusion on the application of the law during the interim period.³
13. The Nationality Code as first adopted made provision for attribution of Ivorian nationality of origin as follows:
Article 6: Est ivoirien tout individu né en Côte d'ivoire, sauf si ses deux parents sont étrangers.
*Article 7: Est ivoirien l'individu né à l'étranger d'un parent ivoirien.*⁴
14. Article 8 provided that a person fulfilling these conditions is treated as having nationality since his or her birth, even if the facts were only established later.
15. Article 9 provided that birth or descent was only legally valid if established in accordance with the civil registration law. However, Article 9 also provided that a child found in Côte d'Ivoire of unknown parents was to be presumed born in Côte d'Ivoire (and, if there was no proof that the parents were foreigners, the presumption would be – though it was not entirely clear in the law – that the child was Ivorian).
16. The law did not distinguish in its basic provisions on who became a national at independence between those born before or after independence (or during the gap between independence

³ Similar gaps were left in many of the former French territories before a new law was adopted. By contrast, Commonwealth counties in Africa all had provisions on attribution of nationality on succession of states included in their independence constitutions, with carefully drafted language ensuring that no person was (at least in theory) left stateless with the ending of British sovereignty. The new nationality provisions came into effect on the date of independence, with no gap in time between the application of the two regimes.

⁴ Article 6: Is Ivorian any individual born in Côte d'Ivoire, except if his or her two parents are foreigners.
Article 7: Is Ivorian the individual born abroad to an Ivorian parent.

and the adoption of the Nationality Code). The failure to create clear rules applying on the succession of states continues to create problems today.

17. The difficulty was caused by the lack of definition in the law either of “*étranger*” or of “*ivoirien*”, in the context where neither concept had existed before Ivorian independence. All those living in French West Africa had previously had French nationality, and a large number of people had been forcibly brought to Côte d’Ivoire by the French. It would be possible to argue that none of those who made up the population of the country at independence were “foreigners” / *étrangers* (unless they had the nationality of a country that had not previously been under French control). Equally, it would be possible to argue that all those who would be attributed nationality of one of the other countries of French West Africa according to their own new nationality laws were “foreign” in Côte d’Ivoire (perhaps only if the other country had adopted a nationality law before Côte d’Ivoire’s own law came into effect). Similarly, article 6 could be interpreted to attribute nationality to a child unless there were proof that both parents were *étrangers* (rather than only if there was proof that one was a national), and thus could be argued to give nationality of origin to the child of stateless persons or unknown parents, or parents of unknown or undetermined nationality. Article 6 was indeed understood by contemporaries to found the Nationality Code in a *jus soli* right based on birth in the territory, with a limit excluding a person with two foreign parents in order to avoid a “too broad” attribution of nationality.⁵ However, it did not come to be applied this way: numerous reports by national and international human rights organisations as well as scholarly articles on Côte d’Ivoire have shown how even those with one parent who was clearly Ivorian were denied recognition of nationality and discriminated against on other grounds during the period treated by this communication.⁶
18. Unlike all the other countries of French West Africa (*Afrique occidentale française*, AOF), Côte d’Ivoire did not adopt the rule known as double *jus soli*, by which a child born in the territory of one parent also born there automatically acquires nationality at birth by operation of law.
19. The assumption in international law on succession of states is that nationality will be attributed on the basis of habitual residence unless other laws are specifically adopted.⁷ However, no definition was included in the law to provide criteria for automatic attribution of Ivorian nationality based on habitual residence, place of birth or other conditions (for example the place of birth of a person’s ascendants before independence),⁸ or to create clarity on the attribution of Ivorian nationality by operation of law to those who might potentially have the claim on the nationality of one of the other newly created states.

⁵ See discussions on the 1961 Ivorian code in Alexandre Zatzepine, *Le droit de la nationalité des républiques francophones d’Afrique et de Madagascar*, Paris : Pichon et Durand-Auzias, 1963, and Roger Decottignies and Marc de Biéville, *Les nationalités africaines*, Paris : Collection du Centre de Recherches, d’Etudes et de Documentation sur les Institutions et la Législation Africaines, No.4, 1963.

⁶ For a useful summary of the legal issues, see Sylvie Bredeloup, « La Côte d’Ivoire ou l’étrange destin de l’étranger » *Revue Européenne des Migrations Internationales* Vol.19, No.2, 2003, pp. 85-113 ; Ruth Marshall-Fratani “The war of ‘Who is Who’: Autochthony, Nationalism and Citizenship in the Ivorian Crisis”, in Dorman et al, *Making Nations, Creating Strangers: States and Citizenship in Africa*, Brill, 2007; as well as Manby, *Struggles for Citizenship*, pp.81-93.

⁷ International Law Commission, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States*, 1999.

⁸ This was by contrast with Niger, for example, as well as most of the lusophone countries, where those habitually resident were presumed to become nationals; or the situation in the Commonwealth countries, where a person born in the country of one parent also born there became a national automatically at independence, and others born in the country and habitually resident there could apply to register as nationals (a non-discretionary process).

Nationality by declaration: in force 1961-1972

20. In order to cater for those people who were not Ivorian by origin under Articles 6 and 7, the 1961 Nationality Code also provided, in Articles 17-23, for the possibility of acquisition of nationality by declaration by those born in the country (before or after independence) and resident there for at least five years, up to the age of 21. In this, the law followed the French model, and that of other West African countries at independence. However, while some countries (such as Guinea or Burkina Faso, and France itself) made the attribution of nationality to a person born in the country automatic on attaining majority, Côte d'Ivoire chose to require a formal declaration by the person concerned. Article 17 provided that:

*L'enfant mineur né en Côte d'Ivoire de parents étrangers peut réclamer la nationalité ivoirienne par déclaration [...] si, à la date de sa déclaration, il a en Côte d'Ivoire, sa résidence habituelle depuis au moins cinq années consécutives et si la preuve de sa naissance résulte d'une déclaration à l'état civil à l'exclusion de tout autre mode.*⁹

21. These provisions were repealed in 1972, with effect from early 1973, although they had only been accessed by two people by that date.¹⁰ If they knew of the law's provisions at all, many entitled to acquire nationality in this way may have assumed that there was no need to do so, given the liberal attitude of the government at that time to the rights of foreigners to stay in Côte d'Ivoire. For those whose parents came from Guinea or Burkina Faso, where the law provides for automatic attribution of nationality for those who were born in the country and are still resident there at majority, the assumption may even have been that the same system applied in Côte d'Ivoire.

Transitional provision on special access to naturalisation

22. Article 105 of the 1961 Nationality Code also created a special temporary naturalisation procedure for foreigners who had established habitual residence in Côte d'Ivoire prior to independence on 7 August 1960. Such persons could apply to acquire Ivorian nationality by naturalisation within a one-year period from the entry into force of the law. This period lapsed on 20 December 1962. Not a single person in fact applied for naturalisation during the one-year transitional period¹¹; many potentially eligible would have been simply unaware of this provision, or may have thought it not important to apply, given that Article 106 also provided that all those established in the territory who did not acquire Ivorian nationality could remain in the territory and continue to benefit from all their acquired rights.

Nationality of origin today

23. The nationality law in effect in Côte d'Ivoire remains *Loi no.61-415 du 14 décembre 1961*, as amended most recently in 2013. The foundational provisions on Ivorian nationality of origin are still contained in Article 6 and Article 7, as amended in 1972¹² to distinguish between children born in and out of wedlock:

Article 6: Est ivoirien :

1 - L'enfant légitime ou légitimé, né en Côte d'Ivoire, sauf si ses deux parents sont étrangers ;

⁹ "A minor child born in Côte d'Ivoire to foreign parents, can claim Ivorian nationality by declaration [...] if, at the time of his or her declaration, he or she demonstrates at least five consecutive years of habitual residence in Côte d'Ivoire and if proof of his or her birth is made through a declaration to the civil registration authorities to the exclusion of any other mode of proof."

¹⁰ As noted in the Exposé des motifs, *Projet de loi portant dispositions particulières en matière d'acquisition de la nationalité par déclaration* (No.2013-653 du 13 septembre 2013).

¹¹ Ibid.

¹² Loi n° 72-852 du 21 décembre 1972.

