

# The Justice Initiative v Côte d'Ivoire

**Communication 318/2006**

*Additional Submissions on Admissibility*

**May 2009**

# THE JUSTICE INITIATIVE v CÔTE D'IVOIRE

## Communication 318/2006

### REVISED SUBMISSIONS ON ADMISSIBILITY

#### A. INTRODUCTION

1. The Open Society Justice Initiative submits the following arguments on admissibility in accordance with Article 55 of the African Charter on Human and Peoples' Rights against Côte d'Ivoire. These additional submissions are made in light of developments since the time of original submissions in 2006.
2. The case is filed on behalf of Ivoirians who have suffered unlawful discrimination in access to citizenship by Côte d'Ivoire as a result of policies promoting pure Ivoirian heritage as a prerequisite for citizenship. Lack of clarity in the basic legal framework of Côte d'Ivoire governing nationality has further permitted widespread discriminatory practices in relation to access to identity documents, causing nearly 30% of the population to be considered "foreign" and therefore stateless as a matter of law or in fact.<sup>1</sup>
3. A disproportionate number - indeed, a large majority - of individuals who have suffered discrimination in access to Ivoirian citizenship are "dioulas", a term applied to people of various ethnicities originally from the north of the country or from countries bordering Côte d'Ivoire in the north, and predominantly of Muslim faith. Many, if not most, of those affected were born and raised in Côte d'Ivoire and have never left the country. As there is no objective and reasonable justification for the differential treatment of "dioulas" in access to citizenship, there is an ongoing violation of Articles 2, 3, 4, 5, 6, 12, 13, 14, 18, and 22 of the African Charter on Human and Peoples' Rights.
4. It is submitted that the communication should be declared admissible notwithstanding any failure to exhaust domestic remedies. This is because the remedies are neither accessible nor effective. There is a danger of physical violence to the victims were they to pursue such remedies. Remedies are unavailable both legally and practically due to the serious and massive nature of the violations.

#### B. FACTUAL BACKGROUND

5. For 33 years after independence from France in 1960, Côte d'Ivoire under the leadership of President Felix Houphouët-Boigny pursued a broad policy of ethnic tolerance and welcomed plantation-worker immigrants from neighbouring countries.

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<sup>1</sup> Of a population of 15,366,672 inhabitants, 11,366,625 (74.1%) are counted as Ivoirian, and 4,000,047 (25.9%) are counted as foreigners. *Source*: Institut National de Statistiques de Côte d'Ivoire, 1998 general census. Originally, 'dioula' stemmed from the term 'merchant' in the Malinké and Bambara languages. While the term was traditionally used to designate the merchant caste, it later evolved to categorize a number of ethnic groups generally from the North and of Muslim faith. These include the Mandé of the North (16.5% of the 1998 census), and the Voltaïque (17.6% of the 1998 census). See also paragraphs 27-38 of the Expert Opinion attached to this submission for a history and definition of the peoples of Côte d'Ivoire.

6. From the 1990s the country became increasingly destabilized as political divisions developed along on geographic, religious, and ethnic lines. In 1993, Henri Konan Bédié was elected president and developed the concept of *ivoirité* which reinforced ethnic divisions by promoting “pure Ivoirian” heritage as a prerequisite for citizenship.<sup>2</sup>
7. In 1999 Bédié was overthrown by General Robert Guéï who continued the same policies of increasing ethnic and religious nationalism. During the period of the military junta, government security forces committed hundreds of extrajudicial killings aimed at people perceived as “dioulas” or of Muslim faith.<sup>3</sup> Individuals were dragged from their homes, stopped randomly in the street, and detained by groups of gendarmes or police. Victims often identified government officers as being present when serious abuses, including rape, were committed.<sup>4</sup>
8. In October 2000, President Laurent Gbagbo came to power in a disputed election. The Supreme Court invalidated the presidential candidacy of Alassane Ouattara, a Muslim from the North of Côte d’Ivoire who was identified as a “dioula”, despite the fact that he produced his Ivoirian birth certificate as well as those of his two parents.<sup>5</sup> This was on the basis of new constitutional rule introduced in July 2000 which required that candidates for the presidency be ‘Ivoirian by origin’, and born to a father *and* a mother who are themselves both Ivoirian by origin.<sup>6</sup> This reflected the discriminatory application of nationality laws against ‘dioulas’, outlined in section C below.
9. 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.<sup>7</sup> Rebels concentrated in the north attempted to raid Abidjan, but were halted by French forces who were stationed in the country pursuant to a defence agreement made in 1963. The “*Mouvement Patriotique de la Côte d’Ivoire*” (MPCI) rebels remained in control of the North, resulting in the *de facto* division of the country. Guéï was killed during the coup attempt, and President Gbagbo seized upon the rebellion to publicly denounce Muslims from the North as

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<sup>2</sup> 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>; Refugees International, *Ivory Coast: Expect Further Displacement Unless Xenophobia is Curbed*, May 7, 2003, available at <http://www.refugeesinternational.org/contact/article/detail/863>. Bédié’s limited classification of ‘Ivoirian’ was based on a belief that historically, people were sedentary, and accordingly Ivoirian heritage would be governed by the theory of ‘autochony’; requiring individuals to prove local, traditional inhabitation. The ‘dioulas’ and other similarly situated individuals do not fit within this historical premise as they were migratory people who moved into the Southern regions of Côte d’Ivoire with their families and anyone else who could verify their ‘village of local origin’ *before* independence.

<sup>3</sup> 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, *Côte d’Ivoire* (2001).

<sup>4</sup> Human Rights Watch, *The New Racism: The Political Manipulation of Ethnicity in Côte d’Ivoire* (Aug. 2001), Section V, ‘The October Presidential Election’, Subsection ‘Victimization on the Basis of Ethnicity and Religion’. Available at <http://www.hrw.org/legacy/reports/2001/ivorycoast/index.htm>

<sup>5</sup> *Arrêt de la Cour Suprême Chambre Constitutionnelle no. 1 du 6 octobre 2000*. See further paragraphs 46-49 of the Expert Opinion attached to this submission.

