

Re: Communication submitted under Article 55 of the African Charter on Human and Peoples' Rights

Complainant: Open Society Justice Initiative

State Party: Côte d'Ivoire

I. INTRODUCTION

The Open Society Justice Initiative hereby submits this communication under Article 55 of the African Charter on Human and Peoples' Rights against Côte d'Ivoire, a state party to the Charter, and its agents on behalf of Ivorians who have suffered unlawful discrimination by agents of the state of Côte d'Ivoire. These actions constituted violations of Articles 2, 3, 4, 5, 6, 12, 13, 14, 18, and 22 of the African Charter on Human and Peoples' Rights.

II. FACTUAL BACKGROUND

For 33 years after independence from France in 1960, Côte d'Ivoire prospered under the leadership of President Felix Houphouët-Boigny as the world's biggest producer of cocoa and one of Africa's richest countries. Houphouët-Boigny pursued a broad policy of ethnic tolerance and welcomed the plantation-worker immigrants from neighboring countries. Since the 1990s, however, the country has been destabilized as political divisions have developed based on geographic, religious, and ethnic lines.

Henri Konan Bédié, who succeeded Houphouët-Boigny in a sharply contested election after his death in 1993, reinforced these ethnic divisions.¹ Alassane Ouattara, a Dioula Muslim from the North, was Prime Minister under Houphouët-Boigny and was viewed by many as the obvious successor. Bédié ultimately gained influential supporters and Ouattara was forced to withdraw. Several political factions vied for control under Bédié, including the predominantly Muslim RDR party in the north and the primarily Christian FPI party in the south.

Bédié sought to consolidate his political power by stirring up strong xenophobic sentiment through the concept of *ivoirité*, which promoted pure Ivorian heritage as a prerequisite for citizenship.² Bédié's limited classification of "Ivorian" excluded around 30 percent of the country's population of 16 million, including many who were born and

¹ Elen Jolivet, *L'Ivoirité: De la Conceptualisation à la Manipulation de l'Identité Ivoirienne*, 2002-2003, available at <http://www.rennes.iep.fr/html/Fauvet/Memoires/Memoires-03/jolivet.pdf>.

² Refugees International, *Ivory Coast: Expect Further Displacement Unless Xenophobia is Curbed*, May 7, 2003, available at <http://www.refugeesinternational.org/contact/article/detail/863>.

raised in Côte d'Ivoire and had never left the country.³ According to new laws and policies, a citizen is considered a "foreigner" if he or she has even one parent who was not born in Côte d'Ivoire.⁴ These laws also prohibit "foreign" ownership of land, voting, or running for public office.⁵ Bédié used this as a political tactic to bar his rival Ouattara and other politicians from the predominantly Muslim North, which also has a greater population of foreigners, from the presidential elections.⁶

Heightened political tension culminated in December of 1999 with a coup d'état that removed Bédié from power.⁷ Military General Robert Guéï, under the pretense of ending Bédié's xenophobic policies, installed a military junta government and declared himself the Head of State.⁸ Once in power, Guéï embraced Bédié's xenophobic policies and perpetrated wide-scale human rights abuses. Guéï held presidential elections at the end of 2000.⁹ Members of the RDR party called for a boycott, and the resulting low voter turn out led to the election of Laurent Gbagbo of the southern Christian FPI party.¹⁰ This highly contested election raised tensions between the Muslim north and the Christian south and led to random violence against civilians.

Furthermore, the election was tainted by a controversial Supreme Court decision that invalidated the presidential candidacy of Ouattara. Based on an allegation that Ouattara had at one time used a passport from Burkina Faso, the Court held that he had "prevailed himself of another nationality" which disqualified him to run for office under a new constitutional rule instituted by Guéï in 2000.¹¹

Conditions worsened after a failed coup d'état on September 19, 2002, in which junior officers from Guéï's former militia rose up in protest.¹² Rebel violence

³ Id.

⁴ See Siddhartha Miller, Ebony and Ivoirité: War and Peace in the Ivory Coast, Transition Magazine, 2003, available at <http://www.transitionmagazine.com/online/ivoirite.htm>.