*2 - L'enfant né hors mariage, en Côte d'Ivoire, sauf si sa filiation est légalement établie à l'égard de ses deux parents étrangers, ou d'un seul parent, également étranger.*¹³

Article 7: Est ivoirien :

1 - L'enfant légitime ou légitimé, né à l'étranger d'un parent ivoirien ;

*2 - L'enfant né hors mariage, à l'étranger, dont la filiation est légalement établie à l'égard d'un parent ivoirien.*¹⁴

24. Côte d'Ivoire's law does not and has never discriminated on the basis of gender in relation to the attribution of nationality to children by a parent. This is now the norm in Africa. However, the introduction of distinctions between children born in and out of wedlock in 1972 creates additional requirements for proof of descent for children born out of wedlock, in accordance with the *code de la famille* (this includes all children born in a marriage that is not registered under the civil registration system). Discrimination based on gender of the parent was particularly common during the period when there was emphasis on the need for both parents to be Ivorian for a person to be entitled to vote and run for office. In traditions where the child takes the last name of the father and is regarded as belonging to his family, it may be hard to claim the Ivorian nationality of the mother.
25. Article 6 of the Nationality Code is unique in former AOF: Côte d'Ivoire was the only country to include the unclear wording in Article 6 on nationality of origin for those born on the territory related to both parents being *étrangers*. Because Côte d'Ivoire did not adopt the rule that a child born in the territory of one parent also born there automatically acquires nationality at birth by operation of law, the definition of *étranger* thus remained relevant much longer — till today — than it would have done in any of the other countries that adopted the double *jus soli* rule.
26. Even at independence, Côte d'Ivoire's provision on children of unknown parents was not very clear, and this language was deleted in 1972.¹⁵ Côte d'Ivoire is now among the minority of African countries that provide no rights to foundlings or children of unknown parents.¹⁶ The right of a foundling to be considered a national is one of the longest standing principles in international law related to nationality, dating back to the Hague Convention of 1930.¹⁷

¹³ Article 6: Is Ivorian: (1) The legitimate or legitimated child born in Côte d'Ivoire, except if his or her two parents are foreigners; (2) The child born in Côte d'Ivoire out of wedlock, unless if his or her filiation is established with respect to two foreign parents, or only one parent, who is also a foreigner.

¹⁴ Article 7: Is Ivorian: (1) The legitimate or legitimated child born abroad to an Ivorian parent; (2) The child born out of wedlock, abroad, whose filiation is legally established with respect to one Ivorian parent.

¹⁵ The original Article 9 stated that facts related to birth must be established in accordance with civil registration laws, but also that the child of unknown parents found in Côte d'Ivoire is presumed to be born there, unless there is contrary proof (*Toutefois, l'enfant de parents inconnus trouvé en Côte d'Ivoire est présumé y être ne sauf preuve contraire par tous moyens*). It did not state that the child was also presumed to be born of Ivorian parents. This second paragraph was deleted in 1972, although the requirement for civil registration remained.

¹⁶ The others are: Botswana, Equatorial Guinea, Gambia, Lesotho, Liberia, Malawi, Mauritius, Namibia, Nigeria, Seychelles, Sierra Leone, Somalia, South Africa, Tanzania, Togo, and Zambia.

¹⁷ Convention on Certain Questions Relating to the Conflict of Nationality Laws, The Hague, 12 April 1930, Article 14: "A child whose parents are both unknown shall have the nationality of the country of birth. If the child's parentage is established, its nationality shall be determined by the rules applicable in cases where the parentage is known. A foundling is, until the contrary is proved, presumed to have been born on the territory of the State in which it was found."

27. There is also no provision on the right to nationality of children born in Côte d'Ivoire who are not attributed the nationality of any other state at birth.¹⁸ This omission is in violation of the requirements of Article 6(4) of the African Charter on the Rights and Welfare of the Child (ACRWC) and of the 1961 Convention on the Reduction of Statelessness (to which the State acceded in 2013).

28. Article 6(4) of the African Charter on the Rights and Welfare of the Child provides that States are obliged to:

ensure that their Constitutional legislation recognizes the principles according to which a child shall acquire the nationality of the State in the territory of which he[/she] 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.

29. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) adopted a General Comment in 2014 on Article 6 of the Children's Charter, which provides authoritative guidance on the interpretation of this article. In particular, the ACERWC General Comment endorsed its ruling in the Kenyan Nubian Children's case¹⁹ that:

[A] purposive reading and interpretation of [Article 6(3)] strongly suggests that, as much as possible, children should have a nationality beginning from birth.

30. In addition, in relation to Article 6(4) and the obligation to attribute nationality to children born on the territory who do not obtain the nationality of any other state at birth, the General Comment states that:

[T]he Committee notes that it can be difficult to prove the risk of statelessness: that is, that a person does not have, or is not going to acquire, another nationality. In addition, it may be unreasonable to expect a child who may have a theoretical right to another nationality to take the steps needed to acquire that nationality. Thus, the Committee encourages States Parties to adopt legal provisions – already in place in many African States – that a child born in the State with one parent (either mother or father) also born in the State acquires the nationality of that State at birth. As already recommended in the Kenyan Nubian Children's case, the Committee also believes that States should adopt provisions giving children born in their territory the right to acquire nationality after a period of residence that does not require the child to wait until majority before nationality can be confirmed. Additionally, a number of African States provide for a child born in the territory of parents who are lawfully and habitually resident there to acquire nationality at birth, and the Committee regards this as best practice. Further, the Committee encourages African States to facilitate the acquisition of nationality by children who were not born in their territory but who arrived there as children and have been resident there for a substantial portion of their childhood.

31. In the UNHCR "Dakar conclusions", adopted by a group of experts considering the obligations of states to grant nationality to children under the 1961 Convention on the Reduction of Statelessness, it was noted that in circumstances where it is not clear if the child has a right to

¹⁸ There is an argument that the language of Article 6 of the Ivorian Nationality Code could be interpreted to attribute nationality to the children of stateless or unknown parents (see paragraph 17); but this is not how the law has been interpreted in practice. In any event such an interpretation would not include children who do not have access to the nationality of their parents.

¹⁹ *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on behalf of Children of Nubian descent in Kenya v. The Government of Kenya*, Decision No.002/Com/002/2009.

the nationality of one or other of its parents, and thus if the state of birth has the obligation to grant nationality:

Some States may make a finding that a child is of “undetermined nationality”. When this occurs, States should seek to determine whether a child is otherwise stateless as soon as possible so as not to prolong a child’s status of undetermined nationality. For the application of Articles 1 and 4 of the 1961 Convention, such a period should not exceed five years [...]. While designated as being of undetermined nationality, these children should have access to all social services on equal terms as citizen children.²⁰

Marriage

32. In its initial form, Article 12 of the Nationality Code provided for a woman marrying an Ivorian man to acquire nationality automatically on marriage. Revisions to the Nationality Code in 2004 made the woman’s acquisition of nationality optional and made it possible for the first time for a man marrying an Ivorian woman to acquire Ivorian nationality (though after a delay of two years), rather than having to naturalise by the procedures applicable to any foreigner.²¹ The law amending the Nationality Code in 2013 made acquisition of nationality on marriage once again automatic (rather than requiring an option), but now automatic for either a man or a woman marrying an Ivorian national (rather than only a woman marrying an Ivorian man, as it had been at independence).²² These provisions are unusual: only Burkina Faso in Africa has similar provisions. They may create problems for those foreign spouses whose own countries do not allow dual nationality, resulting in the person losing their nationality of origin, and also do not respect the right of a person to make his or her own choice. The requirement that marriage be formalised through the civil registration procedures (article 9) also means that marriages under customary law will not result in nationality being transmitted to a spouse.

Naturalisation

33. As in the case of most other nationality laws, the 1961 Nationality Code established a naturalisation procedure, a means of acquiring Ivorian nationality based on long-term residence as a matter of discretion of the public authority. The overall structure of this naturalisation procedure remains in force today, subject to some minor amendments made in 1972 and 2004. Acquisition of nationality through naturalisation is accorded by decree after investigation to ensure that the applicant fulfils the criteria established in the law. The fundamental prerequisites are that a person be at least 18 years of age and have habitual residence in Côte d’Ivoire for five years, with some exceptions (Articles 25-28). All applicants, except for a person who has rendered “exceptional services” to Côte d’Ivoire, must be of good conduct and moral character (Article 31), of sound mind and in a state of physical health that means that the person will not be burden on or danger to the public (Article 32). Detailed procedures and the setting of fees are delegated to decrees (Article 33).

²⁰ *Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children (The “Dakar Conclusions”)*, UNHCR, 2011.

²¹ Loi no. 2004-662 modifiant et complétant la loi 61-415 portant Code de la nationalité. Under the 1961 Nationality Code as in force to that date, a foreign woman marrying an Ivorian man had automatically acquired nationality on marriage; the amendments changed this rule to a right for the woman to opt for Ivorian nationality at the time of marriage; but for a man marrying an Ivorian woman only to be able to do so after a two year delay. Presidential decisions 2005-03/PR of 15 July 2005 and 2005-09/PR of 29 August 2005 reduced and then removed the discrimination based on sex, and made it possible for either a man or a woman marrying an Ivorian national to acquire nationality by option at the time of marriage.

²² Loi No.2013-654 du 13 septembre 2013. Although the automatic acquisition can be problematic (for example, if the other country does not allow dual nationality), it does mean that a person does not have to be aware that a positive step must be taken in order to acquire nationality.