<sup>6</sup> Article 25, Constitution of Côte d’Ivoire, 2000 : « Le Président de la République ... doit être ivoirien d’origine, né de père et mère eux mêmes ivoiriens d’origine. Il doit n’avoir jamais renoncé à la nationalité ivoirienne. Il ne doit être jamais prévalu d’une autre nationalité. »

<sup>7</sup> U.N. High Commissioner for Refugees (UNHCR), *UNHCR Position on the Return of Rejected Asylum Seekers to Côte d’Ivoire* (2004), available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4020dc034&page=search>

- Islamic terrorists.<sup>8</sup> After several rounds of negotiations, the political representatives of the North and South finally signed the Linas-Marcoussis Peace Agreement on 24 January 2003.
10. Since 1993, successive governments have used the ideology of *ivoirité* to fuel xenophobic nationalism and justify discrimination against the “dioulas” and other “foreigners”. According to Human Rights Watch, 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 first Guéï and then Gbagbo, have been reported to be responsible for most of the serious abuses during the presidential and parliamentary elections of October and December 2000.<sup>9</sup>
  11. As a result of these policies, up to one third of the population of Côte d’Ivoire is without citizenship. The consequences of arbitrary denial and deprivation of citizenship are profound, making access to education, health and employment in the public service precarious and uncertain. The consequences also extend to legal restrictions on the right to own property, which forces many who survive from subsistence farming into an even greater risk of poverty.<sup>10</sup>
  12. Since the elections of 2000 there have been a number of negotiations and attempts to resolve the political and security situation. The following section details the legal scope and impact of those agreements on Côte d’Ivoire’s constitutional and legislative framework.

### **C. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK**

13. Access to citizenship in Côte d’Ivoire is governed by the nationality code, Law 61-415 of 14 December 1961, as amended by Law 72-852 of 21 December 1972.
14. At present, the two key provisions for determining citizenship by origin are embodied in Articles 6 and 7 of the nationality code:

“Article 6 (Law of 21/12/72)

Is Ivoirian:

- 1- The legitimate or legitimated child, born in Côte d'Ivoire, except if both of its parents are foreigners;
- 2- The child born out of wedlock, in Côte d'Ivoire, unless its descent is legally established with regard to both of its foreign parents, or to a single parent of foreign status.

Article 7 (Law of 21/12/72)

Is Ivoirian:

- 1 – The legitimate or legitimated child, born abroad from an Ivoirian parent.

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<sup>8</sup> Siddhartha Miller, “Ebony and Ivoirité: War and Peace in the Ivory Coast”, *Transition Magazine*, 2003, available at <http://www.transitionmagazine.com/online/ivoirite.htm> .

<sup>9</sup> See Human Rights Watch, *supra*, note 4.

<sup>10</sup> Loi n°98-750 du 23 Décembre 1998 relative au Domaine Foncier.

2 – The child born out of wedlock, abroad, whose descent is legally established with regard to an Ivoirian parent.”<sup>11</sup>

15. Articles 17 to 23 of Law 415 of 1961 had allowed minors to claim citizenship by origin if they were born in Côte d’Ivoire to foreign parents, but these provisions were abrogated by the 1972 amendments.
16. Adults may acquire citizenship through naturalization according to Article 25 of the nationality code, but only by decree following an enquiry. Article 26 requires a residence period of 5 years, which is reduced to 2 years where the individual is married to a citizen of Côte d’Ivoire (Article 27). Those who acquire citizenship through naturalization are subject to a number of limitations on participation in public life outlined in Article 43 of the nationality code, preventing them from holding public office for 10 years, and prohibiting access to the civil service or the bar as well as the right to vote for 5 years<sup>12</sup>.
17. Article 45 of the nationality code specifies that a child becomes a citizen on account of their parents’ citizenship status as Ivoirians if the child is still a minor, and where the child can prove the relationship according to Ivoirian law. However, Article 47 contains limitations with regard to any criminal convictions and prohibits the acquisition of citizenship if the candidate has not satisfied the laws on residence of foreigners.
18. Article 105 of the nationality code provided that those whose “habitual residence” was in Côte d’Ivoire prior to independence were entitled to Ivoirian citizenship through naturalization, without the need to satisfy the usual 5 year residency requirement, provided that they applied within a narrow period of one year of the law being passed in 1961. Many people failed to do so.
19. Pursuant to this legislation, citizenship is chiefly governed by the principle of *jus sanguinis*. Article 6 of the nationality code purports to grant Ivoirian citizenship to everyone who is born on the territory of Côte d’Ivoire who has at least one “Ivoirian” parent. Individuals born in Côte d’Ivoire of two non-Ivoirian parents have no right to citizenship at all, even if they are the second or third generation born in the country. Because Côte d’Ivoire only came into existence in 1960, the meaning of “Ivoirian” in Article 6 is problematic: no one was legally “Ivoirian” prior to this date, since all were French subjects. Thus, the grounds on which anyone was granted or refused Ivoirian nationality at independence are not clear. The ambiguity of these provisions has been explicitly recognized by the 2003 Linas-Marcoussis Peace Accords as posing significant difficulties for “regularization of status”, i.e. recognition of citizenship. See further paragraphs 39-42 of the Expert Opinion attached to this submission.

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<sup>11</sup> Original text in French: Art. 6. nouveau (Loi du 21/12/72), Est ivoirien : 1- L'enfant légitime ou légitimé, né en Côte d'Ivoire, sauf si ses deux parents sont étrangers; 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.

Art. 7. nouveau (Loi du 21/12/72), 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.

<sup>12</sup> Loi no. 2004-663 du 17 décembre 2004, Article 43 : “L'étranger naturalisé est soumis aux incapacités suivantes: (1) Pendant un délai de dix ans à partir du décret de naturalisation, il ne peut être investi de fonctions ou de mandats électifs pour l'exercice desquels la qualité d'ivoirien est nécessaire; (2) Pendant un délai de cinq ans à partir du décret de naturalisation, il ne peut être électeur lorsque la qualité d'ivoirien est nécessaire pour permettre l'inscription sur les listes électorales; (3) Pendant un délai de cinq ans à partir du décret de naturalisation il ne peut être nommé à des fonctions publiques rétribuées par l'État, inscrit à un barreau ou nommé titulaire d'un office ministériel.”