⁵ See Sudarsan Raghavan, Ivory Coast Languishes in Chaos, Knight Ridder Tribune Business News, Jan. 30, 2003, available at <http://proquest.umi.com/pqdweb?did=281629711&sid=2&Fmt=3&clientId=9269&RQT=309&VName=PQD>.

⁶ Miller, *supra* note 4.

⁷ Amnesty International, Amnesty International Report (2001), available at <http://web.amnesty.org/web/ar2001.nsf/webafrcountries/COTE+D'IVOIRE?OpenDocument>.

⁸ Miller, *supra* note 4.

⁹ Id.

¹⁰ Human Rights Watch, The New Racism: The Political Manipulation of Ethnicity in Côte d'Ivoire (Aug. 2001), available at <http://www.hrw.org/reports/2001/ivorycoast/index.htm#TopOfPage> [hereinafter HRW, The New Racism].

¹¹ The Constitution of Ivory Coast, Article 35 as amended in 2000, stipulates: The candidate for the presidency must... be of Ivorian origin, born of father and mother who are also of Ivorian origin. He must never have renounced his Ivorian nationality, nor have ever claimed he was of another nationality. HRW, The New Racism, Section II-Background, footnote 3. See also, James Copnall, Ivory Coast's Cultural Divide, BBC News, July 17, 2004, available at <http://news.bbc.co.uk/1/hi/world/africa/3901939.stm>.

¹² U.N. High Comm'r for Refugees [UNHCR], UNHCR Position on the Return of Rejected Asylum Seekers to Côte d'Ivoire (2004), available at <http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=RSDLEGAL&id=4020dc034&page=publ>.

concentrated in the north but attempted to raid Abidjan. In the coup, Guéï was assassinated and death-squads were sent to the home of Ouattara. French forces halted the rebels' advancement into Abidjan. But the "Mouvement Patriotique de la Côte d'Ivoire" (MPCI) rebels remained present in the North, resulting in the de facto division of Côte d'Ivoire. Gbagbo seized upon the rebellion to publicly denounce Muslims from the North as Islamic terrorists and spread rumors that Ouattara and the RDR were behind the uprising.¹³ After several rounds of negotiations, the political representatives of the North and South finally signed a ceasefire agreement in January 2003. Fighting broke out again soon thereafter.¹⁴

The notion of *ivoirité* has fueled xenophobic nationalism, which has allowed the Ivorian authorities to discriminate against individuals from the North of Côte d'Ivoire, known collectively as "Dioulas." Although the term "Dioula" is invoked with pejorative connotations by those from the South, this brief will use the term "Dioula" to describe the group of individuals who suffer discrimination by the government. The Dioulas are from the North, are predominantly Muslim, and encompass various ethnic groups.

Government abuse of Dioulas has taken many forms and has been perpetrated by several branches of the government, including its secret service (the DST), the police and Gendarmerie, and the courts. The state security forces working on behalf of Guéï and then Gbagbo, were responsible for most of the serious abuses during the elections.¹⁵

Under Guéï, government security forces committed hundreds of extrajudicial killings aimed at people of the Dioula ethnicity or Muslim faith.¹⁶ To this day, police repeatedly discriminate against individuals based solely on the origin of their names, their accent, or their physical appearance and manner of dress that indicate their northern origin.¹⁷ Individuals have been dragged out of their homes, stopped randomly in the street, and detained by groups of gendarmes or police. Victims often identified the presence of government officers when serious abuses, including rape, were committed.¹⁸

The policy of systematically targeting Dioulas is evident. As one Muslim witness stated, "While we were lying there beaten...I saw the gendarme stop them and ask them for their ID papers. After looking, the gendarme said, 'You can go. It's not Baoules we want, it is the Dioulas we're looking for.'"¹⁹ Even with proper proof of citizenship, the government denies Dioulas benefits and services by creating obstacles to obtaining state-

¹³ Miller, *supra* note 4.

