

Institute on Statelessness and Inclusion & la Coalition de la société civile de lutte contre l'apatridie

Joint Submission to the Human Rights Council at the 33rd Session of the Universal Periodic Review

Côte d'Ivoire

Introduction and focus of submission

1. The Institute on Statelessness and Inclusion (ISI)¹ and la Coalition de la société civile de lutte contre l'apatridie (CICA)² make this joint submission to the Universal Periodic Review (UPR) in relation to statelessness, access to nationality and human rights in Côte d'Ivoire.
2. The Ministry of Justice of Cote d'Ivoire has disclosed that as many as 700,000 persons living in the country may be stateless or at risk of statelessness. This submission focuses on the main challenges in relation to preventing, reducing and resolving issues of statelessness in the country and barriers in ensuring the right to a nationality for everyone:
 - I. Lack of safeguards against statelessness
 - II. Statelessness among historical migrants ('from foreign origin')
 - III. Foundlings
 - IV. Discrimination in nationality law on the basis of gender and disability
 - V. Civil registration and access to identity documentation
 - VI. Deprivation of nationality resulting into statelessness
 - VII. Impact of statelessness on people and society

¹ ISI is an independent non-profit organisation committed to an integrated, human rights-based response to the injustice of statelessness and exclusion. It is the first and only global center committed to promoting the human rights of stateless persons and ending statelessness. Between the 27th and 32nd sessions of the UPR, ISI has made over 35 country-specific submissions on the human rights of stateless persons and has also compiled summaries of the key human rights challenges related to statelessness in all countries under review between the 23rd and 31st UPR sessions. For more information about ISI, please see: <http://www.institutesi.org>.

² La Coalition de la Société Civile Ivoirienne Contre l'Apatridie, en abrégé (CICA) est une Plateforme d'actions des ONG de défense des Droits de l'homme sur le droit à la nationalité et l'éradication de l'apatridie en Côte d'Ivoire. Elle a été mise en place en mars 2016, grâce au soutien du Bureau d'Abidjan du Haut-Commissariat des Nations Unies aux Réfugiés (UNHCR) et Open Society Justice Initiative (OSJI). C'est une plateforme qui comprend une vingtaine d'organisations. Elle vise à assurer une meilleure coordination des interventions et une mutualisation des efforts en matière de promotion du droit à la nationalité et de lutte contre l'apatridie dans le pays. Les organisations membres de la CICA partagent un idéal commun, celui d'une Côte d'Ivoire sans apatride, dans lequel tous les droits humains, en particulier le droit à la nationalité et à une identité légale, sont fortement promus.

The Universal Periodic Review of Côte d'Ivoire under the First and Second Cycles

3. Côte d'Ivoire was under review during the first UPR cycle on 2 December 2009 and during the second cycle on 29 April 2014.
4. During sixth session of the 1st Cycle,³ Canada recommended that Côte d'Ivoire take the necessary measures for stateless children born in its territory to acquire Ivorian nationality and remove discriminatory eligibility grounds for naturalisation (according to which, persons must be free of mental or physical handicaps as a criteria for naturalisation). The Netherlands recommended that Cote d'Ivoire take further measures to reduce the number of stateless people in the country. Several states also recommended that Cote d'Ivoire accede to the Convention on the Reduction of Statelessness (Netherlands and the Republic of Congo), the Convention relating to the Status of Stateless Persons (Netherlands and Democratic Republic of Congo) and the International Covenant on the Rights of Migrant Workers and their Families (ICRMW) (Republic of Congo). All recommendations were noted.
5. During the nineteenth session of the Second Cycle,⁴ states commended Côte d'Ivoire for acceding to the two UN Statelessness Conventions (Mexico, Spain, and United States of America) in 2013. Ghana and Chad recommended that Cote d'Ivoire accede to the ICRMW. Switzerland expressed its concerns about the number of people at risk of statelessness but did not make a formal recommendation on this issue.