34. Only a limited number of people have been able to access the naturalisation procedures, by comparison with the numbers who would appear to satisfy the requirements on paper. The 1988 census showed a population of foreign origin of more than three million (half of them of Burkinabè origin), forming just over 28% of a total population of 10.8 million; up from 17.5 percent in 1965. At least 45 percent of these “foreigners” had been born in the country and more than 60 percent of the remainder had been resident for more than five years and thus theoretically eligible to naturalise.²³ Yet only just over 51,146 people were identified as naturalised Ivorian nationals.²⁴ Ten years later, the 1998 population census revealed that of the approximately 15 million inhabitants of the country just over a quarter were non-nationals, once again almost half of them had been born in the country; and only 88,714 people were identified as naturalised.²⁵
35. Following the change of government in 2011, the Ministry of Justice conducted surveys of the *Journal Officiel*, where naturalisation decrees are published, which concluded that at least 32,000 and perhaps up to 92,000 people had been naturalised between 1962 and the end of 2012 (the discrepancies might be explained by different counting methods applied to the spouses and children of those naturalised).²⁶
36. Côte d’Ivoire’s rules on naturalisation are not out of line with those of other countries in the continent. Generally speaking, however, these laws provide very restricted access to naturalisation, especially because they require full proof of legal residence in a context where many if not most migrants within the ECOWAS region take advantage of the regime of free movement even where a residence permit is technically required after 90 days.²⁷ The history of the past years relating to identification of foreigners means that many people will have been in default of these provisions, and thus in theory not eligible for naturalisation. ECOWAS itself has recognised the unenforceability of this system and is removing the requirement for residence permits with the introduction of a regional biometric identity card.²⁸
37. In addition to its onerous conditions and procedures, the regular law and administration of naturalisation is highly discretionary and facilitates arbitrary decision making. For example, Côte d’Ivoire’s law provides (as do several others) that, although a decision that an application for naturalisation is inadmissible is motivated (that is, reasons must be supplied if it is concluded that the basic criteria are not fulfilled), the decision to refuse naturalisation is not motivated and is susceptible to no appeal (Articles 68 and 69 of the Nationality Code).
38. The law on special procedures of acquisition of nationality by declaration adopted in 2013 provides for a less discretionary process, which should ease applications; yet only a minority of those who would appear to be eligible have applied. This law also provides only for very limited recourse in case of rejection of the application: the decision is notified to the applicant, who then has two months to appeal to the minister of justice; if the minister rejects the request the applicant can apply to the president, whose decision is final. However, a failure of the ministry

²³ Recensement Général, Vol.2, 1988.

²⁴ Recensement Général de la Population et de l’Habitat, 1988 : Tome 3, Caractéristiques socio-culturelles et économiques de la population, République de la Côte d’Ivoire, 1992, table 2.3.

²⁵ United Nations, Department of Economic and Social Affairs, Population Division *Trends in International Migrant Stock: The 2013 Revision*, United Nations database, POP/DB/MIG/Stock/Rev.2013, Table 3. See also Georges Photios Tapinos, « La population étrangère », in Georges Photios Tapinos, Hugon Philippe et Vimard Patrice (eds.) *La Côte d’Ivoire à l’aube du XXI^e siècle. Défis démographiques et développement durable*, Paris: Karthala, 2001.

²⁶ Interview, Paul Koreki, Ministry of Justice, Abidjan, June 2014; also Mirna Adjami, *Statelessness and Nationality in Côte d’Ivoire*, UNHCR, forthcoming.

²⁷ Bronwen Manby, *Nationality, Migration and Statelessness in West Africa*, UNHCR and IOM, 2015.

²⁸ “ECOWAS biometric ID card goes into force in 2016”, ECOWAS Press Release N°: 240/2014, 12 December 2014, <http://news.ecowas.int/presseshow.php?nb=240&lang=en&annee=2014>, accessed 07 January 2015.

of justice to respond to the applicant within six months is equivalent to rejection – which of course would not be notified to the applicant.²⁹ This is also not a satisfactory level of due process.

39. Best practice internationally is moving towards a more rights-based approach in naturalisation, with greater weight on due process and less absolute discretion for the executive, for example by providing for a right to reasons and to challenge a decision to refuse naturalisation in court.³⁰ In West Africa, Liberia provides that all naturalisations are done by the courts. A number of southern African countries provide for the appointment of a panel to advise the president on naturalisation decisions, whose advice is expected to be followed.

Dual nationality / loss and deprivation of nationality

40. Article 48 provides for the loss of Ivorian nationality as follows:

*Perd la nationalité ivoirienne, l'ivoirien majeur qui acquiert volontairement une nationalité étrangère, ou qui déclare reconnaître une telle nationalité. Toutefois, pendant un délai de quinze ans à compter de l'inscription sur les tableaux de recensement, la perte est subordonnée à l'autorisation du Gouvernement par décret pris sur rapport du Garde des Sceaux, Ministre de la Justice, et après avis du Ministre de la Santé publique et du Ministre de la défense nationale.*³¹

The wording of this article was copied directly from the French Nationality Code at the time of independence (and is reproduced in several other West African nationality codes). The *tableaux de recensement* (census tables) mean the lists maintained in France on who would be obliged to render mandatory military service. However, this system was never applied in Côte d'Ivoire.

41. Dual nationality is only otherwise mentioned in the context of ensuring that a person who renounces Ivorian nationality has, in fact, another nationality, and thus will not become stateless. Thus, dual nationality is in principle allowed in all other circumstances than the voluntary acquisition of another nationality by an adult; including in the case of a person who holds two nationalities from birth (for example, because the parents are of different nationalities), a person who naturalises as Ivorian, or a person who acquires Ivorian nationality by marriage.
42. Articles 50-56 provide other grounds for loss of nationality by operation of law, as well as for deprivation of acquired nationality by administrative act, including in relation to fraud, acts of disloyalty, and various crimes committed within 10 years of acquiring nationality.
43. In general terms, Cote d'Ivoire's deprivation provisions are similar to those of many other countries – but provide a great deal of discretion to the executive which is not compatible with the requirements of the African Charter on due process.
44. However, most of those affected by discriminatory application of the law in Côte d'Ivoire were not deprived of nationality under these provisions but rather retroactively denied recognition of nationality that they thought they had. Many of those who were denied identity cards or registration as voters had previously been treated as Ivorian nationals and held identity cards; some even had certificates of nationality or were named in naturalisation decrees.

²⁹ Loi No.2013-653 du 13 septembre 2013, article 7.

³⁰ Christian Joppke, *Citizenship and Immigration*, Cambridge: Polity Press, 2010, pp.45-47.

³¹ "Loses Ivorian nationality, the adult Ivorian who voluntarily acquires a foreign nationality, or who declares to have recognised such a nationality. However, during a period of 15 years from inscription on the census tables, loss is subordinated to the authorisation of the government by decree based on a report from the keeper of seals and minister of justice, and after consulting the minister of public health and the minister of national defence."

45. In particular, there was widespread misunderstanding and misapplication of the rules in relation to those who have dual nationality of origin: that is, those who have parents of two different nationalities. During the height of the crisis, the public rhetoric was that the only “true” Ivorian was a person with both parents Ivorian of origin. Thus the nature of deprivation was to apply ever stricter administrative rules that effectively denied people recognition of nationality of origin on the basis that they held another nationality, rather than to assert that they had lost it or to deprive them of nationality under the regular provisions of the law. This is similar to the situation in Zimbabwe, Sudan, Ethiopia, DR Congo and other countries which have seen major crises around nationality and identity.³²
46. The strong (though not universal) trend in African countries is for dual nationality to be allowed: 26 countries now allow dual nationality in all circumstances; the laws of 18 countries (including Côte d’Ivoire) allow dual nationality in some circumstances (only with permission, only for those naturalising, or only for nationals of origin). In countries where dual nationality is not clearly allowed, problems relating to statelessness tend to be more pronounced, since the allegation that someone is a foreigner means that they therefore cannot be a national of the country where they live.
47. The 2014 Tunis Conclusions adopted by a group of international experts on nationality law convened by UNHCR make clear that prohibitions on arbitrary deprivation of nationality apply equally to arbitrary non-recognition.³³ This is so even if the non-recognition does not leave the person stateless (because they hold documentation of another nationality) or even if the person would be stateless but could acquire recognition of another nationality on application. Many of the people denied recognition of Ivorian nationality fall into this category: they were denied because they were alleged to hold another nationality, although Ivorian law does not prohibit a person from holding dual nationality of origin. Some of these people could in fact obtain recognition of another nationality on the basis of descent, and thus could be argued not to have become stateless in the long run. However, they may have had to apply for formal recognition of the other nationality (which would thus be in doubt at the time of the non-recognition of Ivorian nationality, leaving them at least temporarily stateless). Non-recognition without the reasonably accessible right to challenge non-recognition would in any event be in contradiction with the principles of due process established by Article 7 of the African Charter.

Proving nationality and certificates of nationality

48. In accordance with the usual system in the former AOF, the ordinary civil law courts have jurisdiction to preside over nationality matters in Côte d’Ivoire, and the Nationality Code sets out detailed procedures (Title VI, Articles 77-100). Ivorian public prosecutors represent the interests of the State, in either defending or challenging an individual’s nationality, though third parties can intervene as well. The facts on the basis of which nationality is claimed must be established through the civil registration system (Article 9) or by a naturalisation decree.
49. Proof of Ivorian nationality is provided by the delivery of a certificate of nationality by the president of the relevant tribunal or a delegated judge. These certificates are in different forms according to whether the person has nationality of origin or by acquisition through marriage or naturalisation. Although this system has advantages over the common law system where it is often unclear what document is definitive proof that a person is a national and the procedures are controlled by the executive branch of government, it also has problems. In particular, in Côte d’Ivoire the law does not give judges the discretion allowed in Senegal, for example, to rule on the basis of *possession d’état de national*, while the costs and complex procedures mean that many are deterred from going through the system of obtaining a certificate of nationality.

