

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

1. The Secretariat of the African Commission on Human and Peoples’ Rights (the Secretariat) received a complaint on 23 January 2006 submitted by the Open Society Justice Initiative Organization based in New York under Article 55 of the African Commission on Human and Peoples’ Rights (the African Charter) .
2. The Complaint was filed against the Republic of Côte d’Ivoire (State Party to the African Charter, hereafter referred to as the Respondent State or Côte d’Ivoire).<sup>1</sup>
3. The Complaint alleges that for 33 years, upon attainment of independence, Côte d’Ivoire experienced economic prosperity as the leading cocoa producer in the world under the leadership of President Félix Houphouët-Boigny. The latter promoted a policy of ethnic tolerance and welcomed migrant peasants from neighboring countries. However, according to the Complainant, the country was destabilized as a result of the emergence of political divisions based on geographical, religious and ethnic considerations.
4. According to the Complainant, President Henri Konan Bédié, who succeeded President Houphouët-Boigny, deepened the divisions by introducing the concept of « ivoirité » the implementation of which meant that Ivorian nationality could be obtained only by persons born in Côte d’Ivoire by two Ivorian parents. Such a policy, according to the Complainant, affected 30% of the population, including persons who were born in Côte d’Ivoire and had grown up and lived all their life in the country. The outcome of this situation, inter alia, was a socio-political exclusion through a ban on access to land, voting and holding of public office. According to the Complainant, the policy of « ivoirité » was initiated to exclude Mr. Alassane Dramane Ouattara, a native of the north of Côte d’Ivoire from the majority Dioula ethnic group, who had also held the position of Prime Minister under President Houphouët-Boigny, and considered to be his natural successor, from running for political office.
5. These ethnic and religious tensions resulted in a coup d’état in 1999 leading to the takeover of power by General Robert Guéi who continued with the political exclusion agenda initiated under President Bedie’s rule. Prior to the presidential election in 2000, the Government of President Guéi introduced a

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<sup>1</sup> The Republic of Côte d’Ivoire ratified the African Charter on 6 January 1992.

provision into the Constitution which reinforced the « ivoirité » concept by stipulating that « Every Presidential candidate ... should never have held another nationality ». Based on the said provision, the Supreme Court of Côte d'Ivoire rejected the candidacy of Mr. Ouattara on the grounds that he had held burkinabè nationality. Following the boycott of the election by Mr. Ouattara's party, the Rassemblement des Républicains (RDR), Mr. Laurent Gbagbo won the election under the banner of the Front Populaire Ivoirien (FPI).

6. The discontent which remained unresolved brought in its wake a new coup d'état on 19 September 2002 initiated by junior officers of the old militia of President Guéi who was assassinated during the subsequent events while Mr. Ouattara escaped execution by a death squad. The attempted coup triggered the division of the country into two parts, with the North under the control of the rebels and the South by forces loyal to the Government of President Gbagbo, with the support of the French army.
7. The Complainant alleges that President Gbagbo's regime took advantage of the rebellion to treat people from the North as terrorists who enjoyed the support of Mr. Ouattara. The position of the new Government encouraged the continuation of the notion of « ivoirité », which was worsened by a xenophobic nationalism in the form of discrimination on the part of the Ivorian authorities against the Dioulas from the North. The abuses arising from the phenomenon were perpetrated in several State institutions, particularly the intelligence apparatus, the police service, the gendarmerie and the courts. Under the Governments of Presidents Guéi and Gbagbo, a lot of violations were committed in particular during the elections.
8. These violations included extrajudicial killings of persons alleged to be of the Dioula ethnic group or people affiliated to the Muslim religion. Similarly, people were discriminated against by the police forces solely based on their name, accent, physical appearance or their clothing as proof of their northern origin. Thus, these persons were arrested in the streets or in their homes and detained by the police. The victims identified government officials as perpetrators of the said violations, including rape.
9. The Complainant reports that even when their nationality was attested to, some Dioulas were denied certain benefits and services by the government, including acquisition of passports, birth certificates and national identity cards. Furthermore, the authorities extorted monies from the same victims in return for their papers. Finally, the Complainant submits that, during the 2000 presidential elections, the Supreme Court enforced the « ivoirité »

concept by confirming the exclusion of several applications including that of Mr. Ouattara, because he had held burkinabè nationality.

## **The Complaint**

10. The Complainant alleges that Articles 2, 3, 4, 5, 6, 12, 13, 14, 18 and 22 of the African Charter have been violated.

11. The Complainant requests the Commission to :

- Declare that Côte d'Ivoire violated the provisions of the aforementioned Articles of the African Commission ;
- Order the State to put an end to acts of discrimination and to ensure that no acts of discrimination nor human rights violations will be perpetrated against people from the northern part of Côte d'Ivoire ;
- Order the State to adopt a new legislation on nationality ;
- Order the State to establish an independent mechanism to appreciate the complaints of refugees who left Côte d'Ivoire and would like to re-acquire Ivorian nationality ;
- Finally, order the State to properly compensate persons whose rights were violated as a result of discriminatory practices perpetrated against them by Ivorian government officials.

## **PROCEDURE**

12. The Complaint was submitted on 23 January 2006 to the Secretariat, which acknowledged receipt of it the same day and informed the Complainant that it will be submitted to the Commission at its 39<sup>th</sup> Ordinary Session scheduled to take place in Banjul, The Gambia from 11 to 25 May 2006. During the aforementioned session, the Commission decided to be seized of the Communication.

13. The Secretariat informed the Complainant about the decision on seisure on 17 July 2006, and requested the latter to submit its arguments on admissibility. The Secretariat received the said arguments on 19 September 2006 and forwarded them to the Respondent State on 30 October 2006, requesting it to respond as quickly as possible.

14. By letters dated 12 February and 4 April 2007 respectively, the Secretariat informed the Parties that the Commission had considered the Communication during the 40<sup>th</sup> Ordinary Session and decided to defer its consideration to the 41<sup>st</sup> Ordinary Session. The Respondent State was

- reminded to submit its observations on the admissibility. On 21 May 2007, the Respondent State requested the Secretariat to extend its deadline for the submission of its arguments on admissibility.
15. The Respondent State forwarded a request to the Secretariat on 23 May 2007, for stay of proceedings in respect of the Communication in order to pave the way for an amicable settlement within the context of a comprehensive negotiated settlement of the Ivorian crisis. The Secretariat informed the Complainant on 14 June 2007, that following the consideration of the Communication at the 41<sup>st</sup> Ordinary Session, the Commission had decided to defer it to the next session in order to address the requests of the Respondent State.
  16. In view of the fact that the Secretariat did not receive any response from the Respondent State, the Secretariat forwarded a letter to it on 13 September 2007, requesting it to follow up on its proposal for amicable settlement or failing that to submit its arguments on admissibility without any further delay. By a new note verbale dated 18 March 2008, the Secretariat sent a reminder notice to the Respondent State.
  17. The Secretariat received a letter on 11 May 2008, in which the Respondent State indicated having initiated negotiations with the human rights organizations to settle the issue amicably. The Respondent State then made reference to an agreement concluded with the High Council of Malians Living Abroad and forwarded to the Secretariat a copy of a letter sent to the Complainant on 2 November 2007 inviting it for an amicable settlement in this Communication.
  18. The Complainant informed the Secretariat on 13 November 2008, that contrary to the allegations of the Respondent State, it had not received any proposal for an amicable settlement as the letter proposing such a settlement had been transmitted to a wrong address. Thus, the Complainant had urged the Commission to proceed with the consideration of the admissibility of the Communication and expressed its readiness to furnish the Secretariat with additional arguments to that effect. Following this request, the Secretariat revived the procedure by informing the Parties in 2009 and 2010 about the successive deferrals of the consideration of the admissibility of the Communication.
  19. The Secretariat informed the Parties on 13 August 2010 about the postponement of the consideration of the Communication to the 48<sup>th</sup> Ordinary Session scheduled to be held from 6 to 20 November 2010. The Respondent State was requested to submit its arguments on admissibility.

- The Complainant reminded the Secretariat on 17 August 2010, about its request for the continuation of the admissibility proceedings and indicated its desire to see the Commission give a ruling at the subsequent session. The Secretariat once again requested for the submissions of the Respondent State on 25 October 2010.
20. The Complainant transmitted a letter to the Secretariat in February 2011, providing an update of all the communications it had brought before the Commission including this particular Communication. The Complainant confirmed its letter above on 12 April 2011 and requested the Commission to continue with the consideration of the admissibility of the Communication at its 49<sup>th</sup> Ordinary Session scheduled for 28 April to 12 May 2011. In the course of the successive sessions, the Commission decided to defer the consideration of the Communication. The Parties were duly informed about them and the Respondent State requested to submit its arguments on admissibility.
  21. The Complainant seized the Secretariat on 2 November 2011 with a request for amicable settlement following political developments in Côte d'Ivoire as the preparation of a draft bill by the government on nationality had the potential of addressing the legal provisions and discriminatory practices denounced by the Communication. The Complainant therefore requested the Commission to intervene to ensure clarification of the principles of non-discrimination stipulated by the African Charter and the implementation of nationality issues within the context of the amicable settlement. The Complainant requested the appointment of one Commissioner to that effect.
  22. The Secretariat informed the Parties on 28 June 2012 that the Commission had considered the Communication at the 51<sup>st</sup> Ordinary Session and decided to defer its decision on admissibility to the 52<sup>nd</sup> Ordinary Session scheduled to be held from 9 to 22 October 2012 in Yamoussoukro, Côte d'Ivoire. The Respondent State was requested to submit its arguments on admissibility. The Secretariat once again requested the Respondent State on 21 August 2012 to forward its arguments and informed the State that failing that, the Commission would take a decision on the admissibility based on the information in its possession.
  23. In response to the Secretariat's letter dated 28 June 2012, the Complainant, in a letter dated 6 September 2012, recalled its request for amicable settlement filed in April and November 2011. The Secretariat informed the Respondent State on 18 December 2012 about the request for amicable settlement of 2 November 2011 submitted by the Complainant and informed the Parties that the said request will be considered during the 13<sup>th</sup> Extraordinary Session of the Commission in February 2013.

24. At the 13<sup>th</sup> Extraordinary Session, the Commission considered the Communication and decided to request for the consent of the Respondent State regarding the procedure for the amicable settlement or, failing that, the submission of its arguments on admissibility. The Parties were informed about this decision on 1<sup>st</sup> and 4<sup>th</sup> March 2013.
25. At its 53<sup>rd</sup> Ordinary Session held from 9 to 23 April 2013, the Commission observed that the Respondent State had not given any effect to all the aforementioned letters and decided to inform the Complainant about them and once again requested the Respondent State to submit its arguments on the admissibility. Letters were transmitted to the parties to that effect. On 3<sup>rd</sup> March 2013, the Secretariat set a new deadline of two months for the Respondent State to transmit its arguments on the admissibility.
26. At the 54<sup>th</sup> Ordinary Session, the Commission considered the Communication and decided to defer its decision on admissibility to the next session. The Parties were duly informed about the Commission's decision. The Complainant was requested to provide additional submissions on the admissibility as the initial Complaint presented conclusions exclusively based on the condition of exhausting local remedies stipulated in Article 56(5) of the African Charter. The Complainant transmitted additional arguments the substance of which did not differ significantly from the arguments contained in the initial complaint.
27. During the 15<sup>th</sup> Extraordinary Session held from 7 to 14 March 2014 in Banjul, The Gambia, the Commission considered the Communication and declared that it was admissible. The Secretariat informed the Parties to that effect on 17 March 2014, notifying them about the decision and requested the Complainant to make its submissions on the merits within the allotted timeframe.
28. The Secretariat received the submissions on the merits from the Complainant on 28 May 2014, but the attached documents were received on 13 June 2014. The Secretariat transmitted the aforementioned submissions to the Respondent State on 16 June 2014 and requested it to forward its arguments within the prescribed timeline.
29. The Respondent State submitted its arguments on the merits on 14 July 2014. The Secretariat acknowledged receipt of same and forwarded them to the Complainant on 4 August 2014. After preliminary review of the submissions of the Parties with a view to preparing a draft decision on the merits, the Secretariat sent a new measure of inquiry to the Parties requesting them to

submit within a period of one month effective 12 September 2014, including a copy of some texts of the law to enable the Commission carry out an exhaustive review of some issues raised in the Communication.

## **THE LAW**

### **Admissibility**

#### **Arguments of the Complainant on Admissibility**

30. The Complainant alleges that the Communication meets the conditions laid down by Article 56 of the African Charter on admissibility. However, the arguments of the Complainant are focused exclusively on fulfillment of the condition of exhausting local remedies pursuant to Article 56 (5).
31. On this condition, the Complainant alleges that domestic remedies are not available for three main reasons. In the first place, the Complainant reckons that the widespread and targeted acts of physical violence against members of the victims' communities and the reasonable fear of such violence constitute an obstacle to their ability to exhaust the remedies. The Complainant further avers that the Communication reveals a case of serious and massive human rights violations and, in that regard, the gravity of the situation and the huge numbers of victims involved make it practically impossible to exhaust local remedies. Finally, the Complainant asserts that the effectiveness and suitability of the remedies cannot be guaranteed as the national system does not provide any mechanism for collective action or another procedure for redress of widespread violations involving a large group of victims.
32. While recognizing the positive nature of the legislative reforms on nationality carried out by the Republic of Côte d'Ivoire after the Communication was lodged, the Complainant alleges that these reforms cannot prevent the admissibility of their Complaint for two main reasons. On the one hand, the Complainant refers to the established case law of the Commission to support the fact that admissibility must be considered from the time the Communication is submitted. The Complainant further argues that admissibility must be determined based on the facts and circumstances prevailing at the time the Complaint was lodged and that any subsequent change of government or legal regime must be considered in the light of the facts and circumstances of the cause and not in the abstract.

33. On the other hand, the Complainant asserts that though the amendments made to the nationality Code by the Ivorian Parliament in August 2013 are encouraging, they are not enough to correct the violations alleged by the Communication. For instance, the Complainant refers to the fact that by failing to include the definition of the term « Ivorian », the reform stopped short of removing the main and fundamental source of legal uncertainty regarding access to nationality. The lack of administrative regulation for the implementation of the reform, according to the Complainant, is further beset with the risk of continuing to leave access to nationality at the exclusive and excessive discretion of the Executive in a country where the number of Stateless persons account for 700, 000 persons according to the 2014 estimates from the United Nations High Commission for Refugees.
34. In addition to these defects in the reforms referred to by the Complainant, the latter alleges that the amendments adopted do not provide any compensatory measure for the violations of the African Charter which extended over a long period of time. The Complainant asserts that in the absence of compensation measures, any remedy is inadequate and insufficient.

#### **The arguments of the Respondent State on Admissibility**

35. As the in-depth account of the procedure shows, the Respondent State neither followed up on its own proposal for an amicable settlement dating from May 2007 and much less for the one initiated by the Complainant in November 2011. Following the decision by the Commission to continue with the procedure on admissibility, the State also did not transmit its arguments in spite of the numerous reminders sent by the Secretariat to that effect.

#### **Analysis of the Commission on Admissibility**

36. This Communication was submitted in accordance with Article 55 of the African Charter which empowers the Commission to receive and consider « communications other those – originating from – State Parties ». To be declared admissible, the aforementioned communications must meet the conditions laid down in Article 56 of the African Charter.
37. Under the provisions of Rule 105(2) of its Rules of Procedure, when the Secretariat receives observations from the Complainant, it transmits them immediately to the Respondent State to allow the latter to respond within two months from the date the request was forwarded to it. In this Communication, the Commission notes that the procedure referred to here was complied with but the Respondent State had initially sought to proceed



by opting for an amicable settlement of the issue brought up in the Communication.

