

Open Society Justice Initiative v. Côte d'Ivoire – Communication 318/06

Reply to Ivoirian Government's Comments under Rule 112 relating to Implementation

October 2016

Introduction

1. In September 2016, the Commission forwarded a Memorandum from the Respondent State pertaining to the measures taken by the Government to implement the decision adopted by the African Commission in Case 318/06, *Open Society Justice Initiative v. Côte d'Ivoire*.
2. In its memorandum the Government highlights the numerous advances that have taken place in the past six years, and recognizes the weaknesses in the national legal framework in relation to nationality.
3. The Justice Initiative welcomes the efforts of the Government to engage in the implementation of this important decision. However, we remain concerned that many of the reforms that have been introduced are temporary and non-transparent, and have failed to remove the barriers that prevent access to nationality. In order to fully implement the decision of the African Commission, we encourage the Government to:
 - Continue and deepen its engagement with civil society around the National Action Plan; and
 - Set concrete benchmarks leading to the implementation of the necessary administrative and legislative reforms.
 - Foster inter-ministerial dialogue with the African Commission on Human and Peoples' Rights as well as dialogue between civil society and the Government, which enable more effective implementation.
4. The Commission's engagement with the Ivoirian government is crucial in helping steward these reforms. We welcome the Commission's attention to its comprehensive decision in this case, our initial Rule 112 comments, the Ivoirian civil society shadow report and this most recent submission as it analyzes Côte d'Ivoire's state report at its 59th Ordinary Session.
5. We Invite the African Commission to continue to play a role to implement these reforms by:
 - Requesting periodic updates from the State Party;
 - Fostering a dialogue between the government and civil society; and
 - Undertaking a follow up mission to Côte d'Ivoire following the adoption of the National Action Plan (NAP).
6. The Justice Initiative submitted Comments under Rule 112 relating to implementation in this case in April 2016, dealing with the administrative reforms needed to implement the

decision.¹ The government relies on the National Action Plan as the apparatus through which it will propose and implement reforms to its nationality legal framework.

7. The NAP, elaborated with the assistance of UNHCR, falls within the global campaign to end statelessness by 2024. Incorporating the commitments taken during the Abidjan Declaration², the NAP seeks to bring Côte d'Ivoire's laws in compliance with the 1954 Convention relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, both instruments that have been ratified by Côte d'Ivoire.

Civil Society Engagement

8. On September 8-9, 2016, the Government invited numerous stakeholders, including civil society, to a workshop around the National Action Plan (NAP).³
9. The Government has made progress in reaching out to civil society organizations and incorporating their voices following numerous requests for their involvement. In their shadow report to the ACHPR, Ivoirian civil society requested a deepening of that relationship: « Nos organisations relèvent que malgré ces progrès réalisés, le Code de la nationalité en Côte d'Ivoire demeure très restrictif et voudraient exprimer de graves inquiétudes sur [...] la communication insuffisante entre le Gouvernement, les organisations de la société civile et l'ensemble du corps social sur le Plan d'Action National. »⁴
10. Some aspects of the National Action Plan need to be improved. For instance, the Action Plan fails to clarify the ambiguity about who is a citizen and who is a foreigner, which was at the heart of the Commission's decision.⁵ Additionally, some progressive measures to address statelessness like the double *jus soli* rule, largely adopted by other ECOWAS countries, are not contemplated by Côte d'Ivoire's National Action Plan.⁶
11. As it currently stands, the Ministries of Justice and of Human Rights will support the introduction of the National Action Plan to Parliament for adoption. Pending its adoption, Côte d'Ivoire should clarify who is a foreigner and incorporate progressive policies like the double *jus soli* rule.

Limitations of Legislative Reforms (Recommendations 2 and 3)⁷

12. The Commission recommended legislative reforms to improve the situation of the stateless. The Government replies on legal reforms in its Memorandum, but these fail to offer a sustainable solution to statelessness as (a) they were only temporary, (b) they did not

¹ Annex 1: Open Society Comments under Rule 112 relating to Implementation, paras 17-29.

² Annex1: Open Society Comments under Rule 112 relating to Implementation, paras 14-15.

³ Annex 2: Plan d'Action de la Côte d'Ivoire pour l'Eradication de l'Apatridie d'ici 2024, (DRAFT), September 2016

⁴ Annex 3: Rapport Alternatif, 59 Session ordinaire de la Commission Africaine des Droits de l'homme et des Peuples (Banjul, Gambie), written by Mouvement Ivoirien des Droits Humains (MIDH), Action pour la Protection des Droits de l'Homme (APDH), Organisation Nationale pour l'Enfance, la Femme et la Famille (ONEF) and Ligue Ivoirienne des Droits de l'homme (LIDHO), p. 5, September 2016⁵ Annex 2: Plan d'Action de la Côte d'Ivoire pour l'Eradication de l'Apatridie d'ici 2024, p. 5.