¹⁴ Emily Wax, Ivoriens Confront an Identity Crisis: Immigrant Nation Debates Nationality, Wash. Post, available at <http://proquest.umi.com/pqdweb?did=291834891&sid=2&Fmt=3&clientId=9269&RQT=309&VName=PQD>.

¹⁵ HRW, The New Racism.

¹⁶ An incident later verified by Amnesty International, involved the execution of over fifty Muslims. The victims' bodies were discovered in a mass grave in Yopougon neighborhood of Abidjan. Amnesty International Report (2001).

¹⁷ Affidavit of C.S. ¶ 9.

¹⁸ HRW, The New Racism.

¹⁹ Id.

issued documents, such as passports, birth certificates, and identification cards. The police will often extort money from Dioulas in return for these. The Supreme Court has sustained the notion of *ivoirité* by upholding the disqualification of fourteen presidential candidates, including Ouattara.²⁰

As set forth below, Côte d'Ivoire violates Articles 2, 3, 4, 5, 6, 12, 13, 14, 18, and 22 of the African Charter on Human and Peoples' Rights in denying rights guaranteed by the Charter through its systematic policy of discriminating against Dioulas. Côte d'Ivoire must be condemned and held accountable for its actions in order to ensure protection of those in Côte d'Ivoire who have been victims of this discrimination.

III. ADMISSIBILITY

For the African Commission on Human and Peoples' Rights ("Commission") to consider the merits of a communication, Article 56(5) of the African Charter requires that parties exhaust domestic remedies, if any are available, unless it is obvious that this procedure would be unduly prolonged. The underlying principle of Article 56(5) can be found in the Interhandel case,²¹ in which the International Court of Justice held:

The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law; the rule has been generally observed in cases in which a State has adopted the cause of its national whose rights are claimed to have been disregarded in another State in violation of international law. Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system.²²

In the instant case, it would be futile for Dioulas to attempt to seek local remedies in Côte d'Ivoire for three reasons. First, the courts in Côte d'Ivoire are institutions that implement the government's policies restricting the influence and rights of Dioulas. The victims of the government's discriminatory laws and policies lack access to meaningful and impartial hearings before the Ivorian courts. Any attempt to seek redress through the court system would therefore be futile.

Second, these victims already fear for their lives and well-being, and any attempt to seek local remedies would further place them in danger. The Commission has held that if an individual fails to exhaust a domestic remedy because of fear or danger to his life or to those of his relations, the need for exhaustion is obviated because the remedy is considered unavailable.²³ The victims of discrimination by Ivorian authorities failed to

²⁰ Id.

²¹ Interhandel (Switz. v. U.S.), 1959 I.C.J. 6 (General List: No. 34 Mar. 21).

²² Id. at 27.

²³ Communications Nos. 147/95 and 149/966 Sir Dawda K. Jawara v. The Gambia.

use domestic remedies because any attempt to do so would have endangered their lives, safety, and well-being.

Third, Article 56(6) waives the exhaustion of local remedies where it is obvious that this procedure would unduly prolong the process. This communication is brought on behalf of the class of victims of discrimination by the Ivorian government. It is impracticable to use domestic courts for the numerous potential plaintiffs. These victims consist of members of various ethnic, religious, and political groups from the north. It would be impractical and unreasonable to expect

Moreover, many of the victims of discrimination, such as the two victims who have seized the Open Society Justice Initiative to represent them before the Commission and whose affidavits are attached to this communication, no longer reside in Côte d'Ivoire. It would be impracticable to require victims who fled Côte d'Ivoire on account of discriminatory human rights violations to return to that country to exhaust local remedies. The Commission's decision in Rencontre Africaine pour la Défense des Droits de l'Homme/Zambia, which held that victims of persecution need not return to the place where they suffered persecution to exhaust local remedies when such local remedies are practically unavailable and ineffective,²⁴ therefore precludes the need for exhaustion of local remedies in this case.

For the reasons discussed above, this case is admissible before the Commission as it satisfies the Commission's standards under Article 56(5).