20. There are also practical difficulties in proving citizenship that arise out of the fact that it is necessary to have a “certificate of nationality” in order to do a number of things such as obtaining a national identity card, entering competitions into the public service, the army, the bar, admission to liberal professions and for candidacy to public office. However, the certificate is only valid for three months, requiring individuals to constantly re-apply for certificates. The Linas-Marcoussis Peace Accords highlighted this issue, concluding that the arbitrary manner in which the certificate is often allocated leaves individuals at perpetual risk of being denied their document in the future, even if they hold one at present.<sup>13</sup>
21. A series of legislative amendments were initiated from 2004 to revise the nationality code.<sup>14</sup> However, to date, no amendment has been adopted that would clarify the meaning of “Ivoirian” or resolve the situation of those born in the country to parents without Ivoirian documentation. Law no. 2004-662 modified the 1961 law to provide for the acquisition of citizenship by marriage for a foreigner who marries an Ivoirian. In addition, Law no. 2004-663 introduced temporary special naturalization procedures which apply to all those who failed to claim citizenship from 1961 to 1972. These provisions affected (1) those aged under 21 at the date of independence and born in Côte d’Ivoire of foreign parents, (2) those who habitually lived in Côte d’Ivoire before independence.<sup>15</sup> Article 3 of Law 2004-663 details the temporary special procedures, requiring that people in the two categories could, during a 12 month period, apply for naturalization with written evidence in the form of an original birth certificate or a *jugement supplétif* from a court, a form of late certification of birth in the country. Any application had to be sent to the President of the Republic to make the decree, and granted him discretion to reject the claim.<sup>16</sup> The restrictions on public office in Article 43 of the Nationality Code mentioned in paragraph 16 above also applied.
22. The **2007 Ouagadougou Peace Agreement** is a new development since the original filing of Communication 318/2006. The Agreement in question reaffirmed the need for a

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<sup>13</sup> Linas-Marcoussis Accords, 23 January 2003, Annex, I(1)(2): “La Table Ronde considère en revanche que l'application de la loi soulève de nombreuses difficultés, soit du fait de l'ignorance des populations, soit du fait de pratiques administratives et des forces de l'ordre et de sécurité contraires au droit et au respect des personnes. La Table Ronde a constaté une difficulté juridique certaine à appliquer les articles 6 et 7 du code de la nationalité. Cette difficulté est aggravée par le fait que, dans la pratique, le certificat de nationalité n'est valable que pendant 3 mois et que, l'impétrant doit chaque fois faire la preuve de sa nationalité en produisant certaines pièces. Toutefois, le code a été appliqué jusqu'à maintenant. [Emphasis added.]

<sup>14</sup> « Loi no. 2004-662 du 17 décembre 2004 modifiant et complétant la loi 61-415 » ; « Loi no.2004-663 du 17 décembre 2004 portant dispositions spéciales en matière de naturalisation », as amended by « Décision no. 2005-04/PR du 15 juillet 2005 ». See also Habibou Bangré, *Côte d’Ivoire: révision du code de la nationalité et de la naturalisation ; Les amendements apportent des progrès mitigés*, 21 December 2004, available at <http://www.afrik.com/article7981.html> accessed 23 November 2007.

<sup>15</sup> Loi no. 2004-663 du 17 décembre 2004 portant dispositions spéciales en matière de naturalisation., Chapitre 2 – De la détermination des beneficiaries, Article 2. - Sont concernées par la présente loi: 1° Les personnes âgées de moins de 21 ans révolus à la date du 20 décembre 1961 et nées en Côte d’Ivoire de parents étrangers; 2° Les personnes ayant leur résidence habituelle sans interruption en Côte d’Ivoire antérieurement au 7 août 1960.

<sup>16</sup> “A copy of the naturalization decree is addressed to the Ministry of Justice for filing. In cases where the President of the Republic rejects the naturalization request, notification of the decision is forwarded to the interested party and the file transmitted to the Ministry of Justice for archiving”. Original text: Art. 5. - Une copie du décret de naturalisation est adressée au ministère de la Justice pour classement. En cas de rejet de la demande de naturalisation par le Président de la République, notification de la décision est faite à l'intéressé et le dossier est transmis au ministère de la Justice pour archivage.

clear and coherent identification programme of Ivoirian and foreign populations living in Côte d'Ivoire. On that basis, a country-wide programme of identification was launched in 2007 through a process of hearings before mobile magistrates' courts (*audiences foraines*). The process continued into early 2009 and was designed to provide those eligible with a *jugement supplétif* in lieu of a birth certificate. Of critical importance to this case is the fact that this process ultimately focused on the registration of births on Ivoirian territory, which in turn served as an essential pre-requisite to obtain a national identification card or a certificate of nationality. That said, the *jugements supplétifs* in no way confer citizenship in their own right, nor do they regularize the status of the significant proportion of the population that remains in legal limbo despite being born in Côte d'Ivoire and having no citizenship in another country.

#### **D. CAUSES OF STATELESSNESS IN COTE D'IVOIRE**

23. As a result of the above provisions and despite the recent amendments to the law approximately 30% of the population of Côte d'Ivoire is *de facto* or *de jure* stateless. There are four main causes of statelessness in Côte d'Ivoire.
24. First, many individuals living in Côte d'Ivoire at the time of independence failed to receive citizenship. As explained above, Article 105 of the nationality code of 1961 provided that those whose "habitual residence" was in Côte d'Ivoire prior to independence were entitled to Ivoirian nationality without the need to demonstrate residence of 5 years, provided that they applied for naturalization within a narrow period of one year of the law being passed. Many people missed the deadline due to a host of obstacles, including illiteracy, lack of access to administrative procedures, and other obstacles.
25. Second, adherence to the *jus sanguinis* principle means that generations of children born to stateless parents of the above category are stateless.
26. Third, immigrants to Côte d'Ivoire since independence and their descendants born in the country have failed to gain Ivoirian citizenship through naturalization. Although in principle individuals are eligible for naturalization if they can prove "habitual residence" in Côte d'Ivoire for the preceding five years pursuant to Article 25 of the nationality code (see paragraph 16 above), most immigrants did not complete the procedure during Houphouët-Boigny's pro-immigration rule (1960-1993), because they were treated as citizens without naturalizing. Their children born in Côte d'Ivoire consequently assumed that they were Ivoirian by birth and, indeed, were treated as such until after Houphouët-Boigny's death. Most of these individuals have no *effective links* with any country other than Côte d'Ivoire, and now that Côte d'Ivoire insists that they are not citizens, they are effectively stateless.<sup>17</sup>
27. Finally, a significant proportion of local 'Ivoirians by origin' are also at perpetual risk of arbitrary deprivation of their nationality by virtue of their affinities with immigrant based populations in Côte d'Ivoire. The close cultural and linguistic links with 'foreign' or 'dioula' communities have resulted in officials routinely casting doubt on the legitimacy of their nationality, and thereby applying the most narrow and rigorous interpretations of the nationality code at the time of renewing administrative documents such as the "certificate of nationality". The far higher standard of proof applied in such instances has

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<sup>17</sup> Recent international treaties have employed the principle of 'genuine and effective link' as a criterion for granting nationality. See, e.g., the *European Convention on Nationality*, 6 November 1997, Article 18.2(a).

resulted in countless Ivoirians being stripped of their effective exercise of Ivoirian citizenship.