³² Bronwen Manby, *Struggles for Citizenship in Africa*, Zed Books, 2009.

³³ *Expert Meeting - Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality ("Tunis Conclusions")*, UNHCR, March 2014, especially paragraph 9.

Moreover, the overlap with the systems for identity cards and for voter registration has created a great deal of ambiguity: in practice, a national identity card is accepted for most purposes (including registration to vote) as proof of nationality.

Special temporary measures for acquisition of nationality

50. The agreements to end the Ivorian conflict resulted in various undertakings to amend the nationality law to allow the regularisation of the nationality status of those who had been denied recognition of Ivorian nationality. The first law was adopted in 2004 (and modified in 2005); the second in 2013, which is still being implemented.
51. A law adopted in late 2004 in application of the agreement at Linas-Marcoussis established temporary special naturalisation procedures that applied to all those who had been allowed to claim nationality from 1961, either under the transitional naturalisation provisions in force for one year, or under the declaration procedure available until it was repealed by the amendments to the Nationality Code in 1972 (that is, those aged under 21 at the date of independence and born in Côte d'Ivoire of foreign parents, those born in Côte d'Ivoire of foreign parents between 1960 and 1973, and those who habitually lived in Côte d'Ivoire before independence). The law established that people in these categories could apply for naturalisation during a limited period. The supporting documents required were onerous, and included either an original birth certificate or a *jugement supplétif* from a court, a form of late certification of birth.³⁴ The law was modified twice by presidential decisions in 2005 clarifying and redefining the categories of people to which it applied and adjusting the procedures for application.³⁵ The implementing decree was only finally adopted by the Council of Ministers in May 2006, starting an initial one year period for those who wished to apply for naturalisation under its provisions – but no applications were ever in fact processed under these texts.³⁶
52. In 2013, the legislature adopted another law providing temporary special naturalisation procedures targeted at the same people as the 2004 law; that is, those who could have benefited from the transitional provision on naturalisation for those habitually resident in 1961, and the possibility of acquisition for those born in the territory before January 1973 and still resident as adults.³⁷ But the law and its implementing decree made the procedures to access nationality significantly easier by providing for non-discretionary acquisition of nationality by declaration (if the conditions were met); rather than the highly discretionary naturalisation still included in the normal framework of the Nationality Code, from which few had benefited, or in the 2004 special procedures, which had reached nobody at all. The declaration procedure also meant that the person acquiring nationality was not subject to the limitation of political rights placed on those who have naturalised.³⁸ The time limit to apply was extended, but by the end of 2015, more than 120,000 declarations had been made under these provisions; by early 2016, 6,400 had acquired their documents.³⁹ There was no requirement for those applying under this mechanism to show that they were stateless, and many may have been entitled or had

³⁴ Loi no.2004-663 du 17 décembre 2004 portant dispositions spéciales en matière de naturalisation.

³⁵ Décision no. 2005-04/PR du 15 juillet 2005 and Décision no.2005-10/PR du 27 décembre 2005.

³⁶ Décret No.2006-76 du 31 mai 2006 portant modalités d'application de la loi no.2004-663 du 17 décembre 2004, which again re-adjusted the precise definition of those who were eligible to benefit, to bring the law precisely into line with the original provisions in the 1961 Nationality Code, repealed in 1972.

³⁷ However, there was some confusion on the categories (especially the application to descendants of those initially entitled) created by slightly different wording in the law, its implementing decree and an interministerial circular providing guidance on the application procedures.

³⁸ Loi No.2013-653 du 13 septembre 2013, and its explanatory memorandum; Décret No.2013-848.

³⁹ "West Africa celebrates the first anniversary of the Abidjan Declaration on the eradication of statelessness", UNHCR, Dakar, February 2016, available at <http://kora.unhcr.org/west-africa-celebrates-first-anniversary-abidjan-declaration-eradication-statelessness/>.

recognition of another nationality. Those with least existing documentation indeed would have found it hardest to prove their entitlement under the temporary measures.

Statelessness safeguards

53. The Ivorian Nationality Code does not include any explicit reference to statelessness, and does not provide any mechanism for a stateless person to be recognised as such or to become Ivorian.
54. In late 2013, however, Côte d'Ivoire acceded to the two statelessness conventions, following approval by the National Assembly.⁴⁰ Article 3 of the Nationality Code states that provisions of international treaties have direct effect in relation to nationality. However, courts are hesitant to apply international treaties before their terms have been enacted in domestic law.

Civil registration, identification and voter registration

Civil registration

55. The law on civil registration was adopted in 1964, and amended in 1983 and 1999.⁴¹ Like the Nationality Code, the text is inspired by French laws and practices on registration of births, marriages and deaths and creates processes that are similar to those of many civil law traditions. Although a birth certificate (*extrait d'acte de naissance*) is required to establish the facts that prove a person is entitled to Ivorian nationality, it does not in itself constitute proof of nationality (which is supplied only by a certificate of nationality). The law requires that all births in Côte d'Ivoire be declared and registered before the civil registration authorities of the administrative district of birth within three months from the time of birth, regardless of the nationality of the child concerned.⁴² Civil status registry offices are created in the territory of every sub-prefecture.⁴³
56. Registration of births in Côte d'Ivoire fell during the civil war, from 72 per cent in 2000 (not a bad rate comparative to the West Africa region), to 58 per cent by 2006. There have been significant efforts to increase birth registration rates since the installation of the government of national reconciliation in 2007 and the inauguration of the current government in 2011, including by adopting temporary measures to permit late registration of births that happened during the conflict and other measures. Between September 2007 and September 2008, a program of *audience foraines* led to the late birth registration of or issue of replacement birth certificates to 750,000 persons.⁴⁴ Between May 2008 and May 2009, 250,000 civil registration records were reconstituted under the special program that emerged from the March 2007 Ouagadougou Political Accord (*Accord politique de Ouagadougou*, APO) that created a government of national reconciliation.⁴⁵ The overall rate of registration of births was estimated to have increased to 65 per cent in 2011.⁴⁶

⁴⁰ Loi No.2013-647 du 13 septembre 2013 and Loi No.2013-649 du 13 septembre 2013 authorising the president to ratify the 1954 and 1961 Conventions.

⁴¹ Loi No. 64-374 du 7 octobre 1964 relative à l'état civil, modifiée par les lois No. 83-799 du 2 août 1983 et 99-691 du 14 décembre 1999.

⁴² The deadline of three months to register births was established by revisions to Article 42 in 1999.

⁴³ Articles 2-3.

⁴⁴ Paragraph 28, Eighteenth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, S/2008/645, 13 October 2008.

⁴⁵ *Mission d'Observation Electorale de l'Union Européenne, Rapport Final, Election Présidentielle 31 octobre – 28 novembre 2010* (25 January 2011), available at : http://www.eueom.eu/files/pressreleases/english/rapport-final-25012011_fr.pdf.

⁴⁶ *Every Child's Birth Right: Inequities and trends in birth registration*, UNICEF, 2013.

57. In September 2011, President Ouattara signed a presidential ordinance to facilitate the registration of births and deaths that occurred in Côte d'Ivoire during the political crisis.⁴⁷ This measure temporarily waived the legal deadlines for normal civil registration for all births and deaths that took place after 2002 in all zones that had been under rebel occupation; and between 30 November 2010 and 31 July 2011, the period of post-election violence, in all territories of Côte d'Ivoire. This measure was to be effective from the date of publication of the ordinance in the Official Journal through 30 July 2012, and was supported by UNICEF and UNHCR. A law passed in 2013⁴⁸ further extended the waiver of deadlines for an additional period of 24 months starting from 1 August 2012 through 31 July 2014.
58. The basic law on civil registration has not been renewed since it was adopted in the 1960s, and there is also a case for reform, in line with similar efforts in the region to bring civil registration laws up to date: for example, in West Africa, new laws on civil registration have been adopted in Niger in 2007, in Togo in 2009, and in Mauritania in 2011.

Identification of nationals and foreigners

59. Immediately after independence, law No. 62-64 established the requirement for all adult Ivorians to carry a national identity card.⁴⁹ A separate circular created an ID card for foreigners.⁵⁰ These two texts remained unchanged for almost thirty years.
60. In relation to identification of Ivorian nationals, Article 5 of Law No. 62-64's implementing decree⁵¹ required anyone who applied for an Ivorian ID card to produce a copy of his or her birth certificate. However, it was not required in all cases that individuals produce a certificate of nationality. Rather, the decree sanctioned a discretionary process whereby: "In all cases where it appears necessary to identify the nationality of the applicant" agents could require the production of a certificate of nationality.
61. The procedures for identification of foreigners began to be tightened from 1990, when Law No. 90-437⁵² instituted the requirement that all foreigners, including nationals of ECOWAS states, obtain and carry as proof of identity a *carte de séjour*, a type of residence permit. In 1998, Law No. 98-488⁵³ created a new set of categories for the residence cards to be issued to foreigners, distinguishing between ECOWAS nationals and others.
62. A new implementing decree to Law No. 62-64 on identification of nationals was adopted in 1998.⁵⁴ For the first time, this decree made it a requirement that all persons submitting a first-time request to obtain an Ivorian ID card submit as documentary proof not only a copy of a birth certificate or *jugement supplétif*, but also a certificate of residence, a certificate of nationality, and copies of the national ID cards of at least one of the person's parents or a copy of a parent's decree of naturalisation. The 1998 changes, however, were never fully implemented, because all identification operations were suspended with the military coup led by General Robert Guéi

⁴⁷ Ordonnance No. 2011-258 du 28 septembre 2011 relative à l'enregistrement des naissances et des décès survenus durant la crise. This ordinance entered into force with its publication in the government's Official Journal on 29 December 2011.