IV. MERITS

A. The Ivorian government discriminates against Dioulas in violation of Article 2 of the African Charter and denies Dioulas equal protection before the law in violation of Article 3 of the Charter.

The Ivorian government's xenophobic laws and policies against the Dioulas violate Article 2 of the African Charter's prohibition against discrimination: "Every individual shall be entitled to the enjoyment of the rights of freedom recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status."

Côte d'Ivoire has ratified the following international human rights instruments in addition to the African Charter: the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Having ratified the above instruments, Côte d'Ivoire is bound not only by the international legal obligation to protect human rights, which includes not

²⁴ Communication No. 71/92 Rencontre Africaine pour la Defense des Droits de l'Homme/Zambia.

only the guarantee of civil, political, economic, social, and cultural rights, but also equal treatment in the enjoyment of them.

Article 2 of the African Charter affirms the international prohibition against discrimination that has attained the status of a *jus cogens* norm in customary international law. The Universal Declaration of Human Rights states that all humans are born free and equal in dignity and rights and that everyone is entitled to all rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth, or other status. Furthermore, Articles 2 and 26 of the International Covenant on Civil and Political Rights directs states to ensure the rights of the Covenant without distinction of any kind and prohibits discrimination on any ground, respectively. Finally, Article 2 of the International Covenant on Economic, Social and Cultural Rights instructs states to exercise the rights of the Covenant without discrimination of any kind, while the International Convention on All Forms of Racial Discrimination as a whole condemns all forms of racial discrimination.

The unlawful discrimination perpetrated by President Gbagbo manifests itself through violations of numerous rights: equality before the law; recognition of legal status; movement and residence; respect for life, human integrity, liberty and security; participation in government and possession of property; and family life and socio-economic development.

Ivorian laws and policies equally violate Article 3 of the African Charter's guarantee of equal protection before the law. The government of Côte d'Ivoire's clear violation of Articles 2 and 3 of the African Charter remains the fundamental breach of the Charter with respect to its systematic discrimination against the Dioulas. As set forth below, the Ivorian government's discriminatory policies violate additional provisions in the African Charter, in conjunction with its fundamental breaches of Articles 2 and 3.

B. Ivoirian citizenship laws and policies effectively deny Dioulas identification cards and passports, violating the Dioulas' right to legal status and infringing on their freedom of movement in contravention of Articles 5 and 12 of the African Charter.

The fundamental human right to recognition of one's legal status originates from notions of the inherent dignity of the human person. The UN Charter refers to "the dignity and worth of the human person," and the ICCPR alludes to "the inherent dignity of the human person," while the Declaration on Human Rights recognizes the "inherent dignity...of all member of the human family." Only through the enjoyment of fundamental rights, such as the right to recognition of legal status, can human dignity be affirmed.

Article 5 of the African Charter states that everyone shall have the right to recognition of his or her legal status. Governments confer legal status through official documentation such as birth certificates and nationality documents. The Ivorian

government's confiscation of and refusal to issue such official documentation to Dioulas therefore denies them their right to recognition of their legal status.

The notions of legal recognition and juridical personality are established principles in international law as enshrined in various human rights instruments. Article 16 of the ICCPR and Article 6 of the Universal Declaration of Human Rights (UDHR) state that everyone shall have the right to recognition everywhere as a person before the law. Article 15 of the UDHR also guarantees the right to nationality. Furthermore, the Convention on the Rights of the Child, which Côte d'Ivoire has ratified, recognizes in Article 8 the right to preservation of identity, including nationality, name and family relations as recognized by law without unlawful interference. Article 6 of the African Charter on the Rights and Welfare of the Child also guarantees children the right to legal registration after birth and to nationality.

Through common practice, the Ivorian government refuses to consider Dioulas as citizens. According to the accompanying affidavits and human rights reports, Ivorian officials are systematically excluding Dioulas from Ivorian society by denying and destroying their identification documents.