⁵ Annex 2: Plan d'Action de la Côte d'Ivoire pour l'Eradication de l'Apatridie d'ici 2024, p. 5.

⁶ *Ibid.*, at p. 12

⁷ Recommendations follow from Government's response to Justice Initiative's comments under Rule 112.

introduce an effective procedure to claim citizenship, and (c) the law still excludes foundlings, who represent nearly half the stateless population.

13. (a) *Temporary Provisions*. The Ivoirian government relies on Law 2013-753 to illustrate its implementation of the Commission's recommendations regarding violations of Articles 2 and 5 of the African Charter in this case, which was enacted as part of a 2013 reform package.⁸ As the Justice Initiative submitted in April 2016, this law provided a simplified procedure of declaration to recognize citizenship, but it was temporary and the procedure was only available until January 24, 2016.⁹ The Government fails to mention the temporary nature of this policy. In addition to being temporary, this policy was narrowly construed to benefit only those present in Côte d'Ivoire at the time of independence. Thus, Ivoirians born after January 1973 were unable to take advantage of this law.
14. (b) *Lack of an Effective procedure*. At the time of its conclusion, 123,000 applications had been received under the new procedure. The Government in its Memorandum asserts that over 100,000 people have acquired nationality through the declaration process.¹⁰ However, according to the United Nations Refugee agency, as of August 2016, only 10,219 of the 123,000 applicants have been issued nationality certificates.¹¹
15. In a meeting with the Ministry of Justice in April 2016, it was accepted that roughly 60,000 of the 123,000 applicants qualified for the nationality certificates, while the rest were disqualified, often as a result of defects in the paperwork or fraud.¹² The Ministry of Justice officials also acknowledged some of the shortcomings in the process including the lack of an effective advocacy and communications strategy which made it impossible for the Government to meet its target of receiving 1.5 million applications under the procedure.
16. (c) *Failure to Protect Foundlings*. In an attempt to justify the *jus sanguinis* regime following the amendments resulting in the 1972 Code, the Government wrongly asserts that restricting access to nationality to children born within the Ivoirian territory to stateless parents is not "*per se*" contrary to international law.¹³ However, according to Article 1 of the 1961 Convention on the Reduction of Statelessness, Côte d'Ivoire is obligated to confer nationality to children born within its territory who would otherwise be stateless. As it stood, foundlings, who account for 300,000 of the Government's estimated 700,000 stateless population did not benefit from this special procedure.

⁸ See Open Society Comments under Rule 112 relating to Implementation, para. 10. See also, Government's response, p. 2- 3, paras 9-10.

⁹ Annex 1: Open Society Comments under Rule 112 relating to Implementation, para. 10.

¹⁰ Government's response, p. 3, para 12.

¹¹ Annex 4: UNHCR, Statelessness in West Africa Newsletter #10, July-September 2016. These numbers reflect an update from April 2016 when we submitted our Comments under Rule 112; where only 6,400 applicants had received their nationality certificates.

¹² Interview with Ministry of Justice, on file with the Justice Initiative. The difference between the 60,000 who have been approved and the 10,219 who have received their nationality certificates is due to a backlog at the Ministry of Justice where the Minister must sign each decree by hand.

¹³ "Le droit du sang a été instauré avec la modification du Code de la nationalité [...] Ainsi, [...] l'enfant né en Côte d'Ivoire mais dont les deux parents sont étrangers ou apatrides, est considéré comme un étranger. Cette loi n'est pas *per se* contraire au droit international des droits de l'homme.» Government's response, p.2, para. 6.

17. Without comprehensive national legislation and with the end of the implementation of law 2013-653, Ivoirians without access to nationality remain unable to access the rights conferred to them as citizens, and the number of stateless persons stands to grow.

Birth Registration System (Recommendation 4)

18. One of the main recommendations of the Commission's decision was to reform the birth registration system. The Ivoirian government states that "*audiences foraines*" (mobile registration drives) have been organized in Côte d'Ivoire since 2007. While these *audience foraines* fill an important gap in the registration needs of hard to reach people, they do not replace a well thought out civil registration system.
19. The Ivoirian government highlights two examples of *audience foraines*, one supported by the NGO Don d'Amour and one by the N'SIA Fondation. The Government relies on the fact that 2,400 people were registered through the Don d'Amour project, and 309 of them received a *jugement supplétif*, a legal judgment allowing them to obtain legal identity documentation. The *audience foraine* financed by the N'SIA Foundation began as part of a school enrollment drive, which led the local leaders to identify lack of documentation as one of the reasons children were not enrolled in school. Thus, neither birth registration nor stateless persons were the primary target.
20. Nor do *audience foraines* address the status of foundlings, children found within the territory of Côte d'Ivoire. According to UNHCR, a large majority of the accounted for stateless population in Côte d'Ivoire are foundlings. Nonetheless, we welcome more collaboration with civil society and private foundations while noting that the scale of the problem requires a well-thought out, sustained campaign.
21. The Government also drew attention to a week-long registration drive targeting unregistered people of voting age which occurred before the most recent elections, from 12 to 24 July 2016.¹⁴ The Government estimated that 300,000 people were expected to show up. While commendable, these *ad hoc* measures do not meet the need identified in the Commission's decision for permanent, structural reforms to Côte d'Ivoire's birth registration system meant to reduce barriers.
22. Finally, the Ivoirian state does not address the conferral of nationality via the birth registration, a solution that would provide a durable solution to statelessness.