⁴⁸ Loi No. 2013-35 du 25 janvier 2013 portant modification de l'article 2 de l'Ordonnance No. 2011-258 du 28 septembre 2011 relative à l'Enregistrement des Naissances et des Décès Survenus durant la Crise.

⁴⁹ Loi no. 62-64 du 20 février 1962 instituant une carte nationale d'identité.

⁵⁰ Circulaire No. 1138 du 13 juin 1962, as discussed in the ONI's historical overview of identification in Côte d'Ivoire, available at: <http://www.oni.ci/?q=content/historique>.

⁵¹ Décret No. 67-86 du 10 mars 1967, fixant les modalités d'application de la Loi No. 62-64 du 20 février 1962, instituant une carte nationale d'identité, modifiée par Décret No. 71-63 du 6 février 1971.

⁵² Loi No. 90-437 du 29 mai 1990 relative à l'entrée et au séjour des étrangers en Côte d'Ivoire.

⁵³ Loi No. 98-488 du 4 août relative à l'identification des personnes et au séjour des étrangers en Côte d'Ivoire.

⁵⁴ Décret No. 98-471 du 12 août 1998 modifiant et complétant le décret No. 67-86 du 10 mars 1967 fixant les modalités d'application de la loi no. 62-64 du 20 février 1962 instituant une carte nationale d'identité.

on 24 December 1999. In 2000, another decree created a highly discretionary model for issuing national ID cards, foreseen as a two-year temporary measure, but never fully implemented because of the instability during this period.⁵⁵ According to this decree, the normal requirements for obtaining a national ID card were suspended. Instead, Ivorians could go to their “village of birth or origin” to obtain a national ID card on the basis of less stringent requirements.⁵⁶ Although this appeared to be a relaxation of normal provisions, in practice it meant that people who didn’t have a “village of origin” were not able to obtain identity documents (village of birth was not accepted, despite the terms of the decree).⁵⁷

63. The period 2000-2007 saw a series of legal amendments related to the identification of Ivorian nationals and foreigners, including the replacement of the law on identification of foreigners, which made requirements more stringent and raised the fees charged for residence permits. None of these measures fully came to practical fruition as a result of the political crisis, but they were major preoccupations in the negotiations leading to the Linas-Marcoussis accord. In 2000, General Guéï created a new body responsible for identification called the *Centre National d’Identification Sécuritaire* (CNIS, National Centre on Secure Identification), replaced in 2001 by the *Office Nationale d’Identification* (ONI, National Identification Office),⁵⁸ whose powers encompassed a wide range of tasks related to identification and were further strengthened in 2004.⁵⁹
64. At the conclusion of this volatile period by the Ouagadougou Political Accord, the law in force governing identification of Ivorian nationals remained Law No. 62-64 and its implementing Decree No. 67-86 as modified by Decree No. 98-471. With respect to the identification of foreigners the law in force was Law No. 2002-03 of January 2002 relating to the identification of persons and stay of foreigners in Côte d’Ivoire, as modified by Law No. 2004-303 of 3 May 2004, Presidential Decision No. 2005-05/PR of 15 July 2005, and Ordinance No. 2007-604 of 8 November 2007.
65. The APO also agreed measures to create a coherent and accessible “ordinary” identification system, together with a program of identification specifically to establish a new voters’ register for forthcoming elections.⁶⁰ Decree No. 2007-647 then established this dual system.⁶¹ The former process requires that an applicant for a national ID card produce not only a birth certificate or *jugement supplétif* but also a certificate of nationality. The latter process,

⁵⁵ Décret No. 2000-419 du 31 mai 2000 fixant les modalités d’application de la Loi No. 62-64 du 20 février 1962 instituant la carte nationale d’identité.

⁵⁶ Those individuals who did not possess the required documents relating to the birth and nationality of their parents, could present all the documents they held and appear with two witnesses before a mobile team (*équipe itinérante*), including a magistrate and various other officials, advised by the local chiefs and notables. This mobile team could issue an identity card and certificate of nationality.

⁵⁷ General Guéï also signed two ordinances that allowed as a temporary measure for individuals to present informal administrative certificates or receipts issued by local municipalities in place of identification through documents otherwise required by law. Ordonnance n° 2000-504 du 26 juillet 2000 instituant une attestation administrative d’identité tenant lieu de carte de résident; Ordonnance n° 2000-502 du 26 juillet 2000 instituant une attestation administrative d’identité.

⁵⁸ Article 3, Décret 2001-103 du février 2001 portant création de l’Office Nationale d’Identification. See summary at http://www.oni.ci/?q=content/identification_c%C3%B4te_ivoire, accessed 01 December 2014.

⁵⁹ Article 13, Décret No. 2004-28 du 15 janvier 2004 portant modification du décret No. 2001-103 du 15 février 2001 portant création de l’Office Nationale d’Identification.

⁶⁰ See Ouagadougou Political Accord, Sections 1.3.1. and 1.3.2, available at <http://www.onuci.org/pdf/ouagaaccord.pdf>, accessed 01 December 2014. An English translation by the UN is available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2007/144, accessed 01 December 2014.

⁶¹ Décret No. 2007-647 du 20 décembre 2007 portant conditions d’établissement, d’obtention et de forme de la Carte Nationale d’Identité.

however, only required that ID card applicants produce a birth certificate or *jugement supplétif*, and not a nationality certificate, though they would be subject to background checks. All persons who were on the 2000 voter list would automatically be able to obtain Ivorian national ID cards and be re-registered on the new voter list.⁶²

66. After a hiatus of four years, the Council of Ministers adopted a communication in October 2013 that authorised the ONI to start the ordinary identification process as foreseen in the APO.⁶³ In June 2014, the Council of Ministers also adopted a decree establishing general rules to obtain an Ivorian national ID card, based for the first time on the universal requirement to produce a certificate of nationality as well as a birth certificate.⁶⁴ This will place a major burden on the courts to issue the nationality certificates required, since late registration of birth will first need to be established by the same courts (where not already in place), and only a minority of applicants have previously been required to obtain the certificate of nationality.

Voter registration

67. For several decades, foreign residents in Cote d'Ivoire of West African origin were allowed to participate in Ivorian elections, even though Article 5 of Côte d'Ivoire's 1960 Constitution reserved the right to vote to "Ivorian nationals".⁶⁵ The 1980 Electoral Code explicitly extended the right to foreigners as follows: "non-Ivorians of African origin inscribed on the voter lists will be able to take part in the vote."⁶⁶ The 1994 Electoral Code, however, confirmed the 1960 Constitution's principle that only Ivorian nationals can make up the electorate⁶⁷, and also introduced new criteria for presidential candidates, including that a candidate must be "Ivorian by birth", of two parents also Ivorian by birth, and must never have held another nationality.⁶⁸ The same requirements were adopted with regards to the eligibility requirements to be a candidate for election as a deputy.⁶⁹
68. The 2000 Constitution enshrined these criteria for the presidential candidate (with a change in wording for the requirements for the presidency from "Ivorian by birth" to "Ivorian of origin", reflecting the terminology in the Nationality Code),⁷⁰ which were thus also incorporated in the

⁶² These texts and their predecessors were collected in the *Compil des textes législatifs et réglementaires relatifs à l'identification des personnes et au séjour des étrangers*, Ministère de la Justice des Droits de l'Homme et des Libertés Publiques, June 2013.

⁶³ Projet de Communiqué du Conseil des Ministres du Mercredi 02/10/2013, available at : http://www.gouv.ci/doc/1380792727CCM_02_10_2013_V3.pdf.

⁶⁴ Communiqué du Conseil des Ministres du Mercredi 04/06/2014, available at http://www.gouv.ci/doc/1401955748CCM%20_04062014_V3_HorsMI.pdf. The Communiqué refers to the decree as the following : Décret portant conditions d'établissement, d'obtention et de forme de la Carte Nationale d'Identité.

⁶⁵ Article 5 of Côte d'Ivoire's 1960 Constitution read as follows: "Suffrage is universal, equal and secret. Are voters, under conditions determined by law, all adult Ivorian nationals, of both sexes, who enjoy civil and political rights."

⁶⁶ Article 57 of Loi No.80 - 1039 du 1er Septembre 1980 relative à l'élection des députés à l'Assemblée nationale: «Pour les élections de 1980, pourront prendre part au vote les non-ivoiriens d'origine africaine inscrits sur les listes électorales ». See also Loi. No.80-1038 portant modification des articles 10 et 29 de la Constitution.