For example, the Ivorian government violated the human rights of C.S., a Dioula, who experienced discrimination in Côte d'Ivoire in his attempt to obtain identification documents. C.S. states that the police consider Dioulas as foreigners and want to make Dioulas legally disappear. To do so, police authorities confiscate Dioulas' identification papers as a means of rendering them non-Ivorian.²⁵ According to a statement made by a witness in a Muslim congregation that was raided by the Ivorian police, the Ivorian officials do not consider northerners as "true citizens" of the country.²⁶ As a result of this mentality, the police discriminate against Dioulas in obtaining identification papers and violate their right to legal status.

By all accounts, Ivorians from the South get their documentation more easily than those from the North. According to C.S., the government does not require that Ivorians from the South produce extensive documentation that is difficult to obtain to prove their citizenship status as it does require of Dioulas from the North.²⁷ The police identify certain names that originate from the North and create obstacles for individuals with those names to obtain legal documentation. When C.S. attempted to get a passport in Côte d'Ivoire, he needed to show the identification of both his parents. Because his name made it evident that he is a Dioula, he was required to offer more proof than is required by law.²⁸ He also had trouble at first getting his nationality card because he did not have his father's birth certificate. C.S. has a friend from the South who was only required to

²⁵ Affidavit of C.S. ¶ 13, 19.

²⁶ Human Rights Watch, *The New Racism: The Political Manipulation of Ethnicity in Côte d'Ivoire* (Aug. 2001), available at: <http://www.hrw.org/reports/2001/ivorycoast/index.htm#TopOfPage>. A witness from a Muslim congregation stated, "...the police started saying, 'you aren't true citizens of this country, you're going to be sent back to where you came from and if you don't understand that, we'll wake you up one by one when you're on top of your women and kill you.'"

²⁷ Affidavit of C.S. ¶ 15.

²⁸ *Id.* at 21.

show his birth certificate to receive his identification card.²⁹ This proves that the Ivorian government offers preferential treatment to Ivoirians from the South and creates discriminatory obstacles for Dioulas, violating their right to legal status.

In addition to preventing Dioulas from obtaining documentation, the police also frequently destroy or lose their identification documents, causing additional obstacles in obtaining future identification papers. Limited public archives exist to track down previous documentation.³⁰ Dioulas therefore are forced to make copies of their identification and keep the originals at home, but the police still give them difficulties because they say that the identification papers are not originals, and then they demand money.³¹ After C.S. came to the United States with a valid Ivorian passport, he tried to get it renewed before it expired, so he sent his mother's identification papers to the Ivorian authorities. They lost the papers—he suspects on purpose—and now he has no way of getting a renewal of his passport, nor a consulate card in the United States.³² By losing his mother's documentation, the State has deprived C.S. of the right to have a passport and recognized citizenship. This illustrates how the Ivorian government is creating a class of people without citizenship by depriving them official documentation.³³

C.S. believes the Ivorian government is basing citizenship on ethnicity instead of legal documentation. He says, “The government is trying to bring back the idea of citizenship as based on the tribe you are from, not the place.”³⁴

The Ivorian government's discriminatory laws and practices violate the Dioulas' right to freedom of movement and residence in violation of Article 12 of the African Charter. Freedom of movement is also guaranteed by Article 13 of the UDHR and Article 12 of the ICCPR. An individual must carry an identification card with a photograph to travel freely in Côte d'Ivoire. Because the Ivorian government denies, destroys, and refuses to issue identification documents to Dioulas, Dioulas are often unable to travel.³⁵ To travel within Côte d'Ivoire, Dioulas routinely encounter identification checks and must pay bribes or request the services of Ivoirians from the South to avoid discriminatory identity checks against Dioulas.³⁶ C.S. tells of an experience in which he was required to pay a transportation company to facilitate his intrastate travel to avoid discriminatory police roadblocks he would have encountered had he traveled on his own.³⁷

With regard to foreign travel, the Ivorian government deprives Dioulas of their right to freely enter and leave their own country. According to Article 12 of the Charter, this right may only be restricted for the protection of national security, law and order,

²⁹ *Id.* at 22.