Côte d'Ivoire's international obligations

6. Since 2013, Côte d'Ivoire has been party to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention). It is also party to the following treaties and conventions that are relevant in preventing and reducing statelessness and ensuring the right to a nationality: International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD).
7. Côte d'Ivoire has not ratified the ICRMW which states that each child of a migrant worker shall have the right to a nationality (Article 29).
8. The gaps in law and practice relating to statelessness that are addressed in this Submission are in clear violation of the international obligations of Côte d'Ivoire. Article 1 of the 1961 Convention sets out that all otherwise stateless children who are born in the territory of a state should be granted the nationality of that state. The Convention emphasises that foundlings in particular, should be granted the nationality of the state they are found in (Article 2). Article 7 of the CRC obliges states to ensure the right to birth registration and a nationality for all children – in particular, where they would be otherwise stateless. The right to a nationality should be enjoyed without discrimination, including on

³ A/HRC/13/9, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/101/40/PDF/G1010140.pdf?OpenElement>.

⁴ A/HRC/27/6, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/075/83/PDF/G1407583.pdf?OpenElement>.

the basis of disability (Article 18(a) CRPD) and gender (Article 9(2) CEDAW). Finally, Article 8 of the 1961 Convention sets out a general prohibition of statelessness as a result of nationality deprivation.

9. The Constitution and the Nationality Code of Côte d'Ivoire explicitly provide that the international agreements to which the country is party have, subject to certain reservations, primacy over its national law.⁵

History of statelessness in Côte d'Ivoire

10. Côte d'Ivoire has a long migrant-receiving history from neighboring countries, both pre and post-independence. After independence, liberal immigration policies and large numbers of migrants contributed to economic welfare through the exploitation of natural resources under the president Houphouët-Boigny administration. These policies ensured that immigrants were treated equally as citizens as they contributed to the country's welfare. This also resulted into more flexible nationality laws. Côte d'Ivoire's original Nationality Code of 1961 comprised of both *jus sanguinis* and *jus soli* components in its provisions on acquisition of nationality – meaning that one could acquire citizenship both by descent and by birth on the territory. It is important to emphasise that, despite the existence of the *jus soli* provision, the *jus sanguinis* provision was legally preeminent. According to the Code, all persons born in the country could acquire Ivorian nationality, unless both parents were foreigners. Thus, the nationality of the parents took precedence over the place of birth. However, many immigrants could exercise their right to Ivorian nationality under Houphouët-Boigny's regime as this provision was not implemented strictly.⁶
11. Côte d'Ivoire's immigration policies became less tolerant when the economic crises hit the country in the 1980s. They changed radically in the 1990s when Bedié succeeded Houphouët-Boigny after the latter passed away. Bedié grew hostile towards foreigners, becoming the founder of what would become known as the policy of "Ivoirité". Legal history and the 1961 nationality code implied that only children of parents born in Côte d'Ivoire prior to independence merited the privileged status of Ivorian nationality by origin at independence, excluding generations of immigrants who do not know any other country as their home from Ivorian citizenship.⁷
12. The outbreak of civil war in 2002 led to mass displacement. Those who returned after the civil war ceased were deemed 'foreigners', facing barriers to acquire Ivorian nationality. Other issues of statelessness, in particular childhood statelessness, arose as a result of amendments made to the 1961 nationality code over the course of 52 years of its adoption. In 1972, Côte d'Ivoire reformed its foundational 1961 nationality law, removing the statelessness safeguard that had been in place for foundlings. Other reforms also minimised the options under which children could acquire nationality based on birth in the territory.

⁵ Art. 3 du Code de la Nationalité : Les dispositions relatives à la nationalité contenues dans les traités ou accords internationaux dûment ratifiés et publiés s'appliquent, même si elles sont contraires aux dispositions de la législation interne ivoirienne. Art. 123 de la Constitution de 2016: Les traités ou accords régulièrement ratifiés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve, pour chaque traité ou accord, de son application par l'autre partie.

⁶ UN High Commissioner for Refugees (UNHCR), Statelessness and Nationality in Côte d'Ivoire - A Study for UNHCR, December 2016, p. 3, available at: <http://www.refworld.org/docid/58594d114.html>.

⁷ UN High Commissioner for Refugees (UNHCR), Statelessness and Nationality in Côte d'Ivoire - A Study for UNHCR, December 2016, p. 16, available at: <http://www.refworld.org/docid/58594d114.html>.