⁶⁷ Loi 94-642 du 13 décembre 1994 portant code électoral, Article 3 : « Sont électeurs les nationaux ivoiriens des deux sexes et les personnes ayant acquis la nationalité ivoirienne par naturalisation soit par mariage.... »

⁶⁸ Loi 94-642 du 13 décembre 1994, article 49 : «nul ne peut être élu président de la République s'il n'est âgé de 40 ans révolus et s'il n'est Ivoirien de naissance, né de père et mère eux-mêmes Ivoiriens de naissance.» Article 50 « Sont inéligibles ... Les ivoiriens ayant acquis la nationalité d'un autre Etat ».

⁶⁹ Loi No. 94-642 du 13 décembre 1994, Articles 77-78.

⁷⁰ « Le candidat à l'élection présidentielle doit être âgé de quarante ans au moins et de soixante quinze ans au plus. Il doit être ivoirien d'origine, né de père et de mère eux-mêmes ivoiriens d'origine. Il doit n'avoir jamais

2000 Electoral Code.⁷¹ This revised code, however, eased the eligibility criteria for parliamentary candidates contained in the 1994 version, requiring only that candidates for the National Assembly be at least 25 years old, be “Ivorian by birth”, and have never renounced Ivorian nationality.⁷² Voters were Ivorian nationals and those who had acquired nationality by naturalisation or marriage, as in 1994.⁷³ The 2000 code was modified in 2008 to provide for “elections to exit the crisis”⁷⁴ and in that form governed the 2010 elections, with further modifications for the 2011 legislative elections.⁷⁵

69. No elections were held from 2000 to 2010, during the presidency of Laurent Gbagbo, which thus governed under a regime of exception, and the question of eligibility of voters was one of the most contested issues in agreeing new elections that finally took place in late 2010. After a long and contentious process, frequently disrupted by violence and during which several provisional voter lists were published and then revised, the Independent Electoral Commission (*Commission électorale indépendante*, CEI)⁷⁶ certified the final voter list in September 2010 at 5,725,721 people (a substantially lower number than predicted based on projections from previous elections and the census), all of whom were also issued Ivorian national ID cards. Another 601,322 persons who applied to register were placed on a “grey list” (*liste grise*) and were excluded from participating in the 2010-2011 elections and not given an ID card. The full final list was never distributed to voting stations, while the nationality status of those on the grey list was never clarified.⁷⁷ Presidential elections were finally held in two rounds in October and November 2010, and parliamentary elections in 2011, on the basis of the same list. A partial return to conflict meant that President Ouattara, the victor in the elections, was only inaugurated in May 2011; the FPI boycotted the parliamentary elections after the transfer of President Gbagbo to the International Criminal Court, and turnout was only around one third of those on the voters’ roll.

Groups affected by the alleged violations and their rights under the African Charter

70. This communication was brought by the Open Society Justice Initiative against Côte d’Ivoire on behalf of a group of people discriminated against collectively and known as “Dioula”. “Dioula” is a term that means “merchant” or “trader” in the Mande languages, but, especially during the period 2000 to 2010, was used pejoratively in Côte d’Ivoire to denote the alleged foreign origin of a variety of people linked by common characteristics of ethnicity, language and religion who were not seen as “pure” Ivorians.
71. The vast majority of those affected by discrimination as “Dioula” and by Côte d’Ivoire’s restrictive nationality and identification laws have historical or current links to neighbouring West African countries, in particular Burkina Faso, but also Mali, Guinea and others. These include pre-and post-independence migrants and their descendants, members of ethnic groups

renoncé à la nationalité ivoirienne. Il ne doit s’être jamais prévalu d’une autre nationalité. », Article 35, 2000 Constitution.

⁷¹ Article 48, Loi No. 2000-514 du 1er Août 2000 portant Code Electoral.

⁷² Ibid., Article 71.

⁷³ Article 3 : « Sont électeurs les nationaux ivoiriens de deux sexes et les personnes ayant acquis la nationalité ivoirienne soit par naturalisation soit par mariage »

⁷⁴ Ordonnance no.2008-133 du 14 avril 2008 portant ajustements au Code Electoral pour les élections législatives de sortie de crise ; Décision no. 2008-15/PR du 14 avril 2008 portant modalités spéciales d’ajustements au Code Electoral.

⁷⁵ Ordonnance n° 2011-352 du 24 octobre 2011 ; Ordonnance n° 2011-382 du 10 novembre 2011.

⁷⁶ Loi n°2004-642 du 14 décembre 2004, modifiant la loi n° 2001-634 du 9 octobre 2001.

⁷⁷ Numbers on the different lists taken from *Rapport Final : Election Présidentielle 31 octobre – 28 novembre 2010*, Mission d’Observation Electorale de l’Union Européenne, 25 January 2011.

found on both sides of Côte d'Ivoire's borders, but also, more broadly, Muslims and members of ethnic groups found mainly in the north of Côte d'Ivoire.

72. The single category of "Dioula" as a collective noun for those who faced discrimination on the basis of their perceived identity was used for ease of reference as a basis for the communication to the African Commission. However, for the purposes of devising remedies to the violations alleged, and to provide an objective foundation for legal reform, it is important to draw some distinctions based on criteria other than their ascribed ethnicity or alleged country of origin amongst those who are or were affected by restrictive rules on access to nationality, or who were impacted by the policies of discrimination during the period of *ivoirité*. This opinion suggests that those affected by discrimination during the period to which the communication relates could be divided into the categories outlined below, for each of which different solutions would be appropriate.
73. It is important to distinguish among different populations in this way because of the different types of violation concerned: in some cases, Côte d'Ivoire was simply discriminating among people who were clearly its nationals on impermissible grounds of ethnicity and religion; in others, the provisions of the Nationality Code and other relevant laws on identification were not compliant with international standards on the prevention of statelessness; in others, the violation was rather one of lack of due process. Finally, there are some categories of persons whose nationality Côte d'Ivoire could argue it is not obliged to recognise or grant, given the discretion given in international law to each state to determine which persons are its nationals, but who have a stronger connection to Côte d'Ivoire than any other country. Broader principles of equity, due process and legitimate expectation would require recognition of their Ivorian nationality. These categories are thus relevant in particular for the recommendations that will be provided in the final section of this opinion.
74. It is very hard to determine a figure for the number of people who are stateless in Côte d'Ivoire today. Under international law, "Stateless person" means a person who is not considered as a national by any State under the operation of its law."⁷⁸ UNHCR Guidelines on the definition note that "establishing whether an individual is not considered as a national under the operation of its law ... is a mixed question of fact and law". Thus, "Where the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national."⁷⁹
75. In Côte d'Ivoire, as in many other countries, the weaknesses in the nationality law outlined above have been more or less important according to the way that the various authorities have applied the rules in practice, influenced by the politics of the government in power. Thus, the number of stateless people in Côte d'Ivoire could be said to vary, even without a change in the law. Additionally, of course, some individuals have been able to obtain identification despite such difficulties with the assistance of financial incentives.
76. The government's own figures, as cited by UNHCR, are that there are 700,000 stateless persons in Côte d'Ivoire, of which 400,000 are descendants of historical migrants and 300,000 (the descendants of) children of unknown parents.⁸⁰ However, this number could be revised in either direction depending on the way in which the definition of stateless person was interpreted. It is

⁷⁸ Convention relating to the Status of Stateless Persons, 1954, article 1(1).

⁷⁹ UNHCR, *Guidelines on Statelessness No. 1: The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012, paragraphs 16 & 30. See also Ruma Mandal, *The definition of "Stateless Person" in the 1954 Convention relating to the Status of Stateless Persons: Article 1(1) – The Inclusion Clause*, UNHCR, 19 May 2010.

⁸⁰ See *Global Trends Report 2013*, UNHCR, notes to Table 7 (Persons under UNHCR's statelessness mandate).

certain that there remains a very large number of people who have difficulty in establishing Ivorian identity documentation although Côte d'Ivoire is the country to which they have the strongest connections. Some of these people may be able to establish the nationality of another country based on descent; but many would not.

A. Northerners and members of ethnic groups also found in neighbouring countries

77. Among those people who faced discrimination and denial of legal status in Côte d'Ivoire are Muslim northerners and others whose ancestors on both sides have always lived in the territory of what is now Côte d'Ivoire, even if they share language and other characteristics with people living over the border in a neighbouring country. Côte d'Ivoire's law is clear that such individuals are nationals, whatever interpretation is applied to the Nationality Code. Discrimination among individuals falling in this category is in violation of Côte d'Ivoire's own constitution and laws as well as the African Charter and other international human rights standards.
78. Among those particularly affected by such discrimination are people who were or are internal migrants in Côte d'Ivoire, and thus possibly unable to identify or travel to a "village of origin" during the period when identification required application for documents in such a village, and endorsement by notables of that village.

B. People of mixed parentage

79. The modification of the electoral code in 1994 to require candidates for president and deputy in the National Assembly to have two parents both "Ivorian of origin" in theory applied only to those running for public office. The African Commission has already found these requirements to be in violation of the African Charter.⁸¹ In practice, during the period being considered by the African Commission for this complaint, the requirement for two Ivorian parents often came to be applied to the recognition of the Ivorian nationality of any person, especially where the alleged foreign parent was the father. Again, discrimination in recognition of legal status of such people is in violation not only of the African Charter but also of the Constitution and the Ivorian Nationality Code, and has been so since independence.