³⁰ *Id.* at 15, 16.

³¹ *Id.* at 18.

³² *Id.* at 23.

³³ *Id.*

³⁴ *Id.* at 26.

³⁵ Affidavit of R.S. ¶ 13.

³⁶ Affidavit of C.S. ¶ 10.

³⁷ *Id.*

public health, or morality. Racism and xenophobia, however, comprise the motivations for the Ivorian government's deprivation of this right. By all accounts, the Ivorian government discriminates in denying Dioulas access to their identification papers, including passports, which are needed to travel abroad.

Even outside of the country, Ivorian citizens who are Dioulas have problems obtaining documentation. C.S. came to the United States with a valid Ivorian passport. It has since expired, but he has not been able to get it renewed. Because the Ivorian government previously destroyed his mother's documentation, he has no way to prove his Ivorian descent and cannot obtain legal proof of his citizenship. By denying C.S. a passport, the Ivorian government has violated C.S.'s right to freedom of movement, including his right to enter his own country.

The Commission has previously held that arbitrary removal of one's citizenship, such as on the basis of political opinion, cannot be justified.³⁸ The Charter imposes obligations on member states to ensure the rights of the Charter to all persons within their jurisdictions irrespective of political opinion, ethnic origin, or race. Furthermore, as in the case of Modise v. Botswana, the Commission has held that arbitrary deprivation of citizenship infringes upon the right to enter and leave one's own country and the freedom of movement.³⁹ Failure of Botswana to accept Modise as a citizen, despite Modise having a Botswana citizen father and growing up in Botswana, deprived him of his rights in Article 12 of the Charter. Similarly, the refusal of Côte d'Ivoire to recognize Dioulas as citizens denies them the right to travel and the freedom of movement.

Recognition of legal status remains tantamount to the enjoyment of fundamental rights and the respect of human dignity. Citizenship and legal identity comprise fundamental rights because they are rights on which all other rights depend. The Ivorian government, however, denies Dioulas recognition of legal status by destroying and refusing to issue their identification papers. Without birth certificates, nationality cards, identification cards, and passports, one legally cannot be considered a person. Furthermore, the lack of identification documents among northerners prevents them from both intrastate and interstate travel. The Ivorian government is to blame for their lack of documentation, so they are in effect divesting them of their freedom of movement and residence and right to enter and leave their own country. The government therefore violates Articles 5 and 12 of the Charter by infringing on Dioulas' freedom of movement, right to the respect of the inherent human dignity, and right to recognition of their legal status.

C. The targeted and arbitrary beatings, arrests, detentions, killings, and torture of northerners by Ivorian authorities violate the rights to life, liberty, security, and integrity of all persons in contravention of Articles 4 and 6 of the African Charter.

³⁸ Communication No. 212/98 Amnesty International v. Zambia.

³⁹ Communication. No. 97/93 Modise v. Botswana.

Article 4 of the African Charter guarantees the fundamental right to life, as does Article 3 of the UDHR and Article 6 of the ICCPR. The Ivorian government, however, falls short of ensuring its people the right to life, as agents of the secret service agency, the DST, routinely kill Dioulas arbitrarily. This practice is confirmed by the testimony of A.S. The DST detained A.S. because she is from the North and was falsely accused of sympathizing with northern militants. A.S. was held in detention at the DST for three months in substandard conditions. During her detention, A.S. found out that DST agents have cars waiting at the gate; when Dioulas are released from the DST, the DST agents often abduct the Dioulas, drive them away, and execute them.⁴⁰ This practice by the Ivorian government clearly violates the right to life ensured by Article 4 of the Charter.

Article 6 of the African Charter further prohibits arbitrary arrest or detention, as do Article 9 of the ICCPR and Articles 3 and 9 of the UDHR. Under Ivorian law, all Ivorians must carry identification papers at all times, and the failure to carry identification is a punishable crime. Ivorian authorities systematically stop people in the streets and ask for their identification, and those who do not have it are sent to jail. As has already been demonstrated, the Ivorian government discriminates and violates the fundamental rights of Dioulas by denying them access to identification documents. Dioulas often lack identification, however, because the police have confiscated their papers or they refuse to return identification papers. Others cannot obtain documentation because their parents do not have their papers.⁴¹ Although the blame for their lack of identification rests with the government, Dioulas are punished for not having identification by being arrested and detained.