38. The Commission however notes that as the Complainant did not agree to the amicable settlement proposed by the Respondent State, the submission procedure on admissibility was followed. The said procedure was once again suspended by the request for amicable settlement brought up by the Complainant following the reform of the nationality Code in 2013. As the State did not give any effect to the consultations with a view to settling the issue amicably, the Commission decided to revive the consideration on the admissibility. In spite of numerous letters sent between November 2011 and November 2013, the Respondent State did not submit its arguments on the admissibility. Consequently, the Commission decided to examine the Communication based on the facts in its possession.<sup>2</sup>
39. On considering the submissions put forward, the Commission notes that the Complainant directs his arguments mainly towards evidence of complying with the Rule of exhausting local remedies stipulated in Article 56(5) of the African Charter. As a prelude to its analysis on this point, the Commission itself observes that the other conditions outlined in Article 56 of the Charter were complied with. In fact, the author of the Communication has been identified and the Communication alleges violation of the provisions of the African Charter by a State Party. Furthermore, the Complaint does not contain any insulting or disparaging language and it is not based exclusively on news disseminated through the mass media. Moreover, the Communication was filed at a time when the alleged violations were continuing, which leaves out the application of the condition of seisure of the Commission within a reasonable period of time after exhausting local remedies. Finally, the Complaint does not concern a case settled under the provisions of Article 56(7) of the African Charter.
40. Concerning Article 56(5), its provisions require that the Complainant should exhaust local remedies if only they exist, and are effective and adequate<sup>3</sup> and are not unduly prolonged. A remedy is considered as *available* when it can be used without any restraint by the applicant, *effective* where it offers prospects of success and *adequate* when it is able to provide satisfaction to the Complainant and remedy the alleged violation.<sup>4</sup> In the event where any of

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<sup>2</sup> See *Institute for Human Rights and Development in Africa v. Angola* Communication 292/04 (2008) AHRLR 43 (ACHPR 2008) para. 34; *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria* Communication 155/96 (2001) AHRLR 60 (ACHPR 2001).

<sup>3</sup> See *Jawara v. The Gambia* Communication 147/95 et 149/96 (2000) RADH 107 (ACHPR 2000) para 31.

<sup>4</sup> See *Jawara* para 32. Emphasis by the Commission.

these characteristics is lacking, the local remedies cannot meet the requirements stipulated in Article 56(5) of the African Charter.

41. In this Communication, the Complainant alleges that the local remedies were not available as a result of the fear and persecution which prevented the victims from seeking public protection. On this point, the Commission makes reference to its jurisprudence in the case, *Law Office of Ghazi Suleiman v. Sudan*, where it decided that as the Complainant had been under threat and persecution, he could not have had access to any remedies, which, in any case were not available.<sup>5</sup> Generally, the Commission considers that, as it pertains in the case of its decisions in *Jawara v. The Gambia* and *Aminu v. Nigeria*,<sup>6</sup> in situations where referral to local remedies in itself creates fear and constitutes a risk to the life of the Complainant or the victim, such remedies are deemed unavailable.
42. Under the case in point, the Commission notes that the alleged violations were initially confined, at least, to a period of time between the introduction of the concept of « ivoirité » in 1993 and the seisure of the Commission in 2006. The events that occurred in Côte d'Ivoire during that period are well known internationally. In this case, the widespread acts of physical violence targeting a specific section of the population, particularly people from the North belonging to the Dioula ethnic group or people of Islamic religious persuasion, were reported by several international organizations.
43. The Commission notes for instance, that the said violations were documented and denounced, among others, by the United Nations Security Council and other international non-governmental human rights organizations.<sup>7</sup> The Commission particularly notes that the sources mentioned in this context help to identify the main perpetrators of the alleged violations as public authorities, including the police force and the gendarmerie, as well as public officials.<sup>8</sup>
44. Even so, the Commission clearly observes that the environment of persecution and insecurity existing in Côte d'Ivoire at the time of the facts, especially towards the targeted communities, could not have motivated the

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<sup>5</sup> See *Law Office of Ghazi Suleiman v. Sudan* Communication 228/99 (2003) AHRLR 144 (ACHPR 2003) para 33.

<sup>6</sup> Communication 205/97 (2000) AHRLR 258 (ACHPR 2000) para 13.

<sup>7</sup> See Security Council Resolution 1464, para 7, U.N. Doc.S/RES/1464 (4 February 2003). See also Amnesty International Report 2004 Côte d'Ivoire <http://www.amnesty.org/en/library/asset/POL10/004/2004/en/b1d27f7f-775c-42cc-87cb-94360efc0cec/pol100042004fra.pdf> (consulted on 23 January 2014).

<sup>8</sup> See Security Council and Amnesty International, op cit. See also, US Department of State, Bureau of Democracy and Labor, Country Report on Human Rights Practices <http://www.state.gov/j/drl/rls/hrrpt/2005/61565.htm> (consulted on 23 January 2014).

victims to seek protection under the law from authorities involved in the alleged violations. In such circumstances, internal remedies could not be said to be available.

45. Based on the alleged serious and massive violations, the Complainant also requests a derogation of the principle of exhausting local remedies. On this argument, the Commission refers to its established case law to reiterate the illusion and futility of exhausting local remedies in cases of serious and large-scale human rights violations. Thus, in the cases *Malawi African Association and Others v. Mauritania* and *Sudan Human Rights Organisation and Another v. Sudan*, the Commission had concluded that the seriousness of the violations and the large number of victims concerned made the remedies unavailable and their exhaustion practically useless.<sup>9</sup>
46. On the specific issue of knowing what constitutes a serious and massive human rights violation, in the case, *The Kenyan Section of the International Commission of Jurists v. Kenya*, the Commission considered both the scale and the nature of the alleged violations. With regard to the scale, the Commission then determined that a massive violation is one that affects a large number of persons, either in a specific region or all over the territory of a State Party. Concerning the nature, the violation must be the consequence of continual and pre-determined actions having an impact on a right or a group of rights under the African Charter.<sup>10</sup>
47. In this instance, the Commission notes that the alleged violations concern a large section of the population of the Respondent State, or about 30 percent of a population of 16 million inhabitants at the time of the events in question.<sup>11</sup> Furthermore, the alleged facts were inevitably likely to result in the violation of the right of recognizing the legal status guaranteed by Article 5 of the African Charter. In this regard, the Commission critically notes that hundreds of thousands of persons were affected by the statelessness in Côte d'Ivoire as a result of the allegations alleged by the Complainant.<sup>12</sup>

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<sup>9</sup> See *Malawi African Association et al v. Mauritania* Communications 54/91, 61/91, 98/93, 164/97, 210/98 (2000) AHRLR 149 (ACHPR 2000) para 85 ; *Sudan Human Rights Organisation and Another Person v. Sudan* Communications 279/03 et 296/05 (2009) AHRLR 153 (ACHPR 2009) paras 100-101. See also *Zimbabwean Human Rights NGO Forum v. Zimbabwe* Communication 245/02 (2006) AHRLR 128 (ACHPR 2006) para 69-72.

<sup>10</sup> See *The Kenyan Section of the International Commission of Jurists v. Kenya* Communication 385/10 (ACHPR) 2013, paras 63-64.

<sup>11</sup> See The World Bank, Data, 'Population (Total)' <http://data.worldbank.org/indicator/SP.POP.TOTL> (consulted on 24 January 2014).

<sup>12</sup> See UNHCR 'Côte d'Ivoire' <http://www.unhcr.org/4cd969a29.pdf> (consulted on 24 January 2014) ; UNHCR 'La Côte d'Ivoire fait un grand pas pour éliminer l'apatridie avec l'adhésion aux conventions'

48. In the light of these observations and following the jurisprudence referred to *supra*, the Commission is of the view that the magnitude of the alleged violations had an effect on a sizeable section of the population of Côte d'Ivoire, in particular, the communities in the northern region of the country. Furthermore, by their nature, the said violations which are alleged to have started in the mid-1990's had continued at least until this Communication was lodged in 2006. Moreover, such violations can be considered as pre-determined as they arise from the implementation of a legislation adopted by the Respondent State. Finally, these violations disguised a clear potential of negatively impacting the enjoyment of a right to legal status guaranteed by Article 5 of the African Charter, the violation of which is alleged by the Complainant.
49. From the foregoing, the Commission concludes on the one hand that, the climate of fear and persecution which prevailed at that material time was a stumbling block to exhaustion of local remedies which were actually not available; and that the alleged violations were serious and massive, on the other hand. Consequently, the victims and the Complainant would not be required to exhaust local remedies.
50. Without necessarily considering the other arguments raised by the Complainant, the Commission notes that the facts and the circumstances of the case require the derogation of the clause on compliance with the exhaustion of local remedies.

### **Decision of the Commission on the Admissibility**

51. In view of the aforementioned, the African Commission on Human and Peoples' Rights declares this Communication admissible in accordance with Article 56 of the African Charter.

### **The Merits**

#### **The arguments of the Complainant on the Merits**

52. According to the Complainant, the actions of the Respondent State are the principal and subsequent violations of the provisions of the African Charter. With regard to the main violations, the Complainant alleges that, on the one

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« Cote d'Ivoire makes a giant leapfrog to eliminate statelessness in the area of accession to conventions » <http://www.unhcr.fr/524ec78cc.html> (consulted on 24 January 2014).

hand, the right to equality (Articles 2 and 3) has been violated, and the rights to the recognition of legal status and to the respect of the dignity inherent in a human being (Article 5), on the other hand. Concerning the subsequent or derived violations, the Complainant's allegations are focused on the obligation to give effect to the law (Article 1), on the rights to freedom of movement (Article 12), participation in public life (Article 13), the right to property (Article 14), to work (Article 15), to family protection (Article 18) and to socio-economic and cultural development (Article 22). The Complainant also alleges that Articles 4 and 6 have been violated without however advancing any arguments to that effect.

53. *Concerning the violation of Articles 2 and 3 of the African Charter, the Complainant alleges illegal discrimination regarding access to nationality since it is not justified in law and its purpose not legitimate, nor necessary nor proportionate to the end sought.* According to the Complainant, the discrimination in terms of access to nationality to which the Dioula people were exposed and are still exposed to or perceived ones is based on their ethnic origin or their religious persuasion. Such discrimination is consequently illegal and unjustified in law since it is prohibited by both the provisions of the aforementioned Articles and the jurisprudence of the Commission and international law. The Complainant further avers that the discrimination denounced is neither necessary nor proportionate to the intended purpose as it tended either to withdraw the rights already acquired or to make the right to nationality an illusion.
54. To support the assertion of being discriminated against on account of the law, the Complainant argues that the 1961 Ivorian Code on nationality is vague and reinforces the doctrine of « Ivoirité » by simply stating that an Ivorian is someone born by an Ivorian. This legal ambivalence is believed to have given unlimited discretion to State officials and thus facilitated the implementation of discriminatory policies and practices. The Complainant affirms that the subsequent discrimination has been manifested by a difference in treatment based on ethnic origin and religious affiliation. On this issue, the Complainant indicates that the term « ivoirité » underpins a notion of a « pure » Ivorian heritage for which the term was institutionalized by the 2000 electoral reforms and it is based on a distinction between « indigenous Ivorians » and « Ivorians from migrant ancestral background ». The foreigners are compared to people who hail from the North, who are also referred to as immigrants, since they do not have any connection with another State. By extension, those from the North with a valid claim to nationality are therefore treated as immigrants and therefore foreigners.

55. The Complainant relies on evidence obtained from hundreds of victims in 2010 from which it emerges that more than 54 percent of the persons interviewed claimed that the authenticity of their identity documents was called into question as a result of their foreign consonance of their names. Thus, for instance, a person interviewed by name « Diallo » was told that such a surname could not be Ivorian. In other cases, persons who had shown proof of their nationality were all the same subjected to harassments because their names did not sound like Ivorian names, as shown by a witness interviewed by name « Mamadi ». Some were compelled to pay monies to regain their freedom following identity checks whereas they had shown proof of their nationality. Their documents were subsequently seized by police officers or the gendarmerie. In the same vein, persons travelling with their colleagues were compelled to pay fines to police officers whilst no fine was taken from the other non-Dioula passengers.
56. Concerning the nature of the difficulties faced by applicants for nationality documentation, as part of this Communication, the Complainant lays emphasis on evidence provided by more than 53 percent of persons who claimed to have encountered administrative problems while 39 percent reported about justice-related issues. For instance, the renewal of documents on nationality was denied someone by name « Savadogo » because the difference between his mother's age and his age was too wide and suspicious. The authorities remained adamant while the applicant produced his birth certificate, his old certificate of nationality, the identity card of his uncle, his mother's birth certificate and the naturalization decree of his grandfather. All these persons interviewed were victims of acts reported above and they had one thing in common, that is, they bore surnames such as « Zongo », « Dabré » or « Yabré », which are considered as non-Ivorian.
57. To illustrate the alleged discrimination in a more representative way and in the application of the law, the Complainant refers to the consideration of the candidatures for the 2000 presidential election in Côte d'Ivoire. Based on the law on nationality, reinforced by the new provisions of Article 35 of the 2000 Ivorian Constitution, the candidature of Mr. Alassane Ouattara was rejected for failing to meet the « Ivorian origin » criterion whereas he had produced his Ivorian birth certificate and those of his father and mother. In addition to this, he produced his Ivorian identity card and copies of his two parents' cards. In spite of all these documents, the Supreme Court used its full discretion provided by the law on nationality to nullify the candidature of Mr. Ouattara.
58. By contrast, the Complainant makes reference to the treatment meted out by the same Court to Mr. Robert Guédi as a candidate. As proof of his nationality,

- the latter produced only a certificate of nationality; to prove the Ivorian nationality of his parents, the candidate traced his ancestral origins to the second generation by just drawing family tree himself. As Mr. Robert Guéi was thought to have adequately shown proof of his nationality, the Court decided to validate his candidature.
59. To ascertain the fact that the successive regimes had taken advantage of the vague law on nationality to pursue the discriminatory policy against people from the North, Dioulas or persons perceived as such, the Complainant makes reference to mobile court hearings held in 2007 to register people of voting age and issue them with the identification documents. During the said hearings, the Government of President Laurent Gbagbo had requested that applicants for nationality certificates should register at their places of birth. According to the Complainant, more than 700 000 concerned persons were internally-displaced as a result of the civil war that broke out in 2002 and such people lacked the necessary resources to proceed to their home towns. Furthermore, due to the climate of suspicion towards people hailing from the North, officials in charge of the hearings refused to issue identification documents or simply removed the application letters without any explanation whatsoever. The Complainant reports of complaints of widespread destruction of identity cards of persons from the North by the security agencies on the grounds that they were fake.
60. Persons bearing Dioula names reported that they had been denied access to employment or forbidden from obtaining an identity card, or had been imprisoned and compelled to pay bribes at check points. According to allegations from the Complainant, the situation reached its climax during the 2010 electoral crisis when on 3 February; President Gbagbo's government had requested the removal of names of tens of thousands of people suspected of be of foreign origin from the voters' register based on only the Muslim – sounding surnames. Unlike « Ivorians », persons perceived as foreigners had thus been compelled to pay monies to have their names put on the register.
61. On the issue of unjustified nature of the discrimination, the Complainant alleges that as the victims had established a *prima facie* case of discrimination for differentiated treatment on grounds of ethnic origin and religious affiliation, the burden of proof lies with the Respondent State to provide an objective and reasonable justification. The Complainants also noted that at the time of making their submissions on the merits, the Respondent State had not been able to justify the alleged discriminations.
62. *Concerning the violation of the provisions of Article 5 of the African Charter, the Complainant alleges that the actions of the Respondent State constitute*

*an arbitrary violation of the right of the victims to nationality.* According to the Complainant, the discriminatory acts reported above led to the denial of the right to nationality, and in many instances to statelessness or to the risk of statelessness, thus preventing the recognition of the legal status of thousands of Ivorians. The Complainant establishes the right of the Dioula population to Ivorian nationality based on history. Thus, he argues that as a result of artificial borders splitting homogeneous cultural groups and regrouping different peoples within several independent States, the post-independent borders have undermined the natural process of creating nation States and caused a heterogeneity which has given vent to ethnocentrism. The Complainant asserts that this historical foundation of the right to nationality is confirmed by the accounts of the victims interviewed of which 78 percent were born in Côte d'Ivoire, with parents and grand-parents themselves born in Côte d'Ivoire, the only country they have ever known, the only country with which they have ever had socio-political links and where all the members of their families live.

63. The Complainant asserts that on violation of the right to nationality according to the provisions of Article 5 of the Charter, the law is vague, its implementation discriminatory and the procedure for acquiring nationality inequitable. On the vagueness of the law, the Complainant affirms that the nationality Code fails to clarify two terms whose definition is crucial to ensure an equitable and transparent implementation: « Ivorian » and « foreigner ». The Complainant asserts that at independence, there were no Ivorian citizens in Côte d'Ivoire, just as it pertained in several other African States. In Côte d'Ivoire, the authorities gave the regular residents a timeline of one year to acquire the nationality, a deadline which many residents could not comply with nor deemed it necessary to comply with. The myth was therefore perpetuated, from generation to generation, that Ivorian nationality was only given before independence or in the period after independence.
64. On the allegation of denial of nationality as a result of the inequitable implementation of the law, the Complainant refers to the lack of standardized processes and motivation for follow-up of applications submitted and the unpredictability of the procedure for acquiring nationality. The Complainant stresses that whereas the Ivorian law on nationality is governed by the principle of *jus sanguinis* – to have at least one Ivorian parent – the law in question does not set any concrete standard to determine the validity of the nationality of parents. Furthermore, according to the evidence provided by witnesses, in case the nationality documents of their parents filed alongside the application for nationality or naturalization did not disappear from the administrative processes, they were simply rejected without any reason. The attempts to renew previously acquired documents ended the same way.