28. Of these four classes of victims, a large majority of those lacking Ivoirian citizenship are known or perceived as “dioulas”, a term applied to predominantly Muslim groups of various ethnicities originally from the North of the country or from bordering countries in the north. As explained in paragraphs 50-54 below, the recent amendments to the law have not changed the situation, as they were enacted with the aim of remedying procedural problems, and do not address the substantive laws and their discriminatory effect.

#### **E. ARGUMENTS ON ADMISSIBILITY**

29. This Complaint fulfils all of the requirements stipulated in Article 56 of the African Charter and should therefore be declared admissible by the African Commission.
30. With regard to the requirement to exhaust domestic remedies in Article 56(5) it is submitted that this requirement should be waived for the following reasons:
- I. Danger of physical violence. The perpetration of widespread and targeted acts of physical violence against members of the victim groups, and the victims’ reasonable fear thereof, frustrates their ability to seek out remedial processes generally.
  - II. Serious and massive violations. The gravity of the situation and enormity of the victim class render local remedies unavailable in practical terms.
  - III. No available remedies. There are no effective and sufficient domestic remedies, including no ability to commence a ‘class action’ or any analogous procedure capable of securing a remedy for a widespread rights violation affecting a large group of victims.
31. These arguments should be considered in the context that the Government of Côte d’Ivoire is and has been fully aware of the violations. It is a well established principle that where human rights violations are systematic and ongoing and have attracted domestic and international attention, the respondent state is “presumed to know the situation prevailing within its own territory as well as the content of its international obligations.”<sup>18</sup> In such instances, the Commission will infer that the respondent state has had ample notice and opportunity to provide redress, even where no domestic action was initiated.<sup>19</sup>
32. In this case, the UN Security Council first took note of the grave violations occurring in Côte d’Ivoire in 2003.<sup>20</sup> Since then, the Security Council has continued to note with concern the persistence of abuses against civilians and the ongoing inadequacy of efforts aimed at the elimination of statelessness.<sup>21</sup> Government and international human rights

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<sup>18</sup> *Amnesty International v. Sudan*, Communication Nos. 48/90, 50/91, 52/91, 89/93, para. 33 (1999). The Commission’s rationale for waiving exhaustion in the case of “serious and massive violations of human rights” is absence of the traditional concern for the state’s right to remedy, the notion that a state must be afforded notice of the alleged violation so it has opportunity to take corrective action through its own channels and in accordance with its own laws. See also *Organisation Mondiale Contre la Torture v. Rwanda*, Communications Nos. 27/89, 46/91, 49/91, 99/93, para. 17 (1996).

<sup>19</sup> *Ibid*, paras. 32 and 33.

<sup>20</sup> S.C. Res. 1464, para. 7, U.N. Doc. S/RES/1464 (Feb. 4, 2003).

<sup>21</sup> S.C. Res. 1826, U.N. Doc. S/RES/1826 (July 29, 2008). Preambular para. 9: ‘*Noting with concern*, in spite of the sustained improvement of the overall human rights situation, the persistence of cases of human

organizations have long noted and publicized the unlawful actions of the Ivoirian government and remain seized of the situation. In both the Linas-Marcoussis and Ouagadougou Agreements, the Ivoirian government has itself acknowledged its complicity in the perpetration of abuses by its agents, including the arbitrary confiscation and destruction of identity documents, and the deficiencies of the nationality code on its face and as applied.<sup>22</sup> The Ivoirian government is aware of the alleged violations; it has enjoyed ample opportunity to remedy the situation, but despite its numerous promises of remedies, it has been unwilling or unable to take effective action.

#### I. Danger of physical violence

33. Where a complainant has good reason to believe that pursuing a remedy would place him or his family in danger, the Commission has waived the article 56(5) requirement to exhaust domestic remedies.<sup>23</sup> According to the Commission, “[I]f the applicant cannot turn to the judiciary of his country because of generalised fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him.”<sup>24</sup> In Côte d’Ivoire, severe abuse of individuals identified as “dioula”, Muslim, foreign or Northern at the hands of government officials and security forces has been a widespread and widely acknowledged practice.<sup>25</sup>
34. The practice continues to date. In its *2008 Human Rights Report* on Côte d’Ivoire the U.S. Department of State, after acknowledging an “improvement” in the government’s human rights record (while noting it “continued to be poor”), related reports of extensive and systematic violations:

“[A]rbitrary and unlawful killings . . . ; summary executions by security forces and pro-government militias; torture and other cruel, inhuman, or degrading treatment and punishment by security forces; life-threatening prison and detention center conditions; security force impunity; arbitrary arrest and detention; denial of fair public trial; arbitrary interference with privacy, family, home, and correspondence; *police harassment and abuse of non-citizen Africans*; use of excessive force and other

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rights violations against civilians, including numerous acts of sexual violence, *stressing* that the perpetrators must be brought to justice, and *reiterating* its firm condemnation of all violations of human rights and international humanitarian law in Côte d’Ivoire’. Para. 4: ‘*Encourages* the Ivorian parties to make further concrete progress, in particular in removing the remaining logistical obstacles that impede the identification of the population, the registration of voters, the disarmament and dismantling of militias, the cantonment and disarmament, demobilization and reintegration programme, the unification and restructuring of defence and security forces and the restoration of State authority throughout the country’.

<sup>22</sup> The Linas-Marcoussis Accords, 23 January 2003, *supra* note 8, at annex I, paras. 1 and 2, specifically pointed to the number of difficulties in the application of the nationality laws due to widespread ignorance amongst the public, and also due to administrative and law enforcement practices that are contrary to the respect for human rights. French translation: “La Table Ronde considère en revanche que l’application de la loi soulève de nombreuses difficultés, soit du fait de l’ignorance des populations, soit du fait de pratiques administratives et des forces de l’ordre et de sécurité contraires au droit et au respect des personnes”.

Ouagadougou Peace Agreement (Mar. 4 2007), *available at*: [www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/KHII-72J3KY-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/KHII-72J3KY-full_report.pdf/$File/full_report.pdf).