Even when Dioulas carry identification papers, Ivorian police extort money from them and threaten to jail them. When Dioulas who are stopped show their papers and do not have any money, the Ivorian police send them to prison for 24 to 48 hours until their families come to the police station and pay money.⁴² Before being released, the police make them do manual labor in the streets, and the northerners also have to pay to free themselves from detention, usually approximately 100,000 CFA francs.⁴³ In essence, the grounds for their arrest and detainment are their ethnicity.

A.S. was detained simply because she is a Dioula. The police kidnapped A.S. When she asked why they kidnapped her, they told her that northern women are not Ivorian.⁴⁴ Whereas the police put A.S. into the back of a police car, they released her non-Dioula friend who knew someone at the presidency. The police took A.S. to a forest for interrogation, where the chief of police told her that if he found a foreigner in her family, he would kill all of them.⁴⁵ The police then took A.S. to the DST. There, they told the DST director that A.S. was a foreigner and had northern soldiers at her home.⁴⁶ The officials took all her documentation and asked her why she had northern soldiers at

⁴⁰ *Id.* at 13.

⁴¹ Affidavit of C.S. ¶ 17

⁴² *Id.* at 13.

⁴³ *Id.* at 18.

⁴⁴ Affidavit of A.S. ¶ 4.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 7.

her home. She replied that they were her parents and not affiliated with the rebel soldiers.⁴⁷ A.S. remained in detention for three months at the DST in an enclosed cell infested with insects and snakes, where she had no clothes or bed.⁴⁸

Physical abuse, torture, killings, arrest, and detention on the basis of ethnicity comprise arbitrary interference with the right to life, liberty, security, and integrity. The Ivorian government subjects Dioulas to such treatment on account of xenophobia and racism. The Ivorian government lacks reasonable justification for these abusive actions and therefore violates Articles 4 and 6 of the Charter.

D. Discriminatory laws and policies deprive northerners of enjoyment of their civic rights, such as their right to property and their participation in elected government in violation of Articles 13 and 14 of the African Charter.

Ivorian citizenship laws and the electoral laws that have arbitrarily stripped Ivorians of their rightful citizenship violate Article 13 of the African Charter, which guarantees the right to participate freely in one's government, as affirmed by Article 25 of the ICCPR and Article 21 of the UDHR. One needs identification documents in order to vote. By discriminating against Dioulas in denying them official documentation, the Ivorian government denies them the right to vote in Côte d'Ivoire.

Ivorian property laws also violate Article 14 of the African Charter. The right to property is also guaranteed in Article 1 of the ICESCR, and Article 1 of the ICCPR. Article 17 of the UDHR prohibits the arbitrary deprivation of property. States must respect peoples' right to control their own means of subsistence. Ivorian officials, however, habitually exploit money from Dioulas and take away their personal belongings. Customs officers in the airport harass Dioulas returning to Côte d'Ivoire with goods brought from abroad.⁴⁹ C.S. recounts a situation in which one woman from the North arrived at the airport with merchandise she had purchased abroad. Customs officials demanded illegal bribes because she was a Dioula. But she did not have enough money, so they physically abused her. This is a common scenario. Customs officers typically keep all of the goods and merchandise of the Dioulas they harass at the airport.⁵⁰

The Ivorian government's extortion of money from Dioulas also deprives Dioulas of their right to property. In routinely extorting bribes from Dioulas to obtain identification cards, official documents, or passports, the Ivorian government violates Articles 13 and 14 of the African Charter.

E. The Ivorian authorities' discriminatory laws and policies deny Dioulas their rights to family life and socio-economic development in contravention of Articles 18 and 22 of the African Charter.

⁴⁷ Id.

⁴⁸ Id. at 8.