65. The Complainant refers to the statements of some witnesses to illustrate the way certain reported practices had generated a degree of unpredictability of the procedure for access to nationality. For example, when a witness by name « Lansani » presented his identity papers to the commissioner, the latter requested for a naturalization decree and the official gazette in which it was published, making the procedure too complicated. When the applicant brought up an application for a nationality certificate before the judge, the said document was issued on an orange-colored paper whereas in practice, access to a lot of services are often denied to persons holding such « orange » papers, since the administrative authorities only accept documents issued on paper with white background. According to the Complainant, efforts made by candidate Ouattara to prove his Ivorian ancestral link and nationality demonstrate the lack of predictability and impartial judicial control at the highest social level on issues concerning application for acquisition of nationality.
66. On the legality of denial of nationality leading to the actions denounced in this context, the Complainant finally alleges that such a denial is arbitrary by definition as it renders an individual stateless. The Complainant pleads that the right of recognition of the legal status guaranteed by Article 5 of the Charter imposes on the Respondent State an obligation to prevent statelessness. According to the Complainant, this obligation has been recognized as a rule of customary international law and prescribed by a number of general and specific international human rights instruments. Moreover, the United Nations Directives on statelessness stipulate that it is not the law but the practice which determines statelessness and that to establish the position of the State on nationality, the competent authorities may be average public servants, such as the official of the civil registry or an official of the government agency responsible for passports.
67. According to the Complainant, the difficulty in obtaining official identification documents is a more serious problem in Africa including the express denial of nationality since the enjoyment of many a right is directly related to obtaining these documents. Based on testimonies collected as part of this Communication, the Complainant alleges that the systematic refusal of the authorities to issue identity cards to persons perceived to be « Dioula » resulted in massive statelessness. These practices are viewed as having exacerbated the conflict and their persistence beyond the crisis has also been authenticated, with the emphasis placed on a more generally excessive discretion affecting the entire population without distinction whatsoever on account of migratory origin.

68. The Complainant asserts that, against this background, the deprivation of nationality for want of documentary evidence is strongly suspected when the State does not offer adequate and effective access for the registration and for birth certificate of children born on the territory. In reviewing the application for nationality, the theoretical possibility of the nationality of another State is inapplicable. In this regard, the Complainant calls on the Commission to focus particular attention on children born in Côte d'Ivoire by parents whose status is unknown or whose Ivorian nationality has been challenged.
69. *Still on the issue of non compliance with the provisions of Article 5 of the Charter, the Complainant asserts that the difference in the treatment imposed on the Dioulas in the area of access to nationality based on « foreign »-sounding names and on Muslim affiliation violates their right to the respect of the dignity inherent in a human being.* According to the Complainant, the refusal of the authorities of the Respondent State to issue identity documents to the victims is a denial of their existence, thus violating their dignity, because they are deprived of any legal identity. Furthermore, such a refusal is tantamount to degrading treatment as it is based on ethnic origin and religious affiliation and targeted at a specific section of the society which is relegated to a second class status in the Ivorian society. The Complainant stresses that, the name « Dioula » was originally used to identify the professional group of traders and a patronymic name in the Kong Manding dialect; it was later used as a pejorative and popular reference for all the Mandé and Gur population from the North and consequently for all Muslims. Disqualified from contesting for political office, the « Dioulas » were relegated to the background on the social ladder based on social perceptions disseminated by State ideology which has unfortunately influenced all the ethnic groups in the country.
70. The Complainant reports that the testimonies indicate that persons from the Dioula ethnic group or of foreign origin faced acts of harassment and abuses during the 2000 elections, including in particular sexual abuses in the West of the country where the victims were targeted because of their ethnic origin or their perceived nationality. The Dioulas were also made to pay fines during the process of obtaining nationality documentation and even in everyday life; more than 55 percent of persons interviewed had the inner feeling that their identity was consistently called into question.
71. *Concerning subsequent violations, the Complainant alleges that the refusal to issue passports to victims infringed on their freedom of movement laid down in Article 12 of the Charter.* In this regard, the Complainant affirms that the difficulties associated with the recognition of their Ivorian nationality resulted in the inability of most of the Dioulas to obtain a passport and

therefore travel outside the country. Recognizing the possibility of a limitation to the freedom of movement, the Complainant is of the opinion that such a restriction must be consistent with the other rights stipulated in the Charter and with the principles of equality and non-discrimination. Based on these testimonies, the Complainant reports that the security agencies compelled Dioula travelers to pay a sum of one thousand francs as compared to non-Dioula passengers. Similarly, persons who had travelled out of the country to reside there were also later denied the renewal of their identity papers and were prevented from travelling, including being prevented from returning to visit their parents in Côte d'Ivoire.

72. *The Complainant also alleges the violation of Article 13 of the Charter based on the fact that, in the public sphere and in elections, the Dioulas are discriminated against both in seeking public offices and in their quest to be represented by the members of their communities.* The Complainant recalls the 6 October 2000 decision of the Supreme Court of Côte d'Ivoire rejecting the candidature Mr. Alassane Ouattara for the 2000 presidential election on grounds that he was not an Ivorian whereas the latter had been a Prime Minister for three years and represented the country within high level institutions under the Government of President Houphouët Boigny. These problems persisted during the parliamentary and regional elections which came up immediately after the 2000 presidential elections, in particular after the opposition candidates to the Government of President Gbagbo had won majority of the seats during the local election in March 2001. At that time, though a national verification process of voters was just in its incipient stages, President Gbagbo had declared that only persons holding new voters cards would be allowed to participate in the municipal elections. Most of the persons excluded by the said regulations were actual partisans or perceived to be members of political parties deemed to be « pro-foreign ». Moreover, a large number of Dioulas who had previously obtained a certificate of nationality, all the same had had their names removed from the electoral register before the 2010 elections.

73. *The Complainant further alleges the violation of the right to property guaranteed by Article 14 of the Charter.* According to the Complainant, such a violation is established, as the Commission had already decided in *Mouvement Ivoirien des Droits de l'Homme v. Côte d'Ivoire* that the provisions of Article 26 of the 1998 Law relating to local land ownership are not consistent with Article 14 of the African Charter in that they stipulate that non-Ivorian or foreign persons cannot be landowners in such a locality. The Complainant states that, in a country where 70 percent of the 32 million

hectares of land has not been registered or where property or land rights are vital for the survival of majority of the population in West Africa, people looking for land whose identity documents have been rejected may not know whether they have a right to it. Furthermore, persons without any document but who already possessed land may reasonably suppose that they are Ivorian whereas the government refuses to confirm such a claim. Consequently, following attempts made to obtain an official title deed of the property pursuant to the 1998 Law, the persons without any documents may be denied ownership of their land under the pretext that they are foreigners.

74. *Finally, the Complainant alleges that by denying the victims the possibility of an employment prospect and a personal and family development, the Respondent State violated Articles guaranteed under Articles 15, 18 and 22 of the Charter.* Touching on article 15, the Complainant states that the difficulties faced by the Dioulas in the process of recognition of their Ivorian nationality infringe on their right to obtain employment on a non-discriminatory basis. Without a nationality certificate, they are excluded from access to employment in the formal sector. For instance, the witness « Abdou » was denied promotion as a judge because his mother's birth in the 1930's in Bouaké had been registered under a different name. The interested party had all the same produced nationality documents that were in order.
75. *On the allegation of violation of Article 18, the Complainant declares the destruction of the unity of the family following the violent struggle for access to nationality and identity cards.* For example, after the police had seized the documents of the witness by name « Drissa », the latter had to travel out of his region with a laissez-passer which was only valid for one month. The Complainant alleges that such a situation puts restrictions on the freedom of movement, causes insecurity and a general state of vulnerability and that in its jurisprudence, the Commission established that the denial of nationality is a threat to family life.
76. *Concerning the violation of the right of peoples to development protected by Article 22, the Complainant alleges that arbitrary denial of nationality prevented the Dioulas from achieving their ambitions and their full human potential.* The Complainant asserts that the capacity of the people to achieve their nationality rights provides an indispensable element to stability both at the personal level and at the social and international levels. He avers that this condition of a dignified life is essential for the full and harmonious development of the human personality. According to the Complainant, the realisation of the « plan for life » is the attainment of the right to personal development. To buttress this argument, the Complainant quotes the testimony of « Abdou » whose life has come to a standstill after being

- prevented from benefitting from the promotion as a judge because his identity had been called into question as a result of his foreign-sounding names and his religious affiliation. The identity of this person had been fraudulently determined whereas he had done all his studies as an Ivorian citizen and presented the entire dossier required to sit for the examinations into the judiciary, including his certificate of nationality, his birth certificate, his national identity card and his military certificate.
77. The Complainant also reports the testimony of « Salifou », born in 1982 in Côte d'Ivoire but whose nationality was turned down several times even while he was young at a time his parents had obtained citizenship by naturalization in 1995. It became impossible for him to continue his education as he was unable to sit for the baccalauréat examinations for lack of a national identity card or a passport confirming his nationality.
78. *As previously mentioned, the Complainant also alleges the violation of the provisions of Articles 4 and 6 of the Charter. Referred to at the admissibility stage, these allegations were maintained in the arguments on the merits. However, the Complainant does not produce any argument to buttress the said allegations.*
79. *Based on the above-mentioned conclusions, the Complainant alleges that the Respondent State has violated the provisions of Article 1 of the Charter.* He supports this argument by alleging the failure of the State to provide the necessary measures towards the respect, including the protection, promotion and realisation of the rights mentioned above.
80. *The Complainant finally pleads with the Commission to review the requests indicated in its arguments on the admissibility.* He justifies such a request by the need to contextualize the dispute before the Commission in the light of recent developments of the Ivorian legislation and the arguments presented on the merits.

### **The arguments of the Respondent State on the Merits**

81. The Respondent State does not dispute the facts reported nor the allegations of the Complainant. On the contrary, the Republic of Côte d'Ivoire asserts that these problems which were rampant during the decade of socio-political crisis are being resolved thanks to efforts by the government towards improving the human rights situation and the re-ordering of the social fabric. In support of its stance, the Respondent State provides evidence that it has adopted a series of legislative measures implemented, particularly in 2013, with the aim of addressing the deprivation of nationality.

82. Among other legal measures taken, the Respondent State cites :

- Law No.2013-646 of 13 September 2013 authorizing the President of the Republic to ratify the 1954 Convention on the status of Stateless Persons signed on 28 September 1954 in New York ;
- Law No. 2013-647 on 13 September 2013 authorizing the President of the Republic to ratify the 1961 Convention on the Reduction of Cases of Statelessness signed on 30 August 1961 in New York ;
- Law No. 2013-653 of 13 September 2013 on specific provisions concerning the acquisition of nationality by declaration ;
- Decree No. 2013-650 of 13 September 2013 on the ratification of the 1954 Convention on the status of stateless persons signed on 28 September 1954 in New York ;
- Decree No. 2013-648 of 13 September 2013 on the ratification of the 1961 Convention on the reduction of cases of statelessness signed on 30 August 1961 in New York ;
- Decree No. 2013-848 of 19 December 2013 on the modality for the implementation of Law No. 2013-653 of 13 September 2013 on the specific provisions regarding the acquisition of nationality by declaration.

83. The Respondent State further indicates the adoption of Law No. 2013-33 of 25 January 2013 on legislative provisions relating to marriage which henceforth established equality between spouses as the basis of the family. With regard to issues on the right to property, the State of Côte d'Ivoire indicates the review of Law No. 2013-655 of 13 September 2013, of the 1998 Law on Rural Land Tenure, as amended in 2004, particularly the provisions relating to the timeline granted for the recognition of customary rights of lands in the customary area.

84. Concerning the administrative and legal measures taken to resolve problems arising from the post-electoral crisis, the Respondent State cites the establishment of the National Investigations Commission on violation of human rights and international humanitarian law committed in Côte d'Ivoire during the post-electoral period; the Dialogue, Truth and Reconciliation Commission (CDVR), the Special Inquiry and Investigation Unit (CSEI) and the National Programme for Social Cohesion (PNCS). The Respondent State also indicates that reflections are ongoing under the auspices of the Ministry of Solidarity, Family, Women and Children's Affairs on the definition of a political framework and the options for reparations in Côte d'Ivoire.

85. Concerning the infringements on the right to development, the Respondent State avers that its government is dealing with the rehabilitation and/or reconstruction of economic and social infrastructure and the improvement of the incomes of the population. Finally, the Respondent State asserts that a review of reports it has produced since 2012 as part of its international commitments will further show convincing proof about efforts made by the government to build a society based on the principles of the rule of law, good governance and human security.

## **Analysis of the Commission on the Merits**

### **Additional arguments and requests of the Complainant**

86. From the conclusions submitted on the merits, it appears to the Commission that the Complainant has filed not only de facto and de jure supplementary submissions but also additional pleas. Considering the crucial nature of the said submissions and pleas in the determination of substantive issues, it is necessary for the Commission to decide on them prior to considering the merits of the Communication.
87. On the additional submissions, the Commission notes that to support their claim, the Complainant presents a historical and chronological account of factual or legal elements which go as far back as the period of independence of Côte d'Ivoire in 1960. A cross examination between the introductory submissions and the arguments on the merits reveals that these are not necessarily new facts or additional or explanatory elements meant to clarify or reinforce the previous submissions. While considering that in its decision on admissibility, it clearly noted that the occurrence of the alleged acts of violence took place between the time of the emergence of the concept of « ivoirité » in 1993 and its seisure in 2006, the Commission reckons that such conclusion does not in any way prevent the inclusion of factual or legal findings before or after the said date.
88. On the de facto submissions, the Commission considers that though the violations referred to in the Communication crystallized at the beginning of the 1990's, their alleged historical and legal source takes place before or dates back to the 1960's. Concerning the additional factual elements on the period between the seisure in 2006 to the end of the exchange of the submissions in 2014, it is appropriate to accept them and contextualize them in considering the Communication. However, on this point, the Parties agree with the

Commission. In fact, on the one hand, the Respondent State accepted it while responding to the submissions of the Complainant covering the periods stated above, and on the other hand, the violations are said to be continuing at the time of this decision.

89. On the legal grounds, the Commission notes that on the merits, the Complainant does not submit any argument to buttress the alleged violation of Articles 4 and 6 of the Charter presented during the admissibility stage and maintained in the merits. The Commission consequently recognizes that this is a renunciation and decides to set aside the consideration relating to it. On the other hand, the Complainant extends his claims to the violation of the provisions of Article 15 of the Charter. On these points, the Commission considers that the additional substantive submissions are admissible as long as they are based on the same facts and do not call into question the issues solved under admissibility, and that the author can prove them and the other party can successfully challenge them. The identity or the connections between the facts have been established above. Furthermore, the said submissions have been substantiated and are not in dispute. Regarding the consistency of the additional or new submissions to the issues resolved during the admissibility stage, the Commission will examine it jointly with the related requests.
90. On the said consistency, the Commission notes that in addition to the initial requests, the Complainant requests for amendment of certain provisions of the Ivorian Constitution of 2000 and the legislation on nationality and related issues. It appears to the Commission that the said applications are arising from the *de facto* and *de jure* submissions made during the admissibility stage. Moreover, they were lodged within the set deadlines; they result from the exchange of written submissions between the Parties, and the Commission gave the Respondent State ample opportunity to respond to them. Finally, the issue of submitting applications in the first instance before the Commission does not arise as the Complainant was exempted from exhaustion of local remedies. Consequently, the Commission accepts the said submissions and requests and even deems them relevant to subsequent stages regarding the consideration of the merits. Furthermore, having received them before their update, the Commission admits the submissions on the merits in their entirety and will carry out the consideration at the end of the exchange of the submissions.
91. As a prelude to the actual analysis of the merits, the Commission notes that the Complainant first of all concludes on the allegations of violation of rights of equality guaranteed in Articles 2 and 3 of the Charter before pointing to the lack of respect for human dignity and recognition of the legal status



guaranteed by Article 5 of the Charter. However, it appears to the Commission that in this Communication, the main cause defended by the Complainant is the deprivation of nationality which the population called by the name « Dioula » were subjected to and will always be subjected to as victims in Côte d'Ivoire. As proof, the Complainant himself asserts that his argument aimed at proving that this alleged deprivation is based mainly on a « legitimate claim » by Dioulas to Ivorian nationality. The allegations of violations of the other provisions of the Charter are concurrent or subsequent to the alleged principal violation. In fact, these subsequent allegations are not the consequence of the principal one independently of which they cannot thrive. Consequently, the Commission will consider the « legitimate claim » to nationality prior to the consideration of other arguments on the merits.