<sup>23</sup> *Sir Dawda Jawara v. The Gambia*, Communications Nos. 147/95, 149/96, paras. 35-37 (2000).

<sup>24</sup> *Id.* at para. 35.

<sup>25</sup> Amnesty International Report 2004, *Côte d’Ivoire* (May 26, 2004), *available at* <http://www.unhcr.org/refworld/docid/40b5a1f014.html>.

abuses in internal conflicts; . . . official corruption; [and] discrimination and violence against women.”<sup>26</sup>

35. Substantially the same and worse conditions are enumerated in reports for each of the previous years dating from the time of President Gbagbo’s election.<sup>27</sup> Noteworthy is the fact that these and other accounts consistently implicate the state and state officials for the most serious of abuses.<sup>28</sup> Exhausting local remedies, particularly at the material time of original submission in 2006, would have thus required for the victims to seek the protection of the very agents of their persecution.
36. In *Sir Dawda K Jawara v. The Gambia*, the Commission found with respect to the deposed and exiled former head of state, “[i]t would be an affront to common sense and logic to require the complainant to return to his country to exhaust local remedies.”<sup>29</sup> In so holding, the Commission noticed reports of the unlawful detention of former ministers and parliamentarians and general “terror and fear for lives in the country.”<sup>30</sup> Similarly, in *Aminu v. Nigeria*, the chaotic situation then prevailing in the country and complainant’s arbitrary arrest and detention were considered sufficient for the Commission’s finding “that it would not be proper to insist on the fulfillment of [the Article 56(5)] requirement.”<sup>31</sup>

*The Risk of Violence is Heightened for the Victims Because They Must Travel*

37. Analogously, the victims here could not and cannot pursue domestic remedies without exposing themselves to danger. Because judicial officials have yet to fully redeploy to the North in accordance with the Ouagadougou Agreement,<sup>32</sup> the victims could only bring legal action by travelling to those areas having functional courts and administrative offices. Victims need to travel in order to go to their “village of origin” to obtain records or affidavits, or to an administrative center in the South to lodge a petition or present testimony.<sup>33</sup> Ivoirian law requires that an individual be in possession of either a

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<sup>26</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *2008 Human Rights Report: Côte d’Ivoire* (February 25, 2009), available at <http://www.state.gov/g/drl/rls/hrrpt/2008/af/118997.htm>. Emphasis added.

<sup>27</sup> See generally U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *Country Report on Human Rights Practices*, <http://www.state.gov/g/drl/rls/hrrpt/index.htm> (last visited May 1, 2009).

<sup>28</sup> U.S. Department of State, Bureau of Democracy, Human Rights and Labor, *2005 Human Rights Report: Côte d’Ivoire* (Mar. 8, 2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61565.htm> (“[In 2005] there were credible reports of more than 200 cases in which security force use of excessive force resulted in deaths.”).

<sup>29</sup> *Sir Dawda Jawara v. The Gambia*, supra note 23, at para. 36.

<sup>30</sup> *Id.*

<sup>31</sup> *Aminu v. Nigeria*, Communication No. 205/97, para. 13 (2000).

<sup>32</sup> Ouagadougou Peace Agreement para. 4 (Mar. 4 2007), available at [http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/KHII-72J3KY-full\\_report.pdf/\\$File/full\\_report.pdf](http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/KHII-72J3KY-full_report.pdf/$File/full_report.pdf).

<sup>33</sup> See, e.g., Loi No. 2004-663, *Portant Dispositions Spéciales en Matière de Naturalisation*, art. 3.1-3.2 (Dec. 17, 2004); Site of the National Office of Identification, National Identity Card, Required Documents, <http://www.oni.ci/naturalisation.php> (last visited May 1, 2009). The now defunct “mobile courts” constituted in the Ouagadougou Agreement were authorized merely to issue judgments in lieu of a birth certificate, and so would have relieved this burden only with respect to a narrow class, those having immediate access to proof of Ivoirian parentage.

- nationality or foreign resident card at all times.<sup>34</sup> Individuals without documents undertaking such travel would likely be subject to abuse.<sup>35</sup>
38. The majority of reports alleging serious abuses emanate from encounters at the numerous security checkpoints throughout the country. Individuals identifiable with the victim groups and lacking documentation are subjected to verbal and physical abuse at the hands of checkpoint officials.<sup>36</sup> There are greater violations still, including the sexual abuse and rape of women and girls at roadblocks,<sup>37</sup> arbitrary arrest and detention, torture and extrajudicial execution.<sup>38</sup> The Ivoirian government conceded the existence of this phenomenon in the Linas-Marcoussis Accord of 2003.<sup>39</sup>
39. Nor are those having Ivoirian identity documents immune: if their name or appearance betrays association with the victim groups, they are presumed ‘foreign’ and consequently, their documents are confiscated or destroyed on grounds of fraud--in turn exposing them to further and future abuse.<sup>40</sup> Those opting to pay bribes demanded by checkpoint officials in order to reduce the chances of violence to their persons, property or identifying documents do so with no effective guarantee of greater protection.<sup>41</sup>

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<sup>34</sup> Article 3 and 14, Décision n° 2005-05/PR du 15 juillet 2005 relative à l'identification des personnes et au séjour des étrangers en Côte d'Ivoire.

<sup>35</sup> In this connection, reports of egregious prison conditions and abuse during detention in Côte d'Ivoire are consistent and recurrent. See UK Home Office, *Operational Guidance Note: Ivory Coast*, para. 3.10.1: “prison conditions in Ivory Coast are so poor as to amount to torture or inhuman treatment or punishment.” (Nov. 14, 2006), available at <http://www.unhcr.org/refworld/docid/4602932c.html>; *2005 Human Rights Report: Côte d'Ivoire*, supra note 27 (describing an eviction campaign in which “one hundred villagers were arrested for trespassing and detained . . . . Some of the arrestees had pepper sprinkled in their eyes [and] were made to walk over hot coals . . . [five days after the arrests] 12 persons died from their injuries, and [five days later] another detainee died.”); *id.* (“[S]ecurity forces beat and abused detainees and prisoners to punish them or to extract confessions. There were also reports of rape and torture. Police officers forced detainees to perform degrading tasks under threat of physical harm.”).