C. Pre-independence migrants and their descendants

80. The lack of clarity in the Nationality Code on the legal status of those who had migrated or were forcibly moved by the colonial power before independence, and who were habitually resident in Côte d'Ivoire at independence, was later exploited by politicians generating xenophobia against those groups and seeking to deny their right to vote in Côte d'Ivoire. Very many of these people never acquired any other nationality under the transitional provisions of the law of the other country and have in practice no ongoing connection to the other country, and thus when their Ivorian nationality was denied they became stateless.
81. The basic assumption in international law (though not universally endorsed) is that nationality on succession of states is attributed, in the absence of any other provision, on the basis of habitual residence.⁸² Since there were no other provisions made at independence and since the law was in addition extremely unclear in relation to who did become a national, the only equitable rule to apply would be that those who were habitually resident in Côte d'Ivoire on the date of independence became Ivorian nationals at that date, unless they took positive steps to confirm or acquire another nationality after that date.

⁸¹ *Mouvement ivoirien des droits humains (MIDH) v. Côte d'Ivoire*, ACHPR, Comm. No. 246/02.

⁸² International Law Commission (1999). *Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries* (Annex to UNGA Res. 55/153, 12 Dec. 2000).

D. Naturalised Ivorians and their descendants

82. Several tens of thousands of people did successfully naturalise as Ivorian before widespread discrimination against foreigners was instituted in the late 1990s. However, the nationality of the children of those who have naturalised has often been contested, as officials have apparently been under the impression that those children should themselves naturalise even though the provisions of the law make it clear that the child of a naturalised citizen is automatically also a national. The distinction between different types of nationality certificate facilitates such discrimination.
83. Among those who acquired nationality before the crisis of the 2000s were 8,133 persons naturalised in a single decree signed in 1995 by President Konan Bédié relating to “persons of original Burkinabè nationality of the villages of Garango, Koudougou, Koupela, Tenkodogo, in Bouaflé Department, and the villages of Kaya, Koudougou, Ouagadougou, in Zuénoula Department.”⁸³ This decree related to people forcibly established in these villages by the French authorities, for whom there was a broader recognition of the injustice of their situation as non-recognised Ivorians. However, despite this apparent resolution of the situation for at least one group of people, those named still struggled to obtain national ID cards and nationality certificates; and their children, who should under the law have been automatically Ivorian, were often not recognised as such.⁸⁴ The decision to naturalise these individuals as a group is still controversial twenty years later; many of those listed in the decree, and their descendants, still had no documentation of nationality when the government of President Ouattara sought to remedy these problems in 2013.⁸⁵
84. Discrimination against those who have successfully completed a discretionary naturalisation process (by the same authorities who granted that naturalisation) is against all principles established in the African Charter of equal protection of the law, non-discrimination and due process.

E. Children of unknown or stateless parents or who are stateless at birth

85. Among those most at risk of violation of their right to legal status are children who are vulnerable for various reasons, including foundlings (abandoned babies), children separated from their parents (especially where those parents are unknown), children of stateless parents or parents of undetermined nationality, and children born on the territory with no possibility of claiming the nationality of either parent (including people who were in such a category as child, but who are now adults).
86. The lack of a provision on foundlings or children of unknown parents is particularly important in light of the conflict in which children have become separated from their families. As noted above, the government’s own estimate of 700,000 stateless persons includes 300,000 people with unknown parents. However, even for those children whose parents are known (but absent or deceased), obtaining recognition of legal status may be difficult, if a children’s code or other law does not establish procedures for this to be facilitated.
87. Even if a foundling provision were restored, the law would still leave without access to nationality those children born in Côte d’Ivoire of stateless parents or who are not automatically attributed the nationality of one of their parents at birth. This is in violation of Côte d’Ivoire’s obligations under the ACRWC and 1961 Convention on the Reduction of Statelessness.

⁸³ Décret No. 95-805 du 26 septembre 1995.

⁸⁴ Mirna Adjami, *Statelessness and Nationality in Côte d’Ivoire*, UNHCR, forthcoming.

⁸⁵ See, for example, « Lutte contre l’apatridie : 8.133 postulants a la nationalité ivoirienne obtiennent leur naturalisation » Government of Cote d’Ivoire, 4 March 2013; and « Bradage massif de la nationalité ivoirienne: Ouattara se sert de Bédié, grosse colère au PDCI », *IvoireBusiness.net*, 13 March 2013.

F. Persons who do not fulfil the conditions but have previously held proof of Ivorian nationality

88. Many of those whose nationality and legal status in the country came to be contested had previously considered themselves to be and had been treated as nationals (with national identity cards even if not certificates of nationality) even though their parents did not hold proof of Ivorian nationality. This was especially the case for the descendants of pre-independence migrants born in the country (who this opinion argues should be entitled to Ivorian nationality: category C above), but also for those whose parents moved to the country even after independence. It is possible that some of those on the “grey list” not permitted to vote in 2010 fall in this category; although others may qualify as nationals under the existing law.
89. There is a strong argument that it would be arbitrary to refuse to continue recognition of nationality to persons who were previously recognised as Ivorian even if the person concerned did not in fact satisfy the legal criteria for attribution under the law but could be said to have *constructively* acquired Ivorian nationality by being treated by the authorities as a national (through the issue of ID cards etc) over many years. This argument is based on general principles of law in relation to due process, acquired rights, and legitimate expectations; as well as the presumptions of international law relating to state succession where relevant; and the principle of the best interests of the child and the right of every child to acquire a nationality. But in addition, this argument is based on the concept of *possession d'état de national*, integrated in the law of many African states (for example, in Senegal, Chad and Togo in West Africa), whereby a person can obtain recognition as a national if they produce witnesses and other evidence that they have always been treated as such. At the very minimum, once a person has held papers indicating that he or she is a national, including an identity card, the burden of proof should be on the person asserting that the person is not a national to show that this is the case.

G. Persons born in Côte d'Ivoire of foreign parents

90. Many of those affected by discrimination as “Dioula” in relation to recognition of legal status were born in Côte d'Ivoire of two parents who are or were nationals of another country, whose laws would, in principle, given them the right to claim that nationality. Despite the fact that Côte d'Ivoire's nationality code has no ban on dual nationality of origin, the law does not provide any rights to Ivorian nationality of origin in these circumstances. However, depending on the circumstances, many descendants of migrants would not be able to obtain recognition of the nationality of their ascendants, especially where that nationality was itself undocumented, raising the risk of statelessness.
91. There is no absolute obligation under international law for a state to grant nationality to every child born on its territory; only to children who would otherwise be stateless, in accordance with the obligations established by the ACRWC, as well as the 1961 Convention on the Reduction of Statelessness. However, the longer the period is since a parent was established in the country of a possible other nationality the less likely it is that the child born outside the country of that nationality would be able to claim it. Moreover, it may in some circumstances be unreasonable to require a person to seek recognition of another nationality if the country of birth, in this case Côte d'Ivoire, is in fact the country where the child has by far the strongest connections, especially if resident from birth until majority, and lack of recognition of Ivorian nationality would render the child (and future adult) vulnerable to exclusion from many critical services in the country – including, ultimately, the right to vote.
92. As noted above, until the law was changed in 1972, children born in Côte d'Ivoire of two foreign parents had the right to opt for Ivorian nationality if they were still resident in the country at majority, even though this law was hardly used before it was repealed, for reasons that are now difficult to establish. The abolition of the law (and the simultaneous deletion of the right to

nationality for children of unknown parents) left Côte d'Ivoire's law one of the most closed in Africa. The temporary special naturalisation procedures adopted in 2013 restore this right, but only for those born before 1973, and appear to have reached only a small percentage even of that number. Some among them may of course not wish to obtain Ivorian nationality, but others are likely unaware or distrustful of the process.

H. Long-term residents born in another country

93. According to the 1998 census, some 800,000 people born in another country had been resident in Côte d'Ivoire for more than five years at that date (see paragraph 34). Among the people who have themselves migrated since independence, many may see themselves as being of another nationality (and indeed hold documents from another country), but some hold no other documents and, after enjoying equal rights with Ivorians over many years, including the right to vote in elections from 1980 to 1994, by now identify as Ivorian. The normal naturalisation process is currently very difficult to access and highly discretionary.

I. People whose birth was not registered

94. Article 9 of the Nationality Code provides that the facts on which the right to nationality is claimed must be established under the law on civil registration. No other form of evidence is accepted. Around 40 percent of births in Côte d'Ivoire today are not registered; and the percentage is lower among the population groups most at risk of statelessness. Although late registration of birth is possible, and campaigns have been conducted to increase registration at birth and to provide for late registration, this absolute requirement and its procedural burdens creates significant obstacles to the regularisation of the situation of those whose nationality has been contested. Among those whose legal status as Ivorian may be difficult to establish are those who were born in neighbouring countries after their parents fled Côte d'Ivoire, whether or not their birth was registered in the other country.