92. With regard to the allegation of violation of Article 1 of the Charter, the Commission notes that the obligation established by the provisions of the said Article can be activated only when a substantive right of the Charter has been violated. The related allegation will be considered after an analysis of the merits concerning the other provisions, the violation of which is also alleged.

#### **On the allegation of violation of Article 5**

#### **On the law of recognition of legal status: nationality**

93. Under the provisions of Article 5, « Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited ».
94. On the argument derived from the violation of the provisions of Article 5 of the Charter, the Complainant asserts, on the one hand, that the lack of precision of the law on nationality has led to the deprivation of the right to nationality and in many instances to statelessness or the risk of statelessness, thus preventing the recognition of the legal status of Ivorians. On the other hand, he avers that the differentiated treatment targeting Dioulas in the area of access to nationality based on foreign-sounding names including their Muslim affiliation violates their dignity.
95. Concerning the first part of the submission and in the light of the provisions of the Charter, as mentioned above, it appears that the Complainant focuses his allegations on the « legitimate claim » of the Dioulas to Ivorian nationality as a right guaranteed by Article 5 of the Charter. It follows that the right

referred to is presumed, and consequently there is the need to consider the alleged violation to determine the validity of the claim. To achieve that, the Commission is going to clarify the meaning of the right to the recognition of legal status under the terms of Article 5 of the Charter, and to determine whether the Dioulas or persons considered as such have a valid claim particularly through the right to nationality and in case the answer is in the affirmative, whether the right derived therefrom has been violated.

96. Concerning the meaning of the right to recognition of legal status protected by Article 5 of the Charter, the Commission notes that legal status is the ability of an individual to have rights and obligations, and for that matter he has a role in the legal activity. A legal person is also called a « subject of law » even though it is necessary to make a distinction between natural persons and corporate entities.<sup>13</sup> Generally, with regard to a natural person who is a human person, the legal status is acquired at birth and it expires on his/her demise. That said, the legal status appears as a simple fiction as it is only an ability that is likely to be realized or not according to whether it may receive recognition from third parties, natural persons or institutions. Thus, without recognition, the legal status remains only an unproductive attribute which cannot bear any of its potential fruits, especially a series of fundamental rights and obligations. The specific right protected by Article 5 of the Charter is consequently a respondent to an obligation falling on any State Party to the Charter to recognize an individual's capacity to enjoy rights and to exercise his obligations.
97. In the current circumstance, as suggested copiously by the Complainant in his submissions, it is crucial to solve the issue as to whether there is a « right to nationality » according to the provisions of Article 5 of the Charter. On this point, the Commission notes that the right guaranteed by Article 5 of the Charter is one of « recognition of the legal status » as defined above. That said, nationality is a basic component of this right in view of the fact that it is the legal and socio-political manifestation such as the status of a refugee or a resident granted by a State to an individual for the enjoyment of rights and the exercise of obligations. The Commission confirms this position by reaffirming in its *Resolution 234 on the right to a nationality* that « the right to a nationality of any human person is a fundamental right derived from the terms of Article 5 of the Charter and essential for the enjoyment of other fundamental rights and freedoms guaranteed by the Charter ». It appears from these considerations that the Ivorian nationality is the component, at least the primordial mode of realization of the right to the recognition of legal status that the Dioulas of Côte d'Ivoire are invoking. It is necessary then to

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<sup>13</sup> Dalloz *Glossary of Legal Terms* (2001) 413.

deduce that nationality is a right that the Dioulas are laying claim to under the terms of the presumed obligation of the State of Côte d'Ivoire to recognize their legal status. Once this clarification is done, then one may have to understand Ivorian nationality; that is finding the definition for the notion of « Ivoirian », before determining whether the Dioulas have a valid claim to it. But, first of all, there is the need to clarify the concept of nationality.

98. The Commission believes that nationality stands for both a *de facto* and *de jure* notion. It must consequently be understood from the standpoint of both the socio-political meaning and its political significance. Under its legal aspect, nationality means a « legal affiliation of a person to the population constituting a State »<sup>14</sup> or yet still « the quality of a person who belongs to a State due to political and legal links ... ».<sup>15</sup> This meaning of nationality is derived from the letter of provisions of Article 5 of the Charter relating to legal status and therefore to nationality. On the other hand, the sociological and political meaning of nationality extends beyond the legal dimension. It goes beyond the « link an individual has with a nation; that is a community of persons united by traditions, aspirations, sentiments or common interests ».<sup>16</sup> From this perspective, nationality may be considered appropriately as the determination of existence as a nation of a human group whose members are united by ethnic, social and cultural traits ; this human group as long as it claims the right to exist as a nation or aspires to form a nation.<sup>17</sup>
99. While taking note of these conceptions on nationality, the Commission is of the opinion that nationality as an ethnic, social and cultural unit poses a fundamental problem in the African context since the demarcation of borders inherited from independence has caused a split of entities of nationalities that existed before colonization. This territorial carving which formed independent African States from the 1950's therefore saw a regrouping, in a sudden and brutal manner, of erstwhile homogeneous ethnic and socio-cultural entities to constitute groups of States totally heterogeneous.<sup>18</sup> It can therefore be deduced that the new leaders of the independent African States then had to resolve a difficult socio-political and historical equation to form « imaginary- communities – or nationalities » from ethnic and cultural groups that existed already as communities. In short, it was up to the new sovereign African States to create national entities out of several entities dismantled by colonization and to redraw the borders.

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<sup>14</sup> H Batiffol et P Lagarde op. cit., N°59, 60

<sup>15</sup> Y Loussouarn *et al Private International Law* (2007) 790.

<sup>16</sup> J Derruppé *Private International Law* (1988) 10.

<sup>17</sup> See Derruppé op. cit.

<sup>18</sup> See B Manby *Nationality in Africa* (2011) 17-25.

100. In the light of this prior clarification, the Commission believes that in many African States, any legal creation of nationality must essentially take its main source from a sociological and political understanding but also from the historical source of nationality. Considering the foundations recalled above, an alternative approach would constitute not only a denial of history but also an open door for dismantling new national entities, which people who were constrained by a wrongful demarcation of boundaries, have striven to build in several decades or even centuries. These would be a guarantee against inter-ethnic conflicts that have confronted a great majority of new African States. In this regard, the Commission believes that a more appropriate understanding of post-independence nationality in Africa is the one suggested by the International Court of Justice in the *Nottebohm Case* in the following terms :

[Nationality is] a legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It can be said that it is the legal expression of the fact that an individual on whom it is conferred, either directly or by law, or by an act of the authority, is in actual fact more closely attached to the population of the State which confers it on him/her than any other State.<sup>19</sup>

101. From the foregoing, the Commission is of the opinion that a determination of the Ivorian nationality must necessarily proceed from the consideration of the historical, legal and political elements which none of the Parties has called into question. From the related submissions, it appears that the historical foundations of Ivorian nationality are to be sought from the settlement of the people from the 13<sup>th</sup> century, from what later came to be referred to as the Côte d'Ivoire territory. In the 13<sup>th</sup> century, the Mandés came from territories in the north, currently occupied by Guinea, Mali, Burkina Faso, Liberia and Sierra Leone to settle in the North-West of Côte d'Ivoire. To date, the ethno-cultural space of the Mandés geographically covers Côte d'Ivoire and each of the neighboring countries mentioned above. A second major wave of migratory movement was constituted by the Akans who came from the territory currently called Ghana in the 17<sup>th</sup> century to occupy the eastern and central regions of Côte d'Ivoire. The Akans are divided to date between Côte d'Ivoire, Ghana and Togo. As for the Krou and Voltaïque who occupy the West and the North-East of Côte d'Ivoire, today they can be found in the East of Liberia and in the South of Mali and Burkina Faso and in the North of Ghana and Togo.<sup>20</sup>

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<sup>19</sup> *Nottebohm Case (Liechtenstein v. Guatemala)* second phase) Order of 6 April 1955 ICJ Reports 23.

<sup>20</sup> See I Doumbia 'Rapport d'expert sur la question de la nationalité en Côte d'Ivoire' (2010) ; O Merabet 'Etude sur le profile migratoire de la Côte d'Ivoire' (2006) [http://www.eeas.europa.eu/delegations/cote\\_ivoire/documents/more\\_info/7\\_doc\\_fr.pdf](http://www.eeas.europa.eu/delegations/cote_ivoire/documents/more_info/7_doc_fr.pdf) (consulted on 14 October 2014) ; Diakadi *République de*

102. The Commission notes that these initial waves of migration continued at a much slower pace before intensifying during the colonial period particularly from 1919 through recruitment of workers from Upper Volta (current Burkina Faso) for the development of export crop cultivation in the South of Côte d'Ivoire. The colonial power had then changed the borders of the territories between Côte d'Ivoire and Burkina Faso, to constitute a unified territory of « Upper Côte d'Ivoire » in order to facilitate the movement of agricultural workers from Upper Volta (called Burkina Faso today) in the North to the South. The said territory was further divided into two in 1947 but the migration continued. From 1960, the first President of independent Côte d'Ivoire, Mr. Félix Houphouët-Boigny encouraged and facilitated these movements.<sup>21</sup> The consequence was that, in the middle of the 1980's, Côte d'Ivoire was already the *melting pot* of ethno-cultural groups originally coming from seven different prospective African States in the West mentioned above. It is a well known fact that Côte d'Ivoire was therefore positioned as a country of immigration par excellence in West Africa.<sup>22</sup>
103. More importantly, the Commission notes that among the population which migrated to Côte d'Ivoire between the 13<sup>th</sup> century and the period of independence, the term « Dioula » refers mainly to the Mandé from the North and the Upper Voltans who in 1998 constituted 34 percent of the population. That said, the people who were originally from several countries in West Africa, particularly the immigrants from Mali, Guinea and Burkina Faso, who migrated just before or after the independence were also identified as « Dioula ».
104. To conclude on the historical basis of the claim by the Dioulas to Ivorian nationality, the Commission notes that the settlement of Dioulas on the current Ivorian territory from the initial migrations of the 13<sup>th</sup> century up till the independence period continued without any interruptions. In the absence of migratory flows the other way round, these Dioulas became an integral and a definitive part of the formation of the Ivorian ethno-cultural landscape as confirmed by competent official departments of the Ivorian State.<sup>23</sup> In other

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Côte d'Ivoire 'Histoire' [http://www.diakadi.com/afriquedelouest/pays/cote\\_d\\_ivoire/infos/hist.htm](http://www.diakadi.com/afriquedelouest/pays/cote_d_ivoire/infos/hist.htm) (consulté 14 octobre 2014) ;

<sup>21</sup> See Manby op. cit. 115-119 ; Doumbia op. cit. 2-5.

<sup>22</sup> See International Organization for Migration *Migration in Côte d'Ivoire : Profil national 2009* (2009) <http://www.iomdakar.org/profiles/fr/content/profil-migratoire-cote-divoire> (consulté, 14 octobre 2014) ; ECOWAS 'Migrants in periods of crisis in the ECOWAS region' [http://www.processusderabat.net/web/uploads/Paris-meeting-2014/FR/Migrants-en-periode-de-crise-dans-l-espace-CEDEAO\\_S.Nfaly\\_FR.pdf](http://www.processusderabat.net/web/uploads/Paris-meeting-2014/FR/Migrants-en-periode-de-crise-dans-l-espace-CEDEAO_S.Nfaly_FR.pdf) (consulted, 14 October 2014) ; S Bredeloup 'La Côte d'Ivoire ou l'étrange destin de l'étranger' 19 (2003) *Revue Européenne des Migrations Internationales* 16-17.

<sup>23</sup> See particularly National Statistical Institute of Côte d'Ivoire, General Population Census, 1998.

words, based on the above-mentioned considerations, the Dioulas, over the decades and even centuries, formed the nucleus of a historical Ivorian nationality by building together with the other ethnic groups from other territories such as the Akans and the Krous, a social fact of attachment, a community of interests, sentiments, in short, a « living together ». The Commission therefore concludes that the process of the historical formation of the current State of Côte d'Ivoire gives the « Dioulas » of these migratory periods, the indisputable basis of a valid claim to Ivorian nationality. The subsequent issue is whether this historically established claim crystallized into a legal guarantee at the time of the initial creation of nationality in Côte d'Ivoire, to be precise, at independence in 1960.

105. On this point, the Commission believes that whereas the wave of migrations continued in the post-independence era at least until the demise of President Houphouët-Boigny in 1993, for purposes of determining the legal constitution of Ivorian nationality, it is appropriate to position oneself in the period of independence in 1960. This milestone is justified by the fact that the enjoyment of the right to Ivorian nationality could only be granted by the State of Côte d'Ivoire which legally existed from 7 August 1960, date on which it gained international sovereignty. In other words, the legal existence of Ivorian nationality which can be termed as original could not have started before the birth of the sovereign State entity called by the name Côte d'Ivoire today.

106. The Commission notes that the normative instrument establishing the legal existence of the initial or original Ivorian nationality is *Law No. 61-415 of 14 December 1961 relating to the Ivorian Nationality Code*.<sup>24</sup> Consequently, it is this instrument that one must invoke when there is the need to establish who is legally Ivorian or not and consequently whether the legislation on nationality complies with the provisions of Article 5 of the Charter, particularly in respect of Dioulas and other alleged victims in this Communication.

107. Under the terms of the relevant provisions of this Ivorian nationality Code :

Article 6 New « An Ivorian is a:

- 1- Legitimate or legitimated child, born in Côte d'Ivoire, except where his two parents are foreign citizens ;

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<sup>24</sup> Amended by Law No. 72-852 of 21 December 1972.

- 2- Child who is born out of wedlock in Côte d'Ivoire, except where his parentage is legally established in respect of his two foreign parents, or one parent, also a foreigner ».

Article 7 New « An Ivorian is a:

- 1- Legitimate or legitimated child, born abroad to an Ivorian parent ;
- 2- Child born out of wedlock abroad whose parentage is legally established in respect of an Ivorian parent ».

108. As mentioned above, the Commission is of the view that the issue of nationality in Africa is closely linked to colonial history.<sup>25</sup> Generally, in view of this historical context, the creation of legal nationality in Africa at independence must necessarily answer at least three basic questions : 1) who is a « national » ; 2) who is a « foreigner » ; and 3) the parameters for the determination of nationality without any ambiguity based on the historical context described above, namely, by taking into account in particular, at the very least, the register of individuals or homogeneous ethnic groups residing in the said territory at independence but also the reference date for the determination of this presence.

109. The jurisprudence of the Commission and international law confirm the requirements formulated. With regard to its jurisprudence, the Commission is of the view that unreasonable legal provisions for the acquisition of nationality are arbitrary and therefore not consistent with the right to nationality guaranteed by Article 5 of the Charter. In this regard, the Commission refers particularly to its decision in *Legal Resources Foundation v. Zambia*, where it concluded that « To suggest that a Zambian of origin is the person born and whose parents are born in the geographical area which later came to be known as the territory of the sovereign State of Zambia can be arbitrary and its retrospective application cannot be justifiable under the terms of the Charter ».<sup>26</sup> Furthermore, in *Modise v. Botswana*, the Commission decided that failure or refusal of a Respondent State to grant nationality on grounds that the Complainant had obtained another nationality or had accepted it without showing any proof is a violation of the right to recognition of legal status.<sup>27</sup>

110. The Commission notes that in the examples cited above, the legal definition of nationality is first of all characterized by a specification of the

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<sup>25</sup> See also the African Union Commission *Delimitation and demarcation of borders in Africa : General considerations and case studies* (2013) 55-56.

<sup>26</sup> *Legal Resources Foundation v. Zambia* Communication 211/98 (2001) AHRLR 84 (ACHPR 2001) para 71.