<sup>36</sup> See *2008 Human Rights Report*, supra note 26 (“There were . . . reports . . . that security forces forced persons stopped at roadblocks to do push-ups while being beaten or subjected to other abuses.”). See also Refugees International, *Côte d'Ivoire: Address Root Causes of Conflict to Prevent and Reduce Statelessness* (Feb. 15, 2007), available at <http://www.refugeesinternational.org/policy/field-report/c%3C%B4te-d%E2%80%99-ivoire-address-root-causes-conflict-prevent-and-reduce-statelessness> (“Checkpoints make life almost impossible. Every couple of kilometers travelers assumed to be foreign have to get down from the vehicles and pay.”).

<sup>37</sup> U.K. Home Office, supra note 35, at para. 3.73; Amnesty International, *Côte d'Ivoire - Targeting Women: The Forgotten Victims of the Conflict* at 9 (Mar. 15, 2007), available at <http://www.amnesty.org/en/library/asset/AFR31/001/2007/en/ec778273-d3b1-11dd-a329-2f46302a8cc6/afr310012007en.pdf>.

<sup>38</sup> Amnesty International, *Amnesty International Report 2008 - Côte d'Ivoire* (May 28, 2008), available at <http://www.unhcr.org/refworld/docid/483e278346.html>.

<sup>39</sup> See Linas-Marcoussis Accords, 23 January 2003, at annex I, paras. 1 and 2.

<sup>40</sup> See U.S. DEP'T ST., *Annual Report on International Religious Freedom for 2004 - Côte d'Ivoire* (Sep. 15, 2004), available at <http://www.internationalrelations.house.gov/archives/109/20429.pdf> (“As most Muslims share names, style of dress, and customs with several of the country’s predominantly Muslim neighboring countries, citizens sometimes are wrongly accused of attempting to obtain nationality cards illegally in order to vote or otherwise take advantage of citizenship. . . . Some people, particularly northerners and foreigners, complain that security forces have harassed them for having the wrong identity cards or not having an identity card.”).

<sup>41</sup> U.S. Committee for Refugees and Immigrants, *World Refugee Survey 2008 - Côte d'Ivoire* (June 19, 2008), available at <http://www.unhcr.org/refworld/country,,,CIV,,485f50ce6e,0.html>

*The Risk of Violence is Concentrated in Places Victims Must Visit*

40. The prospect of having to appear in courts and government offices is similarly forbidding. In its *World Report 2009* on Côte d'Ivoire, Human Rights Watch details attacks upon identification offices and voter registration centers by pro-government groups as recently as November, 2008.<sup>42</sup> The report describes in an incident in the West, where "several citizens were prevented from attending citizenship hearings due to the presence of armed militiamen."<sup>43</sup> In recent months, members of the Front Populaire Ivoirien (FPI), the party of President Gbagbo, have openly admitted their intent to disrupt the registration process, and have been implicated in violent attacks upon the centers.<sup>44</sup>
41. It is evident that the lawlessness, impunity and disregard for human rights prevailing when this case was initially submitted – conditions causing victims to fear for their safety and lives – persist today. Although the situation in Côte d'Ivoire may have improved since the conditions of war that prevailed at the time of the Ouagadougou Agreement, there have been no remedies for past violations.<sup>45</sup> When this communication was filed, government-sanctioned death squads patrolled the streets of urban centers and locales throughout the South and West, abducting suspected "rebel sympathizers" – consistently members of the victim groups – and performing summary executions.<sup>46</sup> As earlier noted, women and girls identified with the victim groups were subjected to violence, rape and similarly horrific violations of dignity both while in transit and during arbitrary raids.<sup>47</sup> Such accounts attest, at a minimum, to the existence of a "chaotic situation" and "terror and fear for lives in the country" the sort of which excused non-exhaustion in *Jawara* and *Aminu*. The continuing operations of the UN mission in Côte d'Ivoire (ONUCI) are a testament to the fragile peace that currently prevails in the country, with recent reports from 2009 suggesting that risks for further conflict are on the increase.<sup>48</sup>

II. Serious and Massive Violations

42. The violations alleged in the present case are serious and massive in their complexity because arbitrary denial and arbitrary deprivation of citizenship result in violations of a host of other rights such as equality before the law, education, and employment. In light of these multiple violations, we draw the attention to the Commission's jurisprudence, which emphasizes that:

"The Commission has never held the requirement of local remedies to apply literally in cases where it is impractical or undesirable for the complainant to seize the

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<sup>42</sup>Human Rights Watch, *World Report 2009 – Côte d'Ivoire* (Jan. 2009), available at [http://www.hrw.org/sites/default/files/related\\_material/cotedivoire.pdf](http://www.hrw.org/sites/default/files/related_material/cotedivoire.pdf).

<sup>43</sup> Ibid.

<sup>44</sup> Integrated Regional Informational Networks (IRIN), *Côte d'Ivoire: Clearing the Highest Hurdle - National Identity* (Jan. 22, 2009), available at <http://www.unhcr.org/refworld/docid/497d8eee1a.html>.

<sup>45</sup> *Media Rights Agenda v. Nigeria*, Communication No. 224/98, para. 37 (2000).

<sup>46</sup> Ruth Marshall-Fratani, *The War of "Who is Who": Autochthony, Nationalism, and Citizenship in the Ivoirian Crisis*, AFR. STUD. REV., Vol. 49, No. 2, p. 28 (Sep. 2006); Human Rights Watch, *Trapped Between Two Wars: Violence Against Civilians in Western Côte d'Ivoire* at 20 (Aug. 2003), available at [http://www.peacewomen.org/resources/Cote\\_d%27Ivoire/trapped.pdf](http://www.peacewomen.org/resources/Cote_d%27Ivoire/trapped.pdf).

<sup>47</sup> See *Targeting Women*, *supra* note 37, at pp. 6-8, 9.