13. In addition to the negative law reform, birth registration is a prerequisite to acquire Ivorian nationality via its exclusively jus sanguinis nationality regime. This means that Ivorian citizens must provide their birth certificate, and the nationality certificate of a parent, in order to obtain proof of nationality within three months. Issues of statelessness exist, especially among those who were displaced, due to difficulties they face in providing this documentation. Further, displacement also resulted in separation of children from their parents, and increased the number of children who grew up with no knowledge or evidentiary proof of their parentage.⁸

Efforts to address statelessness

14. In 2013, Côte d'Ivoire adopted a special temporary programme qualifying individuals to acquire Ivorian nationality by declaration.⁹ In 2015, the country hosted a Ministerial Conference on Statelessness for the ECOWAS region. The Abidjan Declaration on the Eradication of Statelessness was adopted as a result of this Conference.¹⁰ In 2017, the Banjul Action Plan on the Eradication of Statelessness was adopted and is now a legally binding document applicable to all ECOWAS member states.¹¹

15. So far, Côte d'Ivoire has developed a National Action Plan to end statelessness, which however, is yet to be approved by the Government. Côte d'Ivoire has also established a statelessness focal point within the Ministry of Justice, and is conducting a mapping study of stateless persons in the country. It is important to maintain momentum to address issue of statelessness, in particular the issues described below which contribute to the large number of stateless people in the country.

Lack safeguards against statelessness in nationality law

16. Articles 6 and 7 of the Ivorian Nationality Code state that any individual born in the country or abroad is Ivorian, except if both of his or her parents are foreigners. Therefore, in order to acquire Ivorian nationality at birth, at least one parent must be an Ivorian citizen. The Nationality Code is highly restrictive. It excludes a large number of individuals born in Côte d'Ivoire of unknown filiation and does not protect otherwise stateless children born in the territory to foreign or stateless parents. Further, there are big concerns about the inability of parents to prove that they are citizens, due to the lack of identity documents, further exacerbating (risks of) childhood statelessness. These risks will be further elaborated on below, in the section on civil registration.

17. Prior to the 1972 amendments, foundlings could acquire Ivorian nationality by origin as they were presumed to have been born in the country. However, amendments to the Ivorian Nationality Code in 1972 repealed the provision on acquisition of nationality for foundlings.

⁸ Parker, Foundlings in Côte d'Ivoire, The World's Stateless - Children, Institute on Statelessness and Inclusion, January 2017, p. 369, <http://www.institutesi.org/worldsstateless17.pdf>.

⁹ UNHCR, Statelessness and Nationality in Côte d'Ivoire – A study for UNHCR, December 2016, <http://www.refworld.org/docid/58594d114.html>.

¹⁰ <https://data2.unhcr.org/en/documents/download/54536>.

¹¹ <http://www.unhcr.org/protection/statelessness/591c38347/statelessness-conference-2017-banjul-plan-action-english.html>.

Statelessness among historical migrants

18. Article 6 of the Nationality Code does not clearly specify who are considered “foreigners”, placing historical migrants and their descendants, displaced persons, refugee children born abroad and border populations at risks of statelessness.¹²
19. In particular, (the risk of) statelessness exists among descendants of pre-independence migrants in the country, as they may be considered foreigners, despite having lived in the country for generations. They mainly come from neighbouring West African States, that were French colonies at the time, in particular Haute-Volta (now Burkina Faso), Mali, and Guinea. They have been stigmatised since the 1990s as a result of the turbulent politics of Côte d’Ivoire which introduced the concept of “Ivorianité”, making a distinction between those who are “pure” Ivorians and others.¹³

Issues concerning (facilitated) naturalisation procedures

20. The 1961 Nationality Code contained two special avenues for ‘foreigners’ to obtain Ivorian nationality. First, a one-year facilitated naturalisation programme was available for foreigners living in Côte d’Ivoire at independence.¹⁴ ‘Foreigners’ with habitual residence in Côte d’Ivoire prior to independence were eligible for facilitated naturalisation. This procedure however, lapsed in December 1962. In that one-year period, not one person benefitted from facilitated naturalisation. After 1963, facilitated naturalisation became a non-automatic and discretionary procedure, and is still existent in the Nationality Code.¹⁵ It is, however, unclear how many people benefit from this.
21. Further, Article 17 of the 1961 Nationality Code provided for minor children born in Côte d’Ivoire to foreign nationals to acquire Ivorian nationality by declaration. This provision applies to children who had at least five years of consecutive residence in Côte d’Ivoire and whose births were registered with the civil registration office pursuant to law. However, the ‘option-procedure’ to acquire Ivorian nationality by declaration was repealed by the 1972 amendments to the Nationality Code, which entered into effect on 25 January 1973.