<sup>27</sup> See *Modise v. Botswana* Communication 97/93 (2000) AHRLR 30 (ACHPR 2000) para 88.

provisions relating to the determination of the status of a « national » and by extension, of a clear distinction between nationals and foreigners. Then, the national legislations concerned also take the historical legacies of the colonial territorial administration as reference point; namely, the sole European nationality prevailing before any existence of African nationalities. Finally, the time limit adopted is common and cross-cutting: the point of departure is the date of gaining international sovereignty. This date also coincides with the date of the legal establishment of most of the post-independence African nationalities. In the African context, these fundamental constituent elements of the original or initial legal establishment of nationality are unavoidable notwithstanding the option each State was able to make towards the acquisition of nationality by the *jus sanguinis* and *jus soli* principles exclusively and concomitantly. Consequently, the silence or the failure to clearly take into account the fundamental principles of nationality is likely to impede the enjoyment of the right of recognition of legal status. This applies particularly to thousands of persons whose presence and residence came long before the establishment of legal nationality.

111. This conclusion is based both on jurisprudence and also on international law. From the standpoint of jurisprudence, the Commission further notes that apart from its conclusions in *Legal Resources Foundation* and *Modise*, it also considered in *Amnesty International and Others v. Sudan* that a decree whose terms authorize the restriction of freedoms for vague reasons or are based on mere suspicions violates the spirit of the Charter.<sup>28</sup> Such a conclusion derives from the logic, to the extent that when the law is vague and lacks precision, it opens the door for arbitrariness, abuse and its interpretation is dependent on the goodwill of the authority vested with power.
112. The recognition of the pernicious and intrinsically flawed nature of unclear standards has become generally well known both in the practice of national courts and before regional human rights protection organizations.<sup>29</sup> In this regard, the Commission adopts the doctrine of « invalidity on grounds of vagueness » which quite rightly requires to be purely and simply declared null and void and without any effect; that is any standard which in essence already consists of seeds of improper application or simply a deprivation of a

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<sup>28</sup> See *Amnesty International and Others v. Sudan* Communications 48/90, 50/91, 52/91 et 89/93 (2000) AHRLR 297 (ACHPR 1999) para 59.

<sup>29</sup> See *South African Liquor Traders Association and Others v. Chairperson Gauteng Liquor Board and Others*, Constitutional Court of South Africa (2006) para 27 ; *Prosecutor c. Robert Sekabira and 10 Others*, High Court of Uganda, Decision 0085-2010 paras 12-13 ; *Newspaper "La Nación" v. Costa Rica*, Inter-American Human Rights Commission, Case No. 12.376 para 162 (2001) ; *Gillan and Quinton v. the United Kingdom*, European Human Rights Court, Decision of 12 January 2010, para 85.



subjective right.<sup>30</sup> The Commission is of the view that following the application of this doctrine, the disputed law itself becomes a source of violation of rights. Thus, as illustrated clearly by the *Modise* case, the lack of precision of a law on nationality may promote the imputation of an alternative nationality, which could be addressed within the context of violating not only the provisions of Article 5 of the Charter but also of the relevant international law.

113. It is at this turning point of practical application of the right to recognition of the legal personality that a bridge needs to be built between the provisions of the Charter and the provisions of the thematic international Conventions relating to nationality.<sup>31</sup> Based on the provisions of Articles 60 and 61 of the Charter, the Commission notes that a judicious consideration of the case in point requires recourse to specialised international standards in view of the general nature of the recognition of the legal status laid down in Article 5 of the Charter. In the interpretation of these provisions of the Charter, the standards with much relevance and precision in this matter are indisputably the 1954 United Nations Conventions on the Status of Stateless Persons and the 1961 Convention on the Reduction of Cases of Statelessness.<sup>32</sup> This relevance is justified by the fact that one of the most dramatic consequences of the vagueness of legislation on nationality is statelessness which is defined as the situation of a person to whom no State has granted the right of recognition of nationality for the enjoyment of a legal status.
114. Under the terms of the provisions of Article 1 of the 1954 Convention on the Status of Stateless Persons, being stateless is defined as « a person that no State considers as a citizen in the implementation of its legislation ». With regard to the Convention on the reduction of stateless persons, it enacts in Article 8(1) that « The Contracting States shall not deprive any individual of their nationality where this deprivation will make the subject stateless ». In a more precise and complementary approach, the African Charter on the Rights and Welfare of the Child compels States Parties, in Article 6(4), to « ensure that their legislations recognize the principle according to which a child enjoys the right to acquire the nationality of the State on whose territory he/she was born at the time of his/her birth, he/she cannot claim the nationality of any State in accordance with its laws ».

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<sup>30</sup> See in general *Rekvényi v. Hungary*, CEDH, Decision of 20 May 1999; *South African Liquor Traders Association and Others*, op. cit.

<sup>31</sup> See Articles 60 and 61 of the Charter.

<sup>32</sup> United Nations Convention on the Status of Stateless Persons, 28 September 1954 <http://www.unhcr.org/3bbb25729.html> ; United Nations Convention on the Reduction of Cases of Statelessness, 30 August 1961 <http://www.unhcr.org/3bbb286d8.html>.

115. From the cross examination of these different prescriptions, a key obligation emerges : the obligation of the State on whose territory a person claims to have been born to grant him nationality, unless the said State cannot prove that the person in question has already acquired or is eligible to another nationality.<sup>33</sup> The totality of all the historical and legal prerequisites established above is of key relevance to the interpretation and implementation of the right guaranteed by Article 5 of the Charter. That is the case because one of the ultimate purposes of the historical approach to the determination of nationality in Africa is to resolve, once and for all, the dramatic equation of imposing arbitrary borders on new sovereign African States at independence.
116. In this case, the Commission notes that in its letter, the Ivorian nationality Code does not take its source from ethnic and cultural diversity and from the historical dynamics of the creation of the population that constituted the new State of Côte d'Ivoire at independence. In fact, though one cannot begrudge the said legislation for opting for nationality by blood, the Ivorian parent from whom one inherits the original nationality should have been clearly defined, particularly during the time when one belonged to a list of groups of people that inhabited the colonial territory which became « Côte d'Ivoire » at independence. It has nothing to do with the Ivorian Code. However, more surprisingly, whereas the status of « national » is undefined, the law tends to define nationals by contrasting it with foreigners. In short, the rule to determine one or the other of these two statuses consists of considering that an Ivorian is someone who is not a foreigner and vice versa. Consequently, the status of the foreigner is also not defined.
117. From the point of view of the date constituting the reference deadline, the Code also does not mention independence. It is true that under the terms of the provisions of Article 8 (1) of the said Code, one is deemed to have been an Ivorian at birth even if the conditions to acquire nationality are subsequent to birth. However, the provisions of Article 8 (1) go back to the quality of the Ivorian as defined by the provisions of the Code of which the Commission has already concluded about its lack of precision and non conformity with the prescribed criteria under the relevant international law.
118. Furthermore, and with reference to the relevant law on the territory corresponding to the pre-independence Côte d'Ivoire, the only nationality given was the French nationality, in any case at least from the creation of the colony of Côte d'Ivoire, on 10 March 1893. The Parties do not dispute the fact

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<sup>33</sup> United Nations Convention on the Status of Stateless Persons, 28 September 1954 <http://www.unhcr.org/3bbb25729.html> ; United Nations Convention on the Reduction of Cases of Statelessness, 30 August 1961 <http://www.unhcr.org/3bbb286d8.html>.

that at independence on 7 August 1960, there was nothing like Ivorian nationality and that all were French subjects. The Commission considers that the consequence should be that no resident born before independence can lay claim to Ivorian nationality. If that is the case, then by extension and by implementing the provisions of Articles 6 and 7 of the nationality Code, the Ivorian child referred to would not have inherited a nationality by blood relations as a result of lack of existence of the « Ivorian origin». To proceed by such reasoning, the non existence of Ivorian nationality of origin through the fault of the law instituting it would have logically been transmitted from generations to generations for all the inhabitants of Côte d'Ivoire. The Commission is of the opinion that it would simply be a legal absurdity. Such a legal haziness violates the provisions of Article 5 of the African Charter as it renders it impossible to determine precisely the criteria for the acquisition of the legal status of a « national » or a « foreigner ».

119. At this stage, it should be noted that in order to conclude that the right of the Dioulas to nationality has been violated, we should assess the extent to which the application of the law has caused them harm. In this regard, the Commission notes that the vagueness of the law has conferred all discretionary powers to grant nationality on the relevant authorities. The reported facts which were sufficiently proven and well documented by the complainant are not challenged by the Respondent State. In practice, the « Dioulas » are refused nationality through an extremely discretionary application of the law, at least where its vagueness is concerned. This manifested in the refusal by the relevant authorities to issue persons from the « Dioula » ethnic group or persons considered as such with documents attesting to recognition of Ivorian legal status by the Ivorian State. Thus, whereas persons of the other ethnic groups who are perceived as Ivorians « of origin » obtained it systematically and without hindrances, documents like birth certificates and the national identity cards were not issued to Dioulas.

120. In certain cases, documents previously obtained were challenged or seized for good. Analyses and statements attached to the docket by the Complainant prove indisputably that this obstruction to the access to nationality documents was, and continues to be, based on a wrongful interpretation of the provisions of the nationality code, particularly the vagueness of the said provisions. The result of this is that several thousands of persons born in Côte d'Ivoire to persons who were themselves born in Côte d'Ivoire, and who have always lived there, find themselves in a situation of statelessness. Such a situation immediately leads to a violation of their right to the recognition of their legal status guaranteed by Article 5 of the Charter.

121. The Commission notes that through its grounds on the merits, the Respondent State holds that the issue of statelessness has been or is being resolved. To this effect, the Respondent State reports that a set of laws necessary to arrive at valid conclusions have been adopted and to consider their relevance and the extent to which they settle the issues raised by the Complainant. *First*, the Respondent State invokes the United Nations Conventions on Statelessness which was ratified on 13 September, 2013. As it has concluded above, the Commission considers that the Ivorian nationality code is not in keeping with the Conventions ratified by the Respondent State. Better still, the said Conventions take precedence over Ivorian law and, with Côte d'Ivoire being a monistic State, are immediately applied internally. The same can be said that under the provisions of Article 3 of the Nationality Code, « The provisions on nationality contained in the international treaties and agreements duly ratified and gazetted shall apply even if they are contrary to the provisions of the domestic Ivorian law ». The clarity of these provisions requires no interpretation. Applicants for Ivorian nationality have a legal claim, subject to reasonable acquisition requirements, when they do not hold the nationality of any other State, and when the refusal to grant them Ivorian nationality status would make them stateless. Furthermore, and as this study looks beyond this situation, a distinction must be made between the Dioulas and the others as well as the nationality categories and the related advantages.
122. *Secondly*, for a judicious evaluation of the actions taken by the Government of the Respondent State, it is indispensable to examine the standards for the application of the Conventions on statelessness duly ratified by Côte d'Ivoire in 2013. The Parties agree in effect on the consideration of all the measures taken up to the date of submission of their respective conclusions on the merits, without prejudice to the consideration of the applications for reliefs for violations committed. As the Commission has already observed, the relevant provisions of the Conventions on statelessness and the related Directives are reference standards par excellence for the implementation of the right to the recognition of the legal status guaranteed by Article 5 of the Charter. To consider the grounds of the Respondent State, which tends to lead to the conclusion that its reforms have resolved the issues raised by this Communication, one must, therefore, compare the said reforms with the previous observations of the Commission and the international standards mentioned *supra*.
123. As an introductory overview to the evaluation of the reforms invoked by the Respondent State, the Commission notes that between the date of its submission and the consideration of the merits, the Government of Côte d'Ivoire enacted two laws in 2004 to amend the provisions of the Nationality

Code of 1961. By way of major amendments, the said laws respectively introduced the acquisition of nationality for foreigners who marry Ivorians and the introduction of a special temporary nationalization procedure for persons who could not apply for nationality between 1961, the year the Code was adopted, and 1972, when the provisions authorizing the acquisition through a simple declaration were repealed. The ineffectiveness of these reforms, unanimously recognized by the Parties, led to the implementation of the programme for the identification of Ivorians and foreigners living in Côte d'Ivoire under the aegis of the Ouagadougou Peace Accords concluded in 2007 between the Government of the time and the armed rebellion, following the 2002 failed coup d'état. The Parties also agree that the mobile court hearings following the said accords and the distribution of supplementary judgments have not resolved the issues of nationality and statelessness, particularly concerning the Dioulas. The subsequent reforms are those which were undertaken in 2013 by the administration of President Alassane Ouattara and which the Commission will concentrate on in order to consider compliance with the standards mentioned above.

124. It is relevant to concentrate on the 2013 reforms because they are the most recent, on the one hand, and because they, according to the allegations of the Respondent State, resolve the issues which previous reforms have not been able to resolve, on the other hand. Before considering this claim, the Commission reiterates that in this case in point, a distinction must be made between at least two sets of victims: the Dioulas and others. As a reminder, the Dioulas are one of the ethnic groups which formed the original population of Côte d'Ivoire through successive waves of immigration and uninterrupted residence from the 13<sup>th</sup> Century up to the date of the legal birth of Côte d'Ivoire. As the Commission has concluded above, the historical and legal claim of the Dioulas is consubstantial with the birth of Côte d'Ivoire and the first and original Ivorian nationality. Besides, and consequently, any applicant for Ivorian nationality who has blood relations with these Dioulas of the first generation migrants logically inherits a similar claim.

125. However, the Commission considers that there is another category of Dioulas. These are Dioulas who have emigrated to Côte d'Ivoire for the first time after independence and who, on account of this fact, cannot claim legal Ivorian nationality established before their first contact with the independent State of Côte d'Ivoire. These second generation migrants are particularly made up of persons with about the same ethnic origins and culture as the first Dioulas and whose arrival in Côte d'Ivoire was particularly spurred on by the 'pro-immigration' policies of President Houphouët-Boigny. Generally, they emigrated between 1960 and 1993, the year marking not only the demise of the first president of Côte d'Ivoire, but also the end of 'amended' enforcement

of the Code of 1961, that is to say that it is fairer and more consistent with international law. They could also be persons residing in the country before independence, but who have never claimed Ivorian nationality or who had come from other colonial territories. In principle, second generation Dioulas belong to the same category of claim as foreigners who have emigrated to Côte d'Ivoire from the independence era. However, there are major differences between second generation Dioulas and foreigners: time spent within the territory must be taken into account entirely; privileges attached to nationality obtained in practice which must remain established, and any new law must maintain these privileges and take retroactive effect for their beneficiaries.

126. The Commission considers that this distinction between the various categories of claimants to nationality in Côte d'Ivoire is indispensable when we consider issues from the perspective of the modes of obtaining nationality as well as the advantages and related limitations. The Commission notes that with regard to nationality in general, and within the Ivorian context in particular, nationality is acquired through various modes with diverse implications. A careful consideration of the relevant provisions of the Ivorian nationality Code shows that a whole chapter is dedicated to nationality by « *attribution ... as nationality by origin* ». This is the chapter which includes Articles 6 and 7 at the centre of the controversy surrounding nationality in Côte d'Ivoire. Besides, the Code provides that one can « *acquire* » Ivorian nationality. The acquisition may be done *automatically* particularly for adopted children and foreign spouses; *by declaration* for persons born in Côte d'Ivoire to foreign parents until the repeal of the said provisions in 1972; and, finally, *by a decision of the public authority*, a mode provided for in this instance for naturalization or reintegration of the foreigner.<sup>34</sup>

127. The Commission notes that the Code does not provide for any incapacity or limitation with regard to the enjoyment of Ivorian nationality through granting by way of nationality by origin. Better still, Article 8 of the said law provides that « the Ivorian of origin » is deemed to have been an Ivorian right from birth, even if these requirements to qualify for the said status are subsequent to the said birth. On the other hand, a series of situations of incapacity is attached to nationality by acquisition, including, among others and quite significantly, a time frame of ten years to be eligible for an elective mandate, five years to qualify as a voter, and five years to qualify for the bar, the bench or to become an officer of the court. To determine the extent to which the recent reforms resolve the issue of nationality in Côte d'Ivoire, we

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<sup>34</sup> Emphasis of the Commission.

must, therefore, compare the legal status of the victims identified above to the rights and mechanisms provided for by the said reforms.