<sup>48</sup> Security Council report of 8 April 2009 points to systematic violations of the arms embargo against Côte d'Ivoire.

domestic courts in the case of each violation. This is the situation here, given the vast and varied scope of the violations alleged ...”<sup>49</sup>

43. There is no need to exhaust remedies where such exhaustion is “neither practicable nor desirable” in light of the gravity, complexity and scale of the violations. In *Malawi African Association and Others v. Mauritania*, the Commission found that the gravity of the human rights situation and the large number of victims rendered the channels of remedies “unavailable in practical terms.”<sup>50</sup> In that case, as here, the communications alleged discrimination and other serious and widespread violations. The Commission, citing “[t]he gravity of the human rights situation [...] and the great number of victims,” found the communications admissible.<sup>51</sup>
44. That the violations alleged in this case are massive is established by the large number of people affected by statelessness in Côte d’Ivoire –fully *one third* of the population, over three million people. Where there are a large number of individual victims, such remedies as might theoretically exist in the domestic courts are in reality unavailable. The African Commission has recognized this in numerous decisions, specifically stating that:
- “In accordance with its earlier decisions on cases of serious and massive violations of human rights, and in view of the vast and varied scope of the violations alleged and the large number of individuals involved, the Commission holds that remedies need not be exhausted...”<sup>52</sup>
45. This jurisprudence of the Commission reflects judicial notice of the fact that domestic remedies are ineffective in circumstances in which multiple rights are violated simultaneously, and the victims are so numerous,<sup>53</sup> that it is impossible to make a complete catalogue of the names of all the victims.<sup>54</sup> In such situations, as in the present, it is impractical for each victim to present a claim before the domestic courts.
46. In addition to affecting up to one third of the population, the violations alleged disproportionately affect those collectively known as, or perceived to be, “dioulas”. However this group is defined, adequate relief could only be obtained through a class

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<sup>49</sup> Communications 25/89, 47/90, 56/91, 100/93 (Joined) – *Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interafricaine des Droits de l’Homme, Les Témoins de Jehovah/Zaire*, para. 37, See also Communications 48/90, 50/91, 52/91, 89/93 *Amnesty International, Comite Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa/Sudan*, otherwise called the *Sudan detention without trial case* para. 38.

<sup>50</sup> *Malawi African Association v. Mauritania*, Communications Nos. 54/91, 61/91, 98/93, 164/97, 210/98, para. 85 (2000) (internal quotations omitted).

<sup>51</sup> *Amnesty Int’l v. Sudan*, Communications Nos. 48/90, 50/91, 52/91, 89/93, para. 38 (1999).

<sup>52</sup> Communications 27/89, 46/91, 49/91, 99/93 *Organisation Mondiale Contre La Torture and Association Internationale des Juristes Démocrates, Commission International des Juristes (C.I.J), Union Interafricaine des Droits de l’Homme/Rwanda*, para. 18. See further Communication 71/92, *Rencontre Africaine pour la Defense des Droits de l’Homme/Zambia* (§ 14) which was also found to be admissible based on the “mass nature of the arrests” of the victims. See also Communication 159/96, *Union Interafricaine des Droits de l’Homme, Federation International des Ligues des Droits de l’Homme, Rencontre Africaine des Droits de l’Homme, Organisation National des Droits de l’Homme au Senegal and Association Malienne des Droits de l’Homme/Angola*, paras. 11 and 12.

<sup>53</sup> Frans Viljoen, “Admissibility under the African Charter”, in *The African Charter on Human and Peoples’ Rights - The System in Practice*, 1986-2000, edited by Malcolm Evans and Rachel Murray, pages 87-88

<sup>54</sup> See Communications 54/91, 61/91, 98/93, 164/97, 196/97, 210/98 *Malawian African Association, Amnesty International Ms. Sarr Diop, Union Interafricaine des Droits de l’Homme and RADDHO, Collectif des Veuves et Ayants-droit, Association Mauritanien des Droits de l’homme/ Mauritania*, para. 79.

action or analogous means of vindicating the rights of members of a large group.<sup>55</sup> As clearly explained in the appended Expert Opinion,<sup>56</sup> Côte d'Ivoire does not provide a mechanism for groups to defend rights collectively.

47. In the case of *The Social and Economic Rights Action Center v. Nigeria*,<sup>57</sup> the Commission found that the law governing class actions not being well developed in Nigeria made it “difficult, if not impossible, to bring action in the most logical way, that is, as a people.”<sup>58</sup> The Commission has recognized that “[w]here a right is not well provided for in domestic law [...] there cannot be effective remedies, or any remedies at all.”<sup>59</sup>
48. In light of settled African Commission jurisprudence, it is submitted that Côte d'Ivoire's failure to provide a mechanism for groups to defend rights collectively as a class action render local remedies “unavailable in practical terms”, where seizure of domestic courts is “neither practicable nor desirable.”<sup>60</sup>

### III. Lack of Domestic Remedies

49. There are no available domestic remedies capable of effectively redressing the harms alleged. The programme of identification initiated through the Ouagadougou Agreements and the possibility of naturalization do not afford a remedy for those arbitrarily denied citizenship.
50. While the *audiences foraines* undertaken from 2007 to 2009 mark an important step forward by the authorities for the identification and registration of births on the Ivoirian territory, the Ouagadougou Agreement supplies guidance neither on the criteria for nationality, nor on the procedure to be employed in making nationality determinations. Even more importantly, the *jugements supplétifs* obtained through this process merely stand in place of birth certificates, and do not confer citizenship or regularize the status of the significant proportion of the population that remains in legal limbo despite being born in Côte d'Ivoire and having no citizenship in another country. The process in question merely serves as a prerequisite to any determination on nationality; a determination that continues to be regulated by the ambiguous provisions (and arbitrary application) of Articles 6 and 7 of the nationality code.
51. The legislative amendments introduced since 2004 which have provided for naturalization of individuals who have been arbitrarily deprived of nationality “by origin” do not constitute effective or sufficient remedies. The difference between naturalization and citizenship by origin is a critical difference in a system governed by the principle of *jus sanguinis*, such as Côte d'Ivoire: the recognition of an individual's citizenship by origin automatically secures the legal status of his or her children. In contrast, granting citizenship through naturalization fails to remedy the legal uncertainty affecting countless children who do not meet the provisions set out in Articles 45, 46 and 47 of the

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<sup>55</sup> The Committee has often underscored the Charter's concern for group rights. See *Social and Economic Rights Action Center (SERAC) v. Nigeria*, Communication No. 155/96, para. 40 (2001): “The African Charter . . . clearly provides for peoples to retain rights as peoples, that is, as collectives.”)

<sup>56</sup> Annex 1, Expert Opinion by Mr Ibrahima Doumbia.

<sup>57</sup> *SERAC v Nigeria*, supra note 55, para 37.

<sup>58</sup> *Ibid.*, para. 36.

<sup>59</sup> *Ibid* paras. 36-37.

<sup>60</sup> *Malawi African Association v. Mauritania*, Communications Nos. 54/91, 61/91, 98/93, 164/97, 210/98, § 85 (2000) (internal quotations omitted).