Discrimination

22. Despite Côte d’Ivoire being party to the CEDAW and CRPD, its nationality law is discriminatory on the basis of gender and disability.

¹² Act No. 1961-415 of 14 December 1961 promulgating the Ivory Coast Nationality Code, as amended by Act No. 1972-852 of 21 December 1972 [], 1961-415; 1972-852, 21 December 1972.

¹³ For more information see: <http://www.refworld.org/docid/58594d114.html>.

¹⁴ Article 105 of the 1961 Nationality Code.

¹⁵ Other initiatives were introduced, such as the Linas-Marcoussis Agreement called for a special naturalization program to facilitate the acquisition of nationality by historical migrants and their descendants. However, such initiatives have not been successful.

23. Women who acquired Ivorian nationality through naturalisation are restricted in conferring their Ivorian nationality to their children. Currently there are two ways in which nationality can be conferred to the children of naturalised citizens. First, according to Article 45(1) of the Ivorian Nationality Code, a minor child (born in wedlock or legitimated) can acquire Ivorian nationality at the time that his or her father acquires Ivorian nationality. Second, a child of a widowed mother who acquired Ivorian nationality by naturalisation will also acquire Ivorian nationality. In other words, a woman who acquired Ivorian nationality through naturalisation cannot confer her Ivorian nationality upon her children unless her spouse has died.
24. Another concern is that the naturalisation provision is discriminatory on the basis of disability. Naturalisation is only available to persons who are free of mental or physical handicaps, pursuant to Article 32 of the 1961 Nationality Code.
25. Both the Committee on the Elimination of All Forms of Discrimination (CEDAW) and the Committee on the Rights of the Child (CRC) have provided recommendations on issues of discrimination in nationality laws of Côte d'Ivoire. The CEDAW recommended in 2011 that Côte d'Ivoire "*Repeal discriminatory provisions in the laws on nationality [...] in conformity with relevant provisions of the Convention*".¹⁶ The CRC recommended in 2001, that the country

*"make concerted efforts at all levels to address discrimination, notably discrimination based on gender, disability, religion, and national, ethnic or social origin, through a review and reorientation of policies, including increased budgetary allocations for programmes targeting the most vulnerable groups".*¹⁷

Statelessness determination

26. No statelessness determination procedure exists under the Ivorian Nationality Code or any related legislation. Article 77 of the Nationality Code states that civil law courts have jurisdiction to preside over nationality matters in Côte d'Ivoire as it is a matter of 'public order'. However, no mechanism exists for stateless persons to regulate their status through the courts or through an administrative process, and to benefit from protection deriving from their stateless status. Furthermore, the procedures for obtaining the necessary documentation are long, complicated, and costly.

Civil registration

27. Article 9 of the Ivorian Nationality Code requires that birth and filiation must be established in accordance with Ivorian civil status law in order to have an effect with respect to nationality. However, this is likely to be challenging due to high numbers of undocumented persons in the country. Only 65% of children under the age of five have been registered at birth.¹⁸ It is unknown how many adults have a birth certificate.

¹⁶ CEDAW, C/CIV/CO/1-3 para 19(d).

¹⁷ CRC/C/15/Add.155, para. 23.

¹⁸ UNICEF, Country Profiles, Cote d'Ivoire, <https://data.unicef.org/country/civ/#>.