Constitutional Reform Process (Recommendation 1)

23. The Government refers to the fact that there is a substantial constitutional reform process underway that will address some of the issues raised in the decision of the African Commission. To be successful, the constitutional reform process needs to be inclusive, supported by civil society, and transparent, particularly if there is to be a referendum that includes questions of nationality.
24. In May 2016, the Government formed a Committee of Experts to study a new constitution and began consultations in June 2016. While this effort is nascent, civil society has already highlighted key shortcomings of the constitutional reform process in a shadow report

¹⁴ Government's response, p.3, para. 13.

produced by various Ivoirian civil society groups and submitted before the African Commission's 59th Ordinary Session, namely:¹⁵

« Le Gouvernement ivoirien a entamé un processus de révision constitutionnelle qui selon les dernières déclarations officielles du président du Comité d'experts mis en place par le Chef de l'Etat, est l'adoption d'une nouvelle Constitution. Certaines organisations ont mené des enquêtes auprès des populations pour recueillir leurs aspirations au regard de ce projet. Ces enquêtes tirent leur fondement de l'article 21.3 de la DUDH qui stipule que : « la volonté du peuple est le fondement des autorités publiques. Cette volonté doit s'exprimer par des élections honnêtes qui doivent avoir lieu périodiquement au suffrage universel égal et au vote secret ou suivant une procédure équivalente, assurant la liberté du vote ». Les conclusions des enquêtes indiquent que les populations pour la plupart ne sont pas favorables à ce projet et dénoncent surtout la façon unilatérale dont il est conduit. L'opposition politique ivoirienne perçoit également ce projet de la même manière. »

25. During a recent mission in Côte d'Ivoire to meet with civil society actors, a number of stakeholders expressed concern about the Government's plans for a referendum amending the country's constitution, which could eliminate the discriminatory provision of Article 35. If a referendum is to take place, it should be accompanied by a campaign to inform the population about the implications of repealing Article 35¹⁶. While the National Assembly has already voted to support the removal of Article 35 of the Constitution, the lack of transparency surrounding the entire referendum process can only lead to further dissatisfaction from the population and could backfire in the vote.
26. In the interim, two Constitutional Council decisions have interpreted Article 35 in a dynamic way so as to not apply the exclusionary "ivoirité" concept but instead to apply a human rights framework to it. Thus, in the decision No. CI-2009-EP-028/19-11/CC/SG, the comedian Dolo Adama was approved to run as a presidential candidate following his recent naturalization. In 2015, a similar interpretation was applied, allowing people who would have otherwise been excluded under the traditional interpretation of Article 35 to run for the presidency. This innovative interpretation of an otherwise problematic clause is commendable. It also provides the time necessary for the Ivoirian government to engage in consultations to build support for the constitutional changes in the works.



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¹⁵Annex 3: Rapport Alternatif, 59 Session ordinaire de la Commission Africaine des Droits de l'homme et des Peuples (Banjul, Gambie), written by Mouvement Ivoirien des Droits Humains (MIDH), Action pour la Protection des Droits de l'Homme (APDH), Organisation Nationale pour l'Enfance, la Femme et la Famille (ONEF) and Ligue Ivoirienne des Droits de l'homme (LIDHO), p.7, September 2016.

¹⁶ Annex 1: Open Society Comments under Rule 112, para. 23.

Enclosures:

- Annex 1 Open Society Comments under Rule 112 relating to Implementation, April 2016.
- Annex 2 Plan d'Action de la Côte d'Ivoire pour l'Eradication de l'Apatridie d'ici 2024, (DRAFT), Septembre 2016.
- Annex 3 Rapport Alternatif, 59 Session ordinaire de la Commission Africaine des Droits de l'homme et des Peuples (Banjul, Gambie), written by Mouvement Ivoirien des Droits Humains (MIDH), Action pour la Protection des Droits de l'Homme (APDH), Organisation Nationale pour l'Enfance, la Femme et la Famille (ONEF) and Ligue Ivoirienne des Droits de l'Homme (LIDHO), September 2016.
- Annex 4 UNHCR, Statelessness in West Africa Newsletter #10, July-September 2016 (French and English copies provided)