⁴⁹ Affidavit of C.S. ¶ 8.

⁵⁰ Id.

The family is the natural unit and basis of society and therefore deserves protection by the State, as recognized by Article 18 of the African Charter, Article 16 of the UDHR, Article 10 of the ICESCR, and Article 23 of the ICCPR. The Ivorian government's discriminatory denial of citizenship to Dioulas infringes on their right to family life. Dioula families have been separated as a result of discriminatory policies that deprive them of identification papers and passports and hindering their freedom of movement. For example, A.S. remains separated from her youngest daughter who remains in Côte d'Ivoire, unable to travel to the United States because the Ivorian government has denied her documentation to obtain a passport for international travel.⁵¹

The Commission has held that denial of citizenship interferes with the right to family. In Modise v. Botswana, the Commission held that the government's refusal to recognize Modise's citizenship, followed by his deportation, deprived him of his family and his family of his support.⁵² Botswana therefore was held to have violated Article 18 of the Charter. Also, in Amnesty International v. Zambia, the Commission held that Zambia's denial of citizenship and refusal to recognize Banda's passport and registration documents violated Article 18 of the Charter. In both cases, despite the plaintiffs' possession of citizenship documents, the governments refused to recognize the plaintiffs as nationals of their countries.

Similarly, Côte d'Ivoire's denial of citizenship to Dioulas interferes with their right to family life. Without citizenship, they lack the ability to travel to see family members in other countries. Also, as in the prior cases of Modise and Amnesty International, the non-recognition of citizenship gives the government the authority to expel or deport those without citizenship status, which leads to separation of families.

Article 22 of the African Charter guarantees the right of all individuals to economic, social, and cultural development. Recognition of legal status, however, is a fundamental prerequisite to the right to work, education, and family. The Ivorian government's discriminatory policies typically denies Dioulas equal access to employment and other social and cultural rights. Social deterioration is inevitable for Dioulas who lack identification papers proving they are citizens and do not have access to public services.

C.S. states that Dioulas are internalizing that they are inferior as they are sensitized to the government's constant discrimination against them.⁵³ Socially and culturally, Dioulas lack the capacity for development because the government increasingly denies them rights and prevents them from advancing in society.

The Ivorian government's discriminatory practices preclude Dioulas from earning a living, fostering a family, developing their culture, and asserting their rights. Citizenship and legal status is necessary for physical, economic, social, and cultural

⁵¹ Affidavit of A.S. ¶ 18 -19.

⁵² Communication. No. 97/93 Modise v. Botswana.

⁵³ Affidavit of C.S. ¶ 12.

development. The Ivorian government is responsible for their destruction of family ties and incapacity for individual development, thereby violating Articles 18 and 22 of the African Charter.

V. REMEDIES

The foregoing evidence demonstrates that the Ivorian government has breached and continues to breach its obligations under the African Charter, particularly in failing to uphold the rights to non-discrimination; equality before the law; movement and residence; recognition of legal status; respect for life, integrity, liberty, and security; participation in government and possession of property; family, and development.

For the protection of the victims of discrimination in Côte d'Ivoire, their rights must be upheld and violators must be held accountable. Therefore, the Open Society Justice Initiative, on behalf of Dioula victims of discrimination, seeks orders:

1. Declaring Côte d'Ivoire to have violated Articles 1, 2, 3, 4, 5, 6, 12, 13, 14, 18 and 22 of the African Charter.
2. Requiring Côte d'Ivoire to stop its acts of discrimination and guarantee there will be no future occurrences of discrimination or related human rights violations against northerners of Côte d'Ivoire.
3. Requiring Côte d'Ivoire to adopt new legislation on citizenship...
4. Requiring Côte d'Ivoire to establish a special independent body to hear claims of those refugees who left Côte d'Ivoire and want to become Ivorian citizens again.
5. Requiring Côte d'Ivoire to provide appropriate compensation to those whose rights were violated by the discriminatory practices of Ivorian agents.

Respectfully submitted,

Open Society Justice Initiative