28. The Civil Status Law requires that all births in the country be declared and registered before the civil registration office of the administrative district of birth within three months of the time of birth, regardless of the nationality of the child concerned. If this is not done, a child can no longer be registered in the local civil registry and late birth registration falls under the local courts. This is generally more expensive compared to regular civil registration.
29. Public servants lack proper training on how to register new-born babies, while the general public is ill-informed about birth registration procedures. People wishing to register the birth of a child often have to deal with corruption and extortion by Officers of the Civil Registry. In both rural and urban areas, the principle of free birth registration is not respected. The sums demanded by officers in charge of registration vary depending on the service, generally starting at 2,000 OF.
30. The Public Registry is in a poor state. Some documents have been destroyed, damaged, or lost. A large number of civil registries were destroyed during the different crises that affected the country and have yet to be replaced.
31. Côte d'Ivoire's Civil Status Law also requires that foundlings, defined in Article 46 as found new-borns, also comply with the normal birth registration procedures, which can add an additional barrier to acquisition of nationality.

Deprivation of nationality

32. The 1961 Nationality Code has a set of nationality revocation grounds enshrined in Articles 52 to 55. A person's nationality can be withdrawn if, for instance, a person behaves like a foreign national¹⁹ or if a person is convicted of an act constituting a crime or correctional offence against the internal or external security of the State or against established institutions.²⁰ However, none of the denationalisation grounds include a safeguard against statelessness in line with the 1961 Convention. These denationalisation grounds are extremely broad and vague and require further defining and interpretation. Also, it is not clear how often grounds for denationalisation are invoked.

Impact of Statelessness

33. Being stateless in Côte d'Ivoire can result in significant violations of other fundamental rights, which include lack of access to public education, healthcare and other services; inability to access employment, impeded family reunification; social alienation and psychological challenges and discrimination. Stateless persons often live in dire living circumstances, unable to escape poverty. Statelessness can also lead to exclusion from society, including of children born in the territory.
34. Unlike other non-nationals, stateless people have nowhere to be returned to if subjected to deportation proceedings. Finally, given the significance of the size of the stateless population, and its

¹⁹ Act No. 1961-415 of 14 December 1961 promulgating the Ivory Coast Nationality Code, as amended by Act No. 1972-852 of 21 December 1972 [], 1961-415; 1972-852, 21 December 1972 Article 52.

²⁰ Ibid., Article 54(1) and (2).

impact on communities living in the country since the colonial times, those affected inevitably feel alienated and indefinitely marginalised from mainstream society, undermining social cohesion.

35. Statelessness also has a direct impact on national peace and security. Recent crises were largely fuelled by nationalist discourses and by identity politics. This led to, for example, the Linas-Marcoussis Agreement which Ivorian parties signed in 2003, which acknowledged the identity aspect of the crisis and requested the creation of a special programme to facilitate the acquisition of Ivorian nationality by historical migrants and their descendants. However, such a programme is yet to materialise.

Recommendations

36. Based on the above analysis, the co-submitting organisations urge reviewing States to make the following recommendations to Côte d'Ivoire:

- I. Fully promote, respect, protect and fulfil its obligations towards stateless persons under international human rights law and protect the right to a nationality for all.
- II. Review the Nationality Code in order to:
 - a. Ensure full implementation of the 1961 Statelessness Convention and Article 7 of the CRC, by establishing safeguards against statelessness for all children born in the territory, including otherwise stateless children born in the territory to foreign parents.
 - b. Provide clarification on who is considered a “foreigner” as set out in Article 6 of the 1961 Nationality Code; and
 - c. Ensure that foundlings are guaranteed the right to a nationality, as required under international law.
- III. Establish specific procedures to assess the nationality/ statelessness status of historical migrants and of others at risk of statelessness, and to grant citizenship to persons who would otherwise be stateless.
- IV. Strengthen the capacity of the judiciary to adjudicate nationality cases so that individual cases of statelessness may be resolved.
- V. Remove all discrimination in the nationality law, including on the basis of gender in relation to conferral of citizenship on children by naturalised women, and disability in relation to the standard naturalisation criteria.
- VI. Ensure free universal birth registration. Take all necessary steps to address barriers to accessing birth registration, particularly by simplifying procedures, reducing the cost of producing and accessing documents, cracking down on corruption, training administrative officers and harmonising administrative practices regarding birth registration.
- VII. Ensure that provisions for the withdrawal of nationality as set out in Article 52-55 of the 1961 Nationality Code are clearly defined, not arbitrary or discriminatory, are in compliance with international law standards and do not result into statelessness.