- nationality code; caveats and conditions that do not apply to children of ‘citizens by origin’.<sup>61</sup>
52. Even parents and children who meet all requirements are not immune to arbitrary denial of nationality; as explained above, reforms adopted in 2004-05 bestow powers upon the President to reject naturalization claims at his discretion.<sup>62</sup> Those who nonetheless prove successful in their bid for citizenship are subject to a host of restrictions that span up to a decade in time, and strike at the very heart of basic civil rights to public participation, including the right to vote and to stand for office. No such restrictions apply to those whose citizenship by origin is recognized, making the existing reforms and their application patently inadequate to restore the victims’ rights.
  53. The level of presidential discretion and number of restrictions dictating naturalization policies in Côte d’Ivoire illustrate the extent to which naturalization – the only option currently available to the victims – cannot credibly constitute an effective or sufficient remedy for those entitled to citizenship by origin.
  54. While Article 71 of the Constitution empowers the National Assembly to legislate on matters relating to citizenship and nationality, no possibilities for the adoption of crucial reforms currently exist due to the expiration of its mandate in December 2005. Failure to renew the National Assembly’s mandate since 2005 leaves the only possibility of reform to the President, by virtue of special powers afforded by Article 48 of the Constitution.<sup>63</sup> However, the law does not provide any scope for the general public (i.e. the complainants) to launch the reforms through this mechanism.

*The concept of “Ivoirité”*

55. To the extent that local remedies exist, they offer no prospect of success due to discrimination based on the concept of *ivoirité*. A remedy is considered available only if a victim is able to pursue it without impediment.<sup>64</sup> Côte d’Ivoire has engaged in a pattern of discriminatory state interference with the victims’ attempts to obtain citizenship and documentation, effectively impairing their ability to seek redress.
56. As outlined in paragraph 8 above, changes to the Constitution in July 2000 required presidential candidates to be ‘Ivoirian by origin’. Although the phrasing ‘*ivoirien d’origine*’ could be perceived as simple paraphrase of the nationality code’s reference to ‘nationality by origin’, as opposed to ‘nationality by acquisition’ (by marriage,

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<sup>61</sup> Article 45 of the nationality code specifies that a child becomes a citizen on account of their parents’ citizenship status as Ivoirians on condition that the child is still a minor. However, Article 46 the provision excludes minor children who are married. Additional caveats outlined in Article 47 of the nationality code make it clear that acquiring nationality by naturalization is subject to many conditions that do not apply to nationality by origin. As a result, the former cannot be legitimized as a substitute for the latter.

<sup>62</sup> Article 5 of Law 2004-663.

<sup>63</sup> Article 48 of the August 2000 Constitution prescribes that when the institutions of the Republic, the independence of the nation, the integrity of its territory or the delivery of its international engagements are threatened by grave and immediate danger, and that the normal functioning of its public constitutional powers are interrupted, the President of the Republic takes the exceptional measures required by the circumstances after obligatory consultation with the President of the National Assembly and the President of the Constitutional Council. Original text: Lorsque les Institutions de la République, l’indépendance de la Nation, l’intégrité de son territoire ou l’exécution de ses engagements internationaux sont menacées d’une manière grave et immédiate, et que le fonctionnement régulier des pouvoirs publics constitutionnels est interrompu, le Président de la République prend les mesures exceptionnelles exigées par ces circonstances après consultation obligatoire du Président de l’Assemblée nationale et de celui du Conseil constitutionnel.

<sup>64</sup> *Sir Dawda Jawara v. The Gambia*, *supra* note 23, para. 32.

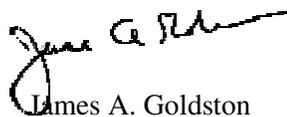
naturalization, etc), the provision effectively created a new constitutional concept of ‘ivoirité’. The extent of the xenophobic policies adopted were most evident during the course of the 2000 elections, and the disqualification of Alassane Ouattara on the basis that he was identified as a “dioula”.

57. The discrimination in vetting of presidential candidates by the Supreme Court is obvious from the fact that ultimately, out of the 20 candidates declared for the election in question (12 from the South and 8 from the North), the Supreme Court approved only five candidates – all from the South.<sup>65</sup> Ostensibly, this was because the eliminated candidates could not produce proof of their eligibility, but it appears that a far higher standard of proof was applied to candidates from the North. The result not only serves to confirm the pervasive impact of the new constitutional principle of ‘ivoirité’, but also the arbitrary nature of the law’s scope and application.<sup>66</sup>
58. While the new constitutional principle of ‘ivoirité’ in principle affects only candidates for the presidency or vice presidency of the country, it has legitimated the concept by enshrining it in law and created a legal environment in which all those who might be regarded as not from Côte d’Ivoire’s ‘core’ ethnic groups are not eligible for citizenship.<sup>67</sup> In this regard, the policy of targeting “dioulas” – and arbitrarily depriving them of their full and effective Ivoirian citizenship – has become entrenched, and remains systematic.
59. It is submitted that evidence of such arbitrary application of the law, prevalent in both the judiciary and in the administrative arm of government, dramatically undermines any prospect of success in challenging the constitutional principle of ‘ivoirité’, particularly given the requirement established by the Permanent Court of International Justice that constructive exhaustion has been satisfied only where the prospective point on appeal has been finally adjudged by a state’s high court.<sup>68</sup>

## F. CONCLUSION

60. For all of the reasons set forth above, the undersigned submit this memorandum of law in support of the applicants’ submission and respectfully request that the African Commission declare this communication admissible.

14 May 2009



James A. Goldston  
Executive Director



Julia Harrington  
Senior Legal Officer



Cynthia Morel  
Legal Officer

<sup>65</sup> The majority of the candidates were rejected on the basis of incomplete or irregular applications (e.g. absence of medical certificates, audits, etc.), cited conflicts of interests, or on the basis of unsuitable character assessments (in relation to morals or probity).

<sup>66</sup> The contrasting standards of proof applied to Ouattara and candidate Robert Guéï (from the South) provide a striking example of the arbitrariness in the use of the ‘ivoirité’ principle by authorities. Guéï was approved despite his failure to produce *any* birth certificates or certificates of nationality, but on the sole basis of a second degree genealogical tree, written of his own hand.

<sup>67</sup> See Bronwen Manby *Struggles for Citizenship in Africa*, Zed Press, forthcoming, 2009.

<sup>68</sup> *Panevezys-Saldutiskis Railway (Estonia v. Lithuania)*, 1939 PCIJ (ser. A/B) No. 76, at 18.

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