128. Starting from the first generation Dioulas, the Commission has already concluded that their right to Ivorian nationality is consubstantial with the historic and legal establishment of the said nationality. Consequently, only the mode of granting Ivorian nationality by way of nationality of origin applies to them. In this regard, one could say that *Law No 2013-653 of 13 September, 2013 on the special provisions on acquisition of nationality by declaration* is a significant advancement in the sense that it extends its application to persons residing regularly and without hindrance in Côte d'Ivoire before 7 August, 1960 and their children born in Côte d'Ivoire. Indeed, these provisions under Article 2 of the said law use the date of independence and residence prior to this date as points of reference. At first glance, such provisions appear to resolve the issue of the nationality of the Dioulas. However, many key factors show that this reform does not substantially resolve the issue.
129. First, under the provisions of Article 10 of the Implementing Order of the said law, the reform of the acquisition of nationality by simple declaration is applicable for a period of 24 months, as from the date of its publication, i.e. 22 January, 2014. According to statistics produced by the United Nations High Commission for Refugees (UNHCR), and which statistics are not challenged by the Parties, at least 700,000 persons were stateless in Côte d'Ivoire, as at the date of this decision. The Commission notes that at the end of the initial registration period which ended on 31 July, 2014, only 80, 000 persons had submitted applications for the acquisition of Ivorian nationality. The second and last registration period will run from March to June, 2015, i.e. for a period of four months. Using the fact that only 80,000 potential applicants registered in 20 months as the point of reference, the probability of the over 600,000 remaining persons doing so in four months is very low.
130. On this same point, the Commission refers to the outcome of the previous reforms to note that experience does not seem to have informed the 2013 reforms. Among others, it is indeed clear that the restriction of closed deadlines has led to such alarming figures of stateless people. Thus, the nationality Code had granted only one year for the acquisition of nationality by declaration. Hundreds of thousands of persons who were however residing in the country before independence were thus unable to obtain their nationality documents. Similarly, the 2004 reform which reintroduced acquisition by declaration and which provided for a period of twelve months for the said acquisition was hardly more successful. On the time necessary for the effective implementation of the reform, therefore, the Government of the

Respondent State does not seem to assess the statistics relating to application for the acquisition of nationality.

131. Furthermore, it is then necessary that at least one of the modes of acquisition of nationality provided for by the 2013 reforms should be applicable to the Dioulas. This is hardly the case because the Law quoted above only really provides for simple declaration in the case of naturalization. Indeed, the list of beneficiaries of the reform only makes reference to foreigners. It is true that a provision covers the status of the Dioulas in the sense that it takes regular residence before independence into account. Having said that, the provision requires « uninterrupted » residence which could be difficult, and indeed impossible to prove, particularly for children born to residents several generations after independence. What is worse is that in its very heading, the Law only deals with « acquisition » and makes no mention of « attribution by way of nationality by origin. »

132. Following the preceding points, the Commission notes that naturalization procedure only holds for persons whose connection is not prior to or consubstantial with the legal establishment of Ivorian nationality, i.e. particularly foreigners residing there before independence, but who have not considered the acquisition of Ivorian nationality, or those who emigrated after independence. The Commission has already concluded that first generation Dioulas cannot be foreigners; neither can their blood descendants, because they have been an integral part of the original and legal Côte d'Ivoire. Whatever the case, the modes of acquisition of nationality provided for by *Law No 2013-653 of 13 September, 2013* and its *Implementing Order No 2013-848 of 19 December, 2013* are applicable to this category of victims. In reality, what these reforms have in common with the nationality Code is that they neither define the notion of an « Ivorian » nor that of a « foreigner », let alone identify clearly and holistically the groups of settlements present in Côte d'Ivoire at the time of the legal establishment of Ivorian nationality. In this case, the considered reforms can only be of benefit to the Dioulas after the original status of the latter has been restored. Whatever the case, the most appropriate procedure would be to grant the Dioulas Ivorian nationality by way of nationality by origin and by simple declaration.

133. With regard to second generation Dioulas and foreigners, the Commission has already noted that they are governed by a similar status, the difference being that the time spent in Côte d'Ivoire must count and that all rights acquired should be maintained retroactively, among others. An appropriate study of this second category of victims requires an introductory reminder of the legal standards which have governed them since the adoption of the nationality Code. In 1961, the said Code provided that minors born in Côte



d'Ivoire to foreign parents acquired nationality through a simple declaration. In 1972, the said provisions were repealed. They were only reintroduced in 2013 through the Law to which reference has been made above. However, the relevance and effectiveness of their reintroduction are being challenged by the Complainant. Consequently, it is proper to subject them to evaluation. As it has indicated above, the Commission notes that the right to nationality as a recognition and manifestation of legal status must be established on the basis of the obligation of a State to recognize as its nationals all persons who have not acquired or cannot acquire another nationality and who, if the nationality is not granted, would be stateless. The Parties agree that at the very least, victims of the second category find themselves in this situation.

134. However, fundamental clarifications should be made because the conclusions on points of law will depend on the nature and scope of remedies and reparations to be prescribed. In this regard, the Commission notes that the timeframes for the implementation of successive reforms, including those of 2013, have shown their limits. By way of illustration, and as has been recalled above, it is the nullity of the extremely short and unrealistic timeframe of one year which has made it impossible to declare nationality and paved the way for the numerous abuses suffered by victims. Successive Governments of the Respondent State have recognized the problem of nationality as the main factor behind the socio-political crisis and armed conflict which Côte d'Ivoire has experienced from 2002 in particular.
135. Furthermore, although it is true that the lack of use of the simple declaration procedure granted under the 1961 Code is imputable to victims, the ineffectiveness of the set timeframes can be blamed on the successive administrations of the Respondent State. Better still, the behavior and practice of the Governments of the Respondent State, particularly from 1961 to 1993, are unambiguous with regard to the recognition of certain privileges relating to nationality for second generation Dioulas and foreigners. Thus, the authorities have, through various successive laws since independence, recognized for these persons the right to acquire nationality automatically through the simple declaration procedure instead of acquisition by naturalization. In such a context, and particularly as a result of the « pro-immigration » policy implemented by Côte d'Ivoire for over three decades after independence, the practice of the Respondent State has been to entertain the legitimate sentiment of a right of persons concerned to Ivorian nationality.
136. Thus, many of these persons have even obtained identification documents like the Ivorian birth certificate, certificate of nationality, the national identity card or the passport. On the other hand, a vast majority of them have never obtained them simply because, since they have never had any links with any

other State similar to those they had with Côte d'Ivoire, they have never felt like citizens of another country other than the former. However, and more significantly, the authorities of the Respondent State have conceived the feeling of belonging to Côte d'Ivoire through a vague and inaccurate Code. Besides, they have entertained this sentiment for decades and have granted persons concerned both documents attesting to that effect and rights they have enjoyed over several generations before the outbreak of political troubles which gave birth to the concept of « ivoirité » in the mid-90s. Incidentally, the Commission considers that the fact that the Respondent State has conceived and entertained this sentiment of « living together » to include the victims, the sentiment and attachment these people have experienced and the privileges they have enjoyed therefrom crystallized into a deep sentiment of having become Ivorians. The Commission considers that this sentiment and its attendant privileges are established rights.

137. All the legal consequences must be associated with these established rights. Since the reforms of 2013 were less advantageous than those which led to the benefit of the established rights for the second category of victims, they cannot be applicable to them. Thus, the Law of 2013 is more restrictive and demanding, in the sense that, it substitutes an extremely discretionary naturalization procedure which has demonstrated its limits in the past for a simplified and fairer acquisition procedure. In short, the Law is explicitly based on good intentions, but its substance and procedures are inappropriate. The facts reported by the Complainant clearly prove that this state of affairs always prevents victims from acquiring nationality. The Commission considers that the consequences of the established right should lead to the retroactive application of the enjoyment of the rights, particularly taking both the era and the time of residence into account. The new reforms do not meet these demands. Consequently, they do not entirely resolve the issues raised by this Communication and are not in keeping with the relevant provisions of Article 5 of the Charter.

138. In short, on the right to nationality as a recognition of legal status, the Commission observes that the Ivorian nationality Code establishes original nationality for Ivorians and acquired nationality for foreigners, but fails to clearly define who an outright Ivorian is, who an Ivorian by origin is and who a foreigner is. This way, the Code and laws adopted by successive Governments of the Respondent State have prevented access to nationality both theoretically and practically. In practice, the Commission concludes that first generation Dioulas have a historically and legally founded claim to Ivorian nationality « by origin » or « by attribution ». With regard to second generation Dioulas and foreigners defined above, they have the same claim by established rights to nationality by naturalization through the most

advantageous procedures put in place by the Respondent State since the establishment of legal nationality. In this regard, successive reforms undertaken by the Respondent State are significant but inadequate. Consequently, the laws and practices of the Respondent State violate the provisions of Article 5 of the Charter with regard to all victims.

## Right to the Respect of Dignity

139. Under the Preamble of the African Charter quoting the Charter of the Organization of African Unity, dignity is one of the « essential objectives for the achievement of the legitimate aspirations of the African peoples ». Dignity is, therefore, the soul of the African human rights system and which it shares with both the other systems and all civilized human societies. Dignity is consubstantial, intrinsic and inherent to the human person. In other words, when the individual loses his dignity, it is his human nature itself which is called into question, to the extent that it is likely to interrogate the validity of continuing to belong to human society. Thus, a rape victim can decide to go as far as taking her life so that she does not have to confront her dehumanization and the accusing and degrading look of society. When dignity is lost, everything is lost. In short, when dignity is violated, it is not worth the while to guarantee most of the other rights.

140. The Commission considers that some of the rights protected by the Charter have a supreme and dependent relationship with the right to dignity. The same can be said of the right to legal status protected by Article 5 of the Charter. Various legal authorities agree that dignity and legal status are fundamentally interdependent. Thus, in *Kuric and one Other v. Slovenia*, for example, the European Human Rights Court establishes this connection as follows: « ... the right to legal status is a normal, natural and logical consequence of the human personality and the dignity inherent to the former; it is a natural and inherent component of every human being and his human personality ».<sup>35</sup> In *Yean and Bosico v. The Dominican Republic*, the Inter-American Court decided that « The failure to recognize legal status is a violation of human dignity because it absolutely denies the condition of an individual to be a subject of law and makes him vulnerable to the infringement of his rights by the State and other individuals ».<sup>36</sup>

141. By agreeing with these conceptions of the crucial importance of the recognition of legal status to the enjoyment of the right to dignity, the

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<sup>35</sup> *Kuric and Other v. Slovenia* European Human Rights Court, Petition 26828/06, Order of 26 June 2012, Partly concurring opinion of Judge Vucinic.

<sup>36</sup> *Yean and Bosico v. The Dominican Republic* Inter-American Human Rights Court, Order of 8 September 2005, para. 178.

Commission considers that failure to grant nationality as a legal recognition is an injurious infringement of human dignity. Such an infringement seriously affects the legal security of the individual, particularly due to the undermining of a set of consubstantial rights and privileges to the enjoyment of fundamental legal and socio-economic privileges. Ultimately, it is the very existence of the victim which is vitally compromised. The jargon of clandestine immigration circles gives a good account of the disgrace associated with the violation of the dignity of clandestine immigrants when they are called « undocumented immigrants ». In the collective modern conscience, to be an « undocumented immigrant » is perceived as the most degrading form of legal, political and social identification. With regard to the intentional denial or otherwise of nationality, dignity is doubly violated because the person no longer fully fits into the fundamental characteristics associated with the status of a subject of law. Indeed, since he is not recognized as a national of any State, and is treated as such, the victim is also treated by the community as a kind of second rate member. In the African context, where social recognition and belonging to the community are vital, denial or doubt of nationality can constitute the highest form of violation of dignity.

142. In the case in point, suffice it to reiterate that both the law and practice of the Respondent State have ensured the denial of the right of victims to nationality. As a consequence of the foregoing, the violation of their right to dignity is constituted by the mere fact that they have been prevented from living in dignity in Côte d'Ivoire as members of the universal and Ivorian human society. The Commission concludes that the laws and deeds of the Respondent State violate the provisions of Article 5 of the Charter on the right to the dignity of the human person.

### **Allegation of Violation of Articles 2 and 3**

143. Under the provisions of Article 2 of the Charter, « Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind as race to, *ethnic group*, colour, sex, language, *religion*, political or any other opinion, national and social origin, fortune, birth or other status ».<sup>37</sup> With regard to Article 3 of the Charter, it is stipulated that « 1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law. ».

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<sup>37</sup> Emphasis of the Commission.

144. To allege violation of the provisions of Article 2 of the Charter, the Complainant argues that the Dioulas, meaning those of the first generation, were subjected to discrimination by the Respondent State on the basis of ethnicity and religion. Referring to General Observation No. 18 in its ruling on *Meldrum v. Zimbabwe*, the Commission defined discrimination as « Any act aimed at distinction, exclusion, restriction or preference based on one of the reasons listed under Article 2 of the Charter, and which aims at or has the effect of annulling or restricting recognition, enjoyment or exercise by all persons and on an equal basis, of all rights and freedoms ».<sup>38</sup> The Commission considers that although the letter does not state so expressly, the spirit of the provisions of Article 2 of the Charter and of the definition in *Meldrum* suggest that there is no need to prove an intention to discriminate. Indeed, this definition actually includes situations in which a law or a neutral or an apparently non-discriminatory measure produces the effects of an unjustified distinction.
145. Furthermore, the list under Article 2 of the Charter is neither absolute nor comprehensive. It is merely indicative. It is a form of unjustified discrimination which is of a prohibitory nature, and there is, therefore, the possibility of conducting unjustified discrimination prohibition compliance test when a standard or act is alleged to have gone beyond this prohibition. In *Good v. Botswana*, the Commission established that the violation of the principle of non-discrimination occurs when: a) persons in a similar situation are treated differently; b) the difference in treatment has no objective and reasonable justification, and c) when the objective is not proportionate to the measures implemented ».<sup>39</sup>
146. In the case in point, the Commission has already concluded that the victims have a right to Ivorian nationality, whether it is by origin, attribution or acquired through simplified naturalization procedures. From this point of view, they are put in a situation similar to that of other Ivorian citizens. With regard to first generation Dioulas, the Commission notes, among other things, that, access to Ivorian nationality is denied them on the basis of their « Dioula » ethnic origin and their Muslim religious persuasion. As the Commission has concluded above, the vagueness and inaccuracy of the nationality Code and the inappropriate nature of the subsequent laws ensured the adoption of policies and practices which discriminate against the Dioulas. The Complainant has amply proved that persons of the Dioula ethnic group or persons perceived as such have been refused the nationality identity card or the certificate of nationality merely because of the « non-

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<sup>38</sup> *Meldrum v. Zimbabwe* Communication 294/04 (2009) AHRLR 268 (ACHPR 2009) Para. 91.

<sup>39</sup> *Kenneth Good v. Botswana* Communication 313/05 (2010) AHRLR 43 (ACHPR 2010), Para. 219.

Ivorian » consonance of their names. They received the same treatment because they were from the northern region of Côte d'Ivoire and that they were Muslims. Even persons perceived to be Dioulas who had acquired nationality documents at a certain point, had these documents seized for the same reasons.

147. Through the reforms undertaken after the 2002 failed coup d'état, and particularly in 2004, 2005, 2007, 2010 and 2013, successive Governments of the Respondent State also recognized discrimination against Dioulas and identified it as the main cause of the political crisis which shook Côte d'Ivoire for more than a decade. No members of any other ethnic or religious group in Côte d'Ivoire have been subjected to such discriminations, even though the common characteristic among them is that they were born in Côte d'Ivoire or that they were simply Ivorians in much the same way as the Dioulas.

148. It is noteworthy that the Complainant refers to the rejection of the candidacy of Mr. Alassane Ouattara for the 2000 presidential election as being the most symbolic manifestation of discrimination within the context of this Communication. Requirements for candidates in this election were governed by the provisions of Article 35 of the 2000 Constitution of Côte d'Ivoire. Under these provisions, any candidate for the presidential election « ... must be an Ivorian by origin, born to an Ivorian father and an Ivorian mother who are themselves Ivorians by origin ». The Commission notes that it has already reached a conclusion in the *Mouvement Ivoirien des Droits de l'Homme v. Côte d'Ivoire* case to the effect that these provisions violate the right to equality before the law protected by Article 2 of the African Charter, in the sense that they accord a different treatment to persons born in Côte d'Ivoire on the sole basis of the presumed foreign origin of their parents.<sup>40</sup> The Commission then considered that the restriction of access to the highest political positions of the State was in itself not a violation. However, it concluded that when such a restriction is discriminatory, unreasonable and unjustifiable, its objective is destroyed by this unreasonable nature.<sup>41</sup>

149. In the case in point, the Commission referred to the facts reported by the Complainant and its aforementioned decision to note that the disqualification of candidate Alassane Ouattara by the Supreme Court of Côte d'Ivoire was an act of outright discrimination in violation of Article 2 of the Charter. With regard to this Communication, the Commission notes that the terms of the provisions of Article 35 of the Constitution of Côte d'Ivoire which have been found to be inconsistent with Article 2 of the Charter are the most elaborated

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<sup>40</sup> See also *Legal Resources Foundation v. Zambia*, op. cit.