The significance of this communication

95. The principles on which this communication is based are of importance not just for Côte d'Ivoire but for the recognition of the right to legal status, including a nationality, generally on the continent. The Commission has recognised the importance of this issue in its decision to commission a study on the right to nationality in Africa, and to move towards the drafting of a protocol to the African Charter on Human and Peoples' Rights on the right to nationality.
96. The key problems in the Ivorian nationality law that led to the crisis of identification in that country are common to many other countries in Africa, even if more exaggerated in Côte d'Ivoire, namely: (a) vagueness in language allowing for varied interpretations of who is a national, especially in relation to those who became nationals on succession of states at independence; (b) the lack of any rights based on birth in the territory, especially for foundlings and those children who do not obtain another nationality at birth, but also for children born on the territory who remain resident there until they are adults and have a stronger connection to Côte d'Ivoire than any other country; (c) the inaccessibility and highly discretionary nature of regular naturalisation procedures; (d) the lack of consistency and due process generally in decisions related to nationality – including in the issue of national identity documents and voter registration.
97. The African Committee of Experts on the Rights and Welfare of the Child has already made strong statements around the right to nationality from birth in the Kenyan Nubian Children's case and in its General Comment on Article 6 of the ACRWC. However, these apply only to the rights of children; even though the full assurance of the right to nationality will only be achieved if children are attributed a nationality at birth, the African Commission has the opportunity to affirm the importance of the recognition of the right to nationality for adults — including in

practice, through the issue of documents, not just in theory. It is only as an adult that the full significance of nationality becomes apparent, especially the right to participate in the government of one's country guaranteed by Article 13 of the Charter. The Commission has already affirmed the importance of non-discrimination in relation to Article 13 its earlier decision on Côte d'Ivoire relating to the qualifications for candidates for elected office, but this decision does not directly apply to the recognition of nationality as the foundation of the right to vote.⁸⁶

98. Although the current Ivorian government has taken some steps to remedy past discrimination, in particular by providing for temporary naturalisation procedures, these do not address these central problems with the Nationality Code. They have not even restored provisions that existed in the law at independence providing for foundlings to acquire nationality and for children born in the territory of two foreign parents to have the right to opt for Ivorian nationality from the age of 16. It is also arguable that some of those people who have been able to benefit from the special measures adopted in 2013 to allow persons to acquire nationality by declaration should in fact rather be obtaining recognition of nationality of origin, and thus that the remedy offered is not a complete restoration of the *status quo ante*.

Recommendations for remedies

99. These recommendations for law and other reform to be undertaken by the Ivorian government are supplementary to the requests made in the argument on the merits. They focus on avoidance of statelessness and the recognition of the legal status and nationality of persons who have the strongest connection to Côte d'Ivoire rather than any other country, especially for those born in the territory. In relation to the attribution of nationality of origin, these recommendations are based on the General Comment on Article 6 of the African Charter on the Rights and Welfare of the Child adopted by the Committee of Experts in 2014; the original argument on the merits was of course completed before this General Comment was published. They also draw on the provisions that are in place in other francophone West African countries, which provide experience on which Côte d'Ivoire could draw in implementing their provisions. The Nationality Code itself states that international treaties to which Côte d'Ivoire is a party, which also include the 1961 Convention on the Reduction of Statelessness, have direct effect. The law and the procedures for its implementation have not, however, yet been modified to reflect these obligations.
100. These reforms should have retroactive effect, and should not be time-limited (except where otherwise stated).

Succession of states

101. The Nationality Code should provide a definitive clarification of the status of those persons who were born before Côte d'Ivoire became independent, and their descendants, and this provision should state that any person who was habitually resident in Côte d'Ivoire on the date of independence, and who did not subsequently obtain recognition of any other nationality, is attributed nationality of origin of Côte d'Ivoire. A decree should provide for the modalities of implementation, in particular for reasonably obtainable forms of proof of habitual residence in 1960.

Temporary procedures

102. The temporary special procedures to obtain nationality by declaration for those born before 1973 should be reviewed, with a view to :
- a. extending the deadline to apply for a longer period. It is of the nature of such special procedures that they do not become known to those who are in remote areas and illiterate.

⁸⁶ *Mouvement ivoirien des droits humains (MIDH) v. Côte d'Ivoire*, ACHPR, Comm. No. 246/02.

- b. clarifying the precise categories who are eligible among the descendants of the original beneficiaries of the law on option (there is currently some contradiction between the law, decree and ministerial circulars).
 - c. permitting applications from historical migrants and their descendants who do not have birth certificates or sufficient documentary proof of their habitual residence in Côte d'Ivoire at the time of independence. This could be done, for example, by devising a system for accepting testimonial evidence from potential applicants.
 - d. Extending the right to apply for those born since 1973 (subject to coordination with a restored general right to opt noted in paragraph 104).
103. In addition, Côte d'Ivoire should create a process to confirm the nationality of returning refugees, including through the use of UNHCR registration documents as identification if other documentation is not available.

Acquisition of nationality based on birth and residence in the territory

104. The right that existed between 1961 and 1972 for those born and still resident in the country at majority to opt for Ivorian nationality by declaration should be restored permanently, not only as the basis for special temporary measures. The modalities for application could be clear that this is a non-discretionary process, providing the basic criteria are met. There should be no time limit after majority within which the declaration must be made, allowing for a person to make the option at the time when the lack of nationality and the right to it first becomes relevant.
105. The modalities for implementation of these rights established by decree would need to ensure that the procedures to acquire nationality by declaration were genuinely accessible and well-publicised, both to state agents responsible and the public at large. Ideally, procedures to make this option would be integrated within the process for obtaining a national identity card.

Children of unknown parents

106. The provision on foundlings and older children of unknown parents should be restored, providing for a presumption of nationality for children of unknown parents found on the territory (original Article 9 of the Nationality Code, but amended to be clear on its meaning).

Nationality of origin based on descent

107. The law should be reformulated to remove the confusing reference to both parents being *étrangers* and to create a clear statement that a child of one Ivorian parent is Ivorian, whether born in or out of wedlock, whether born in or outside Côte d'Ivoire.

Nationality of origin based on birth in the territory

108. Côte d'Ivoire should adopt the double *jus soli* nationality law provision that is applied in every other country of former AOF, providing for automatic attribution of nationality by operation of law to a person born in the country of one parent also born there (before or after independence).
109. The code should include a new provision that any child born in Côte d'Ivoire who does not become the national of another state at birth should become Ivorian by operation of law, in line with Article 6(4) of the ACRWC and Articles 1 and 2 of the 1961 Convention on the Reduction of Statelessness. A decree should establish modalities for the operationalisation of this provision.
110. Côte d'Ivoire should also adopt a new children's code that reinforce these rights and provide supplementary protections were needed (dedicated children's laws have been adopted in recent years by several African countries but not yet in Côte d'Ivoire).

Dual nationality

111. Côte d'Ivoire should be urged to reform the law :

- a. to allow dual nationality in all cases; or
- b. to make completely clear that dual nationality of origin is permitted and that only the voluntary acquisition as an adult of another nationality results on loss of nationality; or
- c. to provide that dual nationality is permitted for children, with the right to opt for another nationality at majority but with the rebuttable presumption that Ivorian nationality is maintained if the person is habitually resident in Côte d'Ivoire.

Identification and protection of stateless persons

112. The law should provide explicit procedures for the identification, protection and naturalisation of stateless persons, in accordance with Cote d'Ivoire's obligations under the 1954 Convention relating to the Status of Stateless Persons.

Naturalisation

113. The law and decree governing naturalisation should be amended to reduce the burdensome administrative requirements on applicants for naturalisation and to remove provisions that discriminate on the grounds of disability.
114. In light of the ECOWAS decision to remove the requirement for a residence permit after 90 days presence in another ECOWAS country, the requirements relating to proof of legal residence in Cote d'Ivoire should be clarified by decree, to allow nationals of other ECOWAS countries to acquire Ivorian nationality.
115. Discretion in the award of naturalisation should be reduced, in particular by establishing an administrative procedure that is not in the decision of one person but rather, for example, taken by a panel subject to rules of procedure, and by requiring decisions to refuse naturalisation to be motivated and subject to challenge in court.

Loss and deprivation

116. The provisions on deprivation of nationality should be reformulated to reduce executive discretion, to allow deprivation only in cases that threaten the vital interests of the Ivorian state, to forbid loss or deprivation where the person would become stateless, and to allow a challenge to any such decision in court (before any decision is made to deport the person).

Civil registration

117. The relevant authorities should review the civil registration law in collaboration with UNICEF and other partners in order to update it and make civil registration services more accessible. Also adopt time-limited exceptional measures to facilitate the registration under Ivorian law of children of Ivorian refugees who were born abroad in asylum countries and whose birth was not registered in that country or whose registration documents need rectification.
118. The nationality code should provide for alternative forms of proof of the facts allowing a person to claim where a birth has not been registered, introducing the concept of *possession d'état de national*, and reducing the overly burdensome procedural requirements of the Ivorian nationality code and the insistence that all facts be established under the civil registration law.

Identification of Ivorian nationals and voter registration

119. *Identification*: The restored "ordinary identification process" requires an applicant for an Ivorian identity card to supply a certificate of nationality obtained in the normal way from a tribunal. It is not clear how the tribunals will cope with this additional burden, especially when in many cases they will first have to establish late registration of birth. There will be a need to review the decrees implementing these procedures to ensure that they are effectively working to provide identification to those who are entitled to it.