<sup>41</sup> See *Mouvement Ivoirien des Droits de l'Homme v. Côte d'Ivoire* Communication 246/02 (2008) AHRLR 74 (ACHPR 2008) Paragraphs 84-86.

form of discrimination against the Dioulas with regard to the access to Ivorian nationality. It is common knowledge that Mr. Alassane Ouattara comes from the Dioula ethnic group of the northern region of Côte d'Ivoire and is also of Muslim religious persuasion. Although he produced his own birth certificate and national identity card as well as those of his parents, his candidacy was rejected on the grounds of inadequate proof of his Ivorian nationality. Under the same circumstances, candidate Robert Guéï only produced his birth certificate and family tree which he drew himself. The Supreme Court ruled that it was ample proof and, therefore, authorized candidate Guéï to stand in the election.

150. The Commission considers that although it is highly important to note that the *Mouvement Ivoirien des Droits de l'Homme* case was on the dispute surrounding the candidacy of persons to the presidential election in Côte d'Ivoire, this dispute was also eminently, if not fundamentally, dealing with nationality and the enjoyment of the rights which go with them. Indeed, it is clear that the Supreme Court could only arrive at this improper and unreasonable application of the definition, or the lack thereof, of the qualities of an « Ivorian » and a « foreigner » under the nationality Code because the law allowed it. More precisely, the legal basis of the ruling of the Supreme Court is the establishment by the Code of an « Ivorian by origin » without defining who this Ivorian is. As mentioned above, the similarities of candidate Ouattara with the Dioulas border on identity. In reality, in addition to being a Dioula, candidate Ouattara was also one of the most popular Dioulas in Côte d'Ivoire, having served for several years as Prime Minister in the Government of the first President of Côte d'Ivoire, Mr. Félix Houphouët-Boigny. The only other basis for discrimination against candidate Ouattara was the fact that he was not an « Ivorian by origin ». It is common knowledge that the Dioulas are the people who are most perceived as Ivorians « by origin ». Consequently, it is the most symbolic form of discrimination against Dioulas. Without prejudice to the outcome of the analysis on this point, such a conclusion will have full meaning when the violations alleged by the Complainant as a consequence of the discrimination so observed by the Commission are being considered.

151. In short, with regard to discrimination against Dioulas, the Commission notes that it is based on their ethnic origin, consonance of their patronymics and their Muslim religious persuasion. On the one hand, discrimination implies two groups of Ivorian citizens who are treated differently on bases prohibited by the Charter. On the other hand, successive Governments of the Respondent State produced no objective and reasonable justification, while the Complainant showed evidence of a difference in treatment. With regard to the other victims, the same conclusions are applicable within the limits of

the observed established rights with regard to the violation of the provisions of Article 5 of the Charter. The Commission concludes that there is ample evidence that such unjustifiable discrimination so established violates the provisions of Article 2 of the Charter.

152. The Complainant also alleges that there has been a violation of Article 3 of the Charter which also prescribes equality before the law and equal protection of the law. The Commission notes that equality before the law derives from a substantial legal prerogative, while equal protection of the law also goes with the practical enjoyment of this substantial prerogative. Thus, through equality before the law, the Charter recognizes and confers upon the human person, the right to, in much the same way as all other persons, belong to the big family of the human person. The Inter-American Human Rights Commission properly states this meaning of equality before the law in *Barberia v. Chile* as follows:

The notion of equality derives directly from the unity of the human family and is linked to the essential dignity of the individual. This principle cannot be reconciled with the notion that a particular group of individuals has the right to special treatment as a result of their perceived superiority. It is also irreconcilable with this notion of categorizing a group as being inferior and to treat it with hostility or even to discriminate against it in the enjoyment of the rights accorded other groups which are not categorized as such. It is forbidden to subject human persons to different forms of treatment which are inconsistent with their unique and fellow-feeling character.<sup>42</sup>

153. Under Articles 3(1) of the Charter, equality before the law, therefore, refers to equality in law or legal equality inherent to any individual subject of law as a result of his human nature and which places him on equal legal terms with other human persons. On the other hand, equal protection of the law provided for by Article 3(2) refers more particularly to the guarantees introduced in order to give substance to the subjective law deriving from equality before the law or in law. In *Zimbabwe Lawyers for Human Rights and one Other v. Zimbabwe*, the Commission considers legal protection of the law as « the right of every individual to equal access to justice and to be

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<sup>42</sup> *Margarita Cecilia Barbería Miranda v. Chile* Case 12.469 Inter-American Human Rights Commission (2010) para 34. The Commission then adopted Legal Opinion OC-4/84 of 19 January, 1984 given by the Inter-American Human Rights Court on the *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, Series A No. 4, para 55. Translation by the Commission.



treated in an equal manner by the law and by the courts both with regard to procedure and substance ».<sup>43</sup>

154. Whatever the case, the Commission raises an intrinsic inter-connection between equality before the law and equal protection of the law, on the one hand, and the right to the enjoyment of rights guaranteed by the Charter, on the other hand. This inter-dependence is not specific to the African Charter. It is noteworthy that the Inter-American Human Rights Court combines these three legal prerogatives and treats them as a single principle. In its *Legal Opinion OC-18 of 17 September, 2003*, the Court concluded that « *the principle of equality before the law, equal protection of the law and non-discrimination is a *jus cogens* standard because the entire legal structure of public national and international order reposes on this principle which transcends any standard* ».<sup>44</sup>

155. By adhering to this position, the Commission considers that in reality, the right to « non-discrimination » which is protected by Article 2 of the Charter constitutes a legal guarantee to ensure the enjoyment of the rights to equality before the law and equal protection of the law under Article 3. In other words, where discrimination occurs, equality and equal protection of the law are automatically undermined. It follows that whenever a violation of Article 2 of the Charter is established, the rights under Article 3 have necessarily been violated. The only exception to this logical position is applicable when the discrimination authorized by law is justifiable and proportionate to the targeted goal. In the Communication under consideration, the Commission has already concluded that an unjustified discrimination has occurred. Therefore, the exception mentioned should not be part of the on-going consideration.

156. In the case in point, the Commission reiterates its preceding conclusions to observe that the laws and procedures introduced by the Respondent State have treated the Dioulas as a group which is inferior to the group of « Ivorians by origin ». Through its very essence, the principle of « ivoirité » instigated by the law and practices of the public authorities and crystallized by the provisions of Article 35 of the 2000 Constitution promises express inequality. Furthermore, the various testimonies of acts of illegal discrimination by civil registry officers, police officers and judicial authorities

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<sup>43</sup> *Zimbabwe Lawyers for Human Rights and one Other v. Zimbabwe* Communication 293/04 (2008) AHRLR 120 (ACHPR 2008) para 124.

<sup>44</sup> Inter-American Human Rights Court, *Juridical Condition and Rights of Undocumented Migrants*, Legal Opinion OC-18 of 17 September 2003, Series A No. 18, para 101. Translation and emphasis by the Commission.

of both the inferior courts and the Supreme Court amply prove that equal protection of the law has been undermined with regard to the Dioulas. The same conditions are applicable to the other victims within the limits of the preceding conclusions concerning them. Without it being necessary to comprehensively consider the grounds of the Parties on this point, the Commission concludes that a violation of the provisions of Article 3 of the Charter has occurred.

### Subsequent Violations

157. The Commission refers to its conclusions deriving from the consideration of alleged violations of Article 5 of the Charter to reiterate that the violation of the right to dignity is a direct consequence of the denial of nationality as a legal status. With reference to the said conclusions, dignity is inherent to the other rights under the Charter. The same reasoning is applicable interchangeably to several other rights under the Charter. Thus, when a right such as nationality is denied or challenged, it becomes impossible to enjoy a set of rights arising out of the enjoyment of a legal status. In principle, the right to enjoy the benefits attached to nationality is violated once the individual is deprived of this legal recognition.

158. Furthermore, the Commission notes that it has ruled, particularly in *Legal Resources Foundation*, on the consequences of the violation of the right to equality protected under Article 2 of the Charter. It also concluded that the non-observance of the principle of equality before the law « affects the capacity to enjoy many other rights ». It is noteworthy that the Commission had then found that discrimination on the grounds enumerated by the Charter was the cause of violence and socio-economic instability which benefitted no one.<sup>45</sup> The subsequent consideration deals with the violation of these rights alleged to be the consequence of the denial of nationality. Consequently, the attendant analysis will frequently refer to the grounds and submissions ensuing from the consideration of the major violations, while producing grounds specific to the concerned subsequent violation.

### Violation of Article 12

159. To conclude that there has been a violation of the provisions of Article 12 of the Charter, the Complainant alleges that the denial of nationality has made it impossible for most Dioulas to acquire identity documents and, for that matter, to travel both within and without the territory of the Respondent State. It appears that the Complainant alleges that the violation of the

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<sup>45</sup> *Legal Resources Foundation v. Zambia*, op. cit. para 63.

provisions of the first two paragraphs of the relevant article which read as follows: « 1) Everyone has the right to move freely and to elect domicile within the State, subject to compliance with the rules enacted by the law. 2) Everyone has the right to leave any country, including his own country, and to return to the same. This right cannot be subject to restrictions, unless the said restriction is provided for by law and where it is necessary to protect national security, public order, public health or public morality ».

160. In *Jawara v. The Gambia*, the Commission concluded that the unfair restrictions in the issuance of passports are a violation of the freedom of movement guaranteed by Article 12 of the Charter.<sup>46</sup> The Commission considers that this position applies to any document linked to nationality and necessary for the process of the issuance of travel documents in or out of the territory of a State and between States. Thus, the refusal to deprive a foreign resident of his residence permit without a justifiable reason automatically prevents him from moving from one place to another within the territory of the host State.

161. In the case in point, the Commission notes that owing to the lack of identity documents, the Dioulas have suffered restriction in their movements within Côte d'Ivoire as well as the enjoyment of the freedom to leave the country and to return to the same. On their movements within Côte d'Ivoire, the Dioulas or persons perceived to be Dioulas have been or are still being subjected to harassment by the public authorities, i.e. police officers. Testimonies abound of persons who have been forced by police officers to pay extra costs for them to travel by public transport on the mere account of their Dioula dialect, accent or clothing. In some cases, these restrictions have been imposed in spite of the fact that they presented their Ivorian identity cards. Furthermore, persons belonging to the Dioula ethnic group who have emigrated to other regions of the world have then had the renewal of their identity and travel documents refused. They could not return to Côte d'Ivoire. As a result of the preceding conclusions, the Commission observes that such acts violate the provisions of Article 12 of the Charter.

### Violation of Article 13

162. The provisions of Article 13 of the Charter read as follows: 1) Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. 2) Every citizen shall have the right of equal access to the public service of his country. 3) Every individual shall have the right of

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<sup>46</sup> See *Jawara* para 70.

access to public property and services in strict equality of all persons before the law. Through the grounds he invokes to buttress this point, the Complainant argues that the limitations imposed by the provisions of Articles 35 and 65 of the Ivorian Constitution of 2000 and the other legislative reforms have had a devastating effect on the ability of nearly 40 percent of the population to participate in civic life. By way of proof, the Complainant mentions both the disqualification of candidate Alassane Ouattara from the 2000 presidential election and the impossibility for many Dioulas to vote during various elections held from 2000.

163. The Commission notes that the grounds invoked by the Complainant tend to lead to the conclusion that the rights to vote and to be voted for, as protected by the first paragraph of Article 13, have been violated. However, other points of the conclusions submitted by the Complainant contain evidence relating to the violation of the provisions of Paragraphs 2 and 3 of Article 13. The Commission holds that it is necessary to consider all the provisions of Article 13.

164. On the right to vote and to be voted for, the Commission considers that it is the bedrock of modern democratic systems which the Member States of the African Union have committed themselves to build. It is noteworthy that the African Union makes the « promotion of democratic principles and institutions » one of the fundamental objectives which govern its actions.<sup>47</sup> Furthermore, under several of its provisions, the *African Charter on Democracy, Elections and Governance* obliges States Parties to ensure « transparency and justice in the management of public affairs ». The same Charter makes popular participation through universal suffrage « an inalienable right of the peoples » and prescribes the « respect of ethnic, cultural and religious diversity which contributes to the strengthening of the participation of citizens ».<sup>48</sup> Through its *Resolution ACHPR/Res.164 (XLVII) 2010 on Elections in Africa*, the Commission urges the States Parties to the African Charter to « introduce impartial and non-discriminatory procedures for all the electoral processes ».<sup>49</sup>

165. The Commission has already concluded above, and by referring to its ruling in *Mouvement Ivoirien des Droits de l'Homme (II)* case quoted above, that the dispute surrounding candidacy for the 2000 presidential election was also eminently that of Ivorian nationality and modes of evidence. This is so because the Supreme Court of Côte d'Ivoire applied rules for the

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<sup>47</sup> See African Union 'Constituent Act of the African Union' (2000/2001) Art 3(g).

<sup>48</sup> See African Union 'African Charter on Democracy, Elections and Governance' (2007/2012) Arts 2(1), 3(1), 3(8) and 8(3).

<sup>49</sup> African Commission 'ACHPR Resolution /Res.164 (XLVII) 2010 on Elections in Africa' (2010).

determination of nationality which violate the principles of equality and non-discrimination prescribed by the Charter. In other words, through this ruling, the superior court arbitrarily denied Ivorian nationality to candidate Ouattara on the grounds of « national origin », a ground prohibited by the Charter. Besides, the Commission had also concluded that the provisions of Article 13 of the Charter have been violated.

166. In the case in point, the Commission notes that the provisions of Articles 35 and 65 of the 2000 Ivorian Constitution are still in force. They require every candidate for the presidential election as well as for the positions of Speaker and Deputy Speaker of the National Assembly to be Ivorians born to parents who are themselves Ivorians by origin. Furthermore, candidates for any one of these positions must never have renounced their Ivorian nationality nor acquired another nationality. In the light of its preceding observations, the Commission considers that the ruling of the Supreme Court of Côte d'Ivoire to deny Mr. Ouattara Ivorian nationality on account of his « non-Ivoirian », and indeed, Dioula origin means that Dioulas have been denied Ivorian nationality. Indeed, through the same causes and circumstances, it is evident that no other candidate from the Dioula ethnic group already identified by the law and practice as being of « non-Ivoirian origin », would not have passed the dispute test for candidacy.

167. It is noteworthy that the Supreme Court based its ruling on the above-mentioned provisions of the Ivorian Constitution which merely echo the denial of nationality sanctioned by the Ivorian nationality code and the successive legislations adopted by the Respondent State. Such is the case of the Dioulas, at the very least. In practice, the Dioulas cannot get elected to the positions concerned since they cannot demonstrate their Ivorian nationality, particularly that of « origin », in accordance with the provisions of the Constitution and the other relevant legislations, even though they are Ivorians. The fundamental source of this denial is the nationality Code, the most relevant provisions of which are still in force. Thus, since the Code is the legal basis of all subsequent laws and practices relating to nationality, the Dioulas are affected by all the limitations mentioned above, given that they are considered as « non-Ivorians » by origin. The effects of nationality acquired and not « by origin » particularly include, among others, five to ten years disqualification from election to certain elective positions. This state of affairs violates the right to stand for election which is protected by the provisions of Article 13(1) of the Charter.

168. The Ivorian legislation on nationality and eligibility has produced the same adverse effects with regard to the right of Dioulas to appoint representatives of their choice. First, and as a consequence of the preceding

conclusions, the Commission considers that the disqualification of a person from the Dioula ethnic group for the reasons mentioned above stripped Dioulas of any chance to elect the candidate of their choice. Furthermore, the proof of such a violation is further produced during the elections following the 2000 presidential election. By way of illustration, after the opposition candidates won the majority of seats during the March 2001 local elections, the Government of President Laurent Gbagbo decided that only holders of the new voter's ID card would be allowed to vote during municipal elections. A whole swathe of the Dioula population perceived as « pro-foreigners » had thus been targeted, since the proof of their Ivorian nationality obviously prevented them from acquiring voter's ID cards. Similarly, the names of some Dioulas who had previously acquired Ivorian nationality certificates were also removed from the voters' register before the 2010 presidential election. The Commission concluded that the provisions of Article 13(1) of the Charter have been violated with regard to the right to appoint representatives of their choice.

169. From the grounds submitted by the Complainant, it is evident that the authorities of the Respondent State have denied certain persons access to public office such as the judiciary because they were Dioulas. The Commission notes that this violation is the direct consequence of the discriminatory application of the nationality Code through the abuse of its vagueness. Indeed, since the Code authorizes the categorization of the Dioulas under the heading « Foreigners », they are affected by the limitations of access to public positions such as the judiciary, the bar or all other « State public positions ».<sup>50</sup> While this limitation could be legitimate with regard to foreigners who have acquired nationality, it violates the provisions of Article 13(2) of the Charter regarding Dioulas as a result of the conclusions of the Commission on rights to legal status and equality. Finally, on the basis of these considerations, the imposition of additional costs relating to access to public transport on Dioulas violates the provisions of Article 13(3) of the Charter which guarantees them « the right to use public services in strict equality of all before the law ».

#### **Violation of Article 14**

170. Under the provisions of Article 14 of the Charter, « The right to ownership shall be guaranteed. It may be interfered with only where it is required by public need or in the general interest of the community, in accordance with the provisions of the appropriate laws ». The Commission notes that the Complainant is not exposing real and proven cases of violation of the right of

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<sup>50</sup> Ivorian nationality code (1961) Art. 43 new, Law of 2004.

Dioulas to ownership as a result of the denial of nationality. On the other hand, the grounds invoked tend to render insecure, the property of Dioulas who have been denied nationality. The Commission notes that in this regard under the provisions of Article 1 of *Law No 98-750 of 23 December, 1998 on rural land tenure (Law on rural land tenure)*, « only the State, public communities and Ivorian natural persons are allowed to be owners » of a parcel of rural land. Article 26 of the same law enumerates a series of limitations which would have the effects of an expropriation against any « non-Ivorian » person.

171. As a result of these restrictions, since Dioulas are considered as « non-Ivorians » in practice and by application of the law on nationality, they cannot lay claim to land which is part of the rural land tenure regime. They also run the risk of being expropriated of the land they owned prior to the entry into force of the *Rural Land Act* in 1998. Such is the case because the said law replaces the traditional and customary modes of proof of ownership through documentary modes. The lack of documentary proof ensures that the concerned land reverts to the State. The heirs of concerned persons can therefore only avail themselves of the right of ownership after a declaration is made to the public authority, with the same risk being run by their donor of having themselves expropriated for the benefit of the State or an Ivorian third party.

172. The Commission notes that in *Mouvement Ivoirien des Droits de l'Homme (I)*, it concluded that the above-mentioned provisions of the *Rural Land Act* violate Article 14 of the Charter in that expropriation which arises out of their application is neither justified by a « public need » nor the « general interest of the community ».<sup>51</sup> The Commission had also deemed as inadmissible, the argument of the Respondent State to the effect that the said Law has had limited effects since only 112 persons of which very few Africans were concerned. It appears that the Commission had considered as a violation of Article 14 of the Charter, the refusal of access to property on the basis of « origin ».<sup>52</sup> However, it is essential to clarify the applicability and effects of these provisions of the Law and the jurisprudence of the Commission with regard to the Dioulas and other victims.

173. With regard to the Dioulas, the Commission notes that the Law uses the term « Ivorian ». Since this term is not qualified, reference should be made to the Law on nationality to determine the definition and contents. The Commission has already resolved the issue of the right of the Dioulas to

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<sup>51</sup> *Mouvement Ivoirien des Droits de l'Homme (I)* para 78.

<sup>52</sup> *Op. cit.*

Ivorian nationality under the aegis of the nationality Code. Consequently, the implementation of the decision of the Commission on this point will resolve any violation of the right of the Dioulas to access ownership. Thus, once the right to Ivorian nationality of the Dioulas has been restored, they will be exempted from the application of the limitations mentioned above. Although it is true the Dioulas could be victims of a potential violation of the right to ownership if the Ivorian law on rural land is applied, the wrong should still occur or it should be demonstrated that there remains a future risk of violation in the absence of an amendment of the Law. The Complainant does not prove that this risk occurred against the Dioulas prior to this Communication. Therefore, it cannot be concluded that a violation has occurred.

174. However, since the nationality Code has still not been reformed, the issue of Ivorian nationality by origin of the Dioulas remains up to date. Consequently, the risk of a future violation is real because there is no guarantee that the present and future authorities of the Respondent State will not apply the disputed provisions to the Dioulas, particularly those under Article 26 of the *Rural Land Act*. The deadlines for the various prescriptions of Law No 2013-655 of 13 September, 2013 amending the Law on rural land concerning the declaration of peaceful and continuous enjoyment of ownership of parcels of rural land constitute enough evidence of this situation. The risk of expropriation of the Dioulas on the unfair and discriminatory basis of their perceived « non-Ivorian » status has survived the 2013 rural land reform. Incidentally, it is proper to conclude that there is a potential violation of Article 14 of the Charter.

175. With regard to the other victims, the Commission notes that the Complainant does not provide evidence to support the alleged violation of their right to ownership. An evaluation of the relevance and effectiveness of the rural land reform will consequently mean a reversion to the conduct of an abstract study on the compliance of the said reform with the provisions of Article 14 of the Charter. The Commission considers that such a study is inopportune. Furthermore, the dispute under consideration does not deal with a lack of implementation of the *Mouvement Ivoirien des Droits de l'Homme (I)* decision. It follows that it is not proper to conduct a specific study of and how the land reform has complied with the said decision.

## Violation of Article 15

176. In Article 15, the Charter stipulates that « Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work ». To allege that these provisions have been



violated, the Complainant argues that the fact that the Respondent State denies the Dioulas Ivorian nationality interferes with their right to access employment on a non-discriminatory basis. In *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v. Zimbabwe*, the Commission concluded that for the Respondent State to have closed down the offices of the Complainants and prevented their workers from going there deprives them of their source of revenue and, therefore, violates Article 15 of the Charter.<sup>53</sup> Furthermore, the Commission concluded that there is a violation of the same provisions when, in *Pagnouille (for Mazou) v. Cameroon*, the Respondent State refused to reinstate the Complainant as a magistrate when all the persons who suffered the same fate as him had been reinstated.<sup>54</sup> It is evident from the above that the right protected under Article 15 refers to the prerogative to access employment as a source of income and to benefit from the same treatment as persons in a work situation and in similar circumstances.<sup>55</sup>

177. In the case in point, it is evident from the testimonies obtained by the Complainant that persons from the Dioula ethnic group have been declared as ineligible for public office for the mere fact that their Ivorian nationality which has been validly proven has been challenged. The reported cases include the denial of access or promotion in areas like the judiciary. The Commission notes that such forms of treatment constitute a violation as a result of the imposition of disqualification ensuing from the discriminatory and arbitrary denial of nationality. Consequently, these restrictions violate the provisions of Article 15 of the Charter for the persons concerned. It is also proper to conclude that there is a potential violation of the same right with regard to all Dioulas because they remain vulnerable as a result of discrimination in access to nationality.

## Violation of Article 18

178. Article 18 of the Charter obliges States Parties to protect families, to ensure their physical and mental health, to assist them, to ensure the elimination of every form of discrimination against women, to ensure the protection of their rights and those of children, as stipulated in international conventions. In *Amnesty International v. Zambia*, the Commission decided

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<sup>53</sup> See *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v. Zimbabwe* Communication 284/03 (2009) AHRLR 235 (CADHP 2009) para 179.

<sup>54</sup> *Pagnouille (for Mazou) v. Cameroon* Communication 39/90 (2000) AHRLR 61 (ACHPR 1997) para 29.

<sup>55</sup> See *Essien v. The Gambia* (2007) AHRLR 131 (ACHPR 2007) para 27.

that forced expulsion is a violation of Article 18 of the Charter, as a result of the dispersal of the families of victims.<sup>56</sup> The Commission adopted the same position in *Modise v. Botswana*, by concluding that the deportation of the Complainant deprived him of his family and also deprived the latter of his support.<sup>57</sup>

179. In the case in point, the Commission has already concluded that the victims suffered restrictions with regard to their movement both within and without the country. Furthermore, the Complainant reports testimonies to prove that police officers seized the identity documents of Dioulas, thereby preventing them from freely moving from one region to another in Côte d'Ivoire. Therefore, some of the victims had no other choice but to acquire a « laissez-passer », the validity of which did not exceed one month. In such circumstances, there is no doubt, as alleged by the Complainant, that the persons concerned could not visit their relatives living in other regions of the country. Such a situation also involved a real risk of separation or dislocation of the family unit. The Commission concludes that the provisions of Article 18 of the Charter have been violated.

## Violation of Article 22

180. Under the said article, « 1) All peoples shall have a right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind ... ». While the Charter guarantees development as a right of the « peoples », the grounds raised by the Complainant allege a violation of both a right to « personal development » under the guise of the loss of a « life plan » and the right to the full development of the Dioulas. On the effect of a careful consideration of these grounds, the Commission considers that it is proper to clarify the contents of the right to development under the Charter, its application and the attendant obligations to be borne by the Respondent State. These clarifications will then allow for a determination of whether the facts presented have hindered the achievement of a « life plan » of the victims and consequently violated their right to development.

181. The Charter is a pioneer international instrument for the proclamation and guarantee of a right to development. Having said that, the most advanced political and legal recognition of this right at the international level was formulated in 1986 when the United Nations General Assembly adopted the

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<sup>56</sup> See *Amnesty International v. Zambia* Communication 212/98 (2000) AHRLR 325 (ACHPR 1999) para 51.

<sup>57</sup> See *Modise v. Botswana* op. cit. para 92.

famous *Declaration on the Right to Development*.<sup>58</sup> Under the provisions of Article 1(1) of the said Declaration, « The right to development is an inalienable right of man by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized ».

182. In its jurisprudence, the Commission further adopts a definition by application rather than by conceptualization of the right to development under the Charter. In *Democratic Republic of Congo v. Burundi, Rwanda and Uganda*, the Commission thus considers that the fact that the Respondent States buried the victims of massacres perpetrated by them against the populations of the Complainant's East Province in mass graves is a violation of « the right of the Congolese peoples to cultural development ».<sup>59</sup> On the other hand, in *Gunme and Others v. Cameroon*, although the Commission could not conclude that there has been a violation of Article 22 for lack of evidence. However, it considered that if they were proven, acts of « economic marginalization and lack of economic infrastructure » could constitute a violation of the right to development.<sup>60</sup> The Commission emphasizes this conception of development under Charter by ruling in *Centre for Minority Rights Development and Others v. Kenya* that the failure of the Respondent State to involve the Endorois populations as well as in the design of reserve settlement projects as well as in the enjoyment of income accruing to their exploitation is a violation of Article 22 of the Charter.<sup>61</sup>

183. This position is in keeping with the national jurisprudence<sup>62</sup> and the doctrine on the right to development.<sup>63</sup> In the light of the foregoing, the Commission considers that there is indeed a fundamental convergence to comprehend the right to development as an inalienable, individual or collective right, to participate in all forms of development, through the full realization of all fundamental rights, and to enjoy them without unjustifiable restrictions. In any case, the conception of this right in the spirit of the Charter

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<sup>58</sup> See Resolution 41/128 of 4 December 1986.

<sup>59</sup> See *Democratic Republic of Congo v. Burundi, Rwanda and Uganda* Communication 227/99 (2004) AHRLR 19 (ACHPR 2003) para 87.

<sup>60</sup> See *Gunme and Others v. Cameroon* Communication 266/03 (2009) AHRLR 9 (ACHPR 2009) paras 205-206.

<sup>61</sup> *Centre for Minority Rights Development and Others v. Kenya* 273/03 (2009) AHRLR 75 (ACHPR 2009) paras 269-298.

<sup>62</sup> See, for example, *Denton v. The Director General, NIA and Others v. The Gambia* (2006) AHRLR 241 (GaHC 2006) para 33.

<sup>63</sup> See, among others, PG Pougoué 'Lecture de la Charte africaine' *Droits de l'homme en Afrique centrale* Colloque de Yaoundé (1994) Karthala 42-44 ; K Mbaye *Les droits de l'homme en Afrique* (1980) 664 et s.

and the mere mention of the term « peoples » in the provisions of Article 22 of the Charter cannot adequately interpret the right to development as being solely and exclusively collective. In spite of its community emphasis, particularly with regard to the right to development, the Charter clearly recognizes the crucial role of the individual without whose self-fulfillment the development of the peoples may be compromised. In certain circumstances, the development of the peoples and the individual may be concomitant. From the perspective of the contents of the right to development under the Charter, the States Parties have a mediate obligation to meet the requirements for the enjoyment of this right and an immediate obligation to at least create the opportunities and environment conducive to the enjoyment of the said right. In other words, there is the need to ensure a gradual implementation, but it is immediately recommended that the individual and collective right to development should be respected, protected and promoted.

184. The Inter-American Human Rights Court carefully formulates this meaning of the right to development by conceptualizing development in the form of a « life plan ». The Court held then in *Loyza Tamayo v. Peru*, that

The concept of the 'plan of life' is comparable to that of self-fulfilment, which is in turn based on the options available to an individual to lead his life and to achieve the objectives he has set for himself. (...) It may be difficult to consider an individual as being free if he has no option to continue to lead his life and to do so to its natural conclusion. (...) Consequently, the elimination or hindrance of these options constitutes a violation or loss of a priceless asset which this Court cannot ignore.<sup>64</sup>

185. In the case in point, the Commission notes that as a result of the denial of nationality, the Dioulas as well as the other victims were unable to obtain the legal recognition necessary for, as is the case of all modern organized societies, the enjoyment of a set of advantages. This lack of recognition of nationality as legal status also prevented them from participating in the shaping and enjoyment of the socio-economic development witnessed by Côte d'Ivoire since independence. With regard to the Dioulas in particular, the impossibility to be recognized as Ivorians prevented them from accessing public jobs, participating in public and political life by voting in elections and getting voted for. This, in turn, hinders every possibility for them to decide with other Ivorians choices relating to the destiny of the Ivorian nation as well as to enjoy the fruits of its social, political, economic and cultural advances.

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<sup>64</sup> *Loyza Tamayo v. Peru Inter-American Human Rights Court*, Order of 19 November 1999, para 191.

186. The Commission considers that due to these multiple denials, a human potential has inevitably been destroyed, ambitions have been dashed, entire lives have been shattered, not only for the individuals, but also for the Dioulas as a community within the big Ivorian community. This has obviously led to an incalculable loss of a life plan, an accumulated loss of generation to generation over the decades. The Commission concludes on a serious violation of the right to development under the provisions of Article 22 of the Charter.

### **Violation of Article 1**

187. The provisions of Article 1 of the Charter provides for an obligation to implement all the necessary measures with the effect of giving meaning to the substantial rights guaranteed by the Charter. With regard to these provisions, it follows that the liability is only invoked when a substantial right has been violated. Furthermore, this liability is automatically invoked as soon as a violation of a right protected by the Charter is deemed to have occurred.<sup>65</sup> As a result of all the foregoing, the Commission concludes that the provisions of Article 1 have been violated.

### **Petitions of the Complainant**

188. The issue of grounds and additional petitions has been resolved above. The consideration was extended to the end of the exchanges and submissions on the merits. Having said that, and in accordance with the constant jurisprudence of the Commission, the measures taken by the State after the referral of the matter in order to remedy violations do not absolve it of its liability under the Charter.<sup>66</sup> The violations observed and perpetrated must be redressed, more so when the said violations are continuous even if they are not actively continued by the current Government of the Respondent State which deserves credit for acting in good faith to take measures to end the suffering and indignity the victims are enduring.

189. Having taken into account the reforms carried out by the State after the referral of the matter, the Commission will consider the petitions of the Complainant on the basis of the outcome of the said reforms. Consequently, the Commission will consider the amended petitions of the Complainant as follows.

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<sup>65</sup> See, among others, *Association des Victimes des Violences Post-Electorales and Interight v. Cameroon* Communication 272/03 (2009) AHRLR 47 (ACHPR 2009) para 105-115 ; *Jawara* para 46.

<sup>66</sup> See, for example, *Civil Liberties Organisation v. Nigeria* Communication 129/94 (2000) RADH 190 (CADHP 1995) para 17.

## Declaratory Ruling on Violations

190. With the benefit of the foregoing, the Commission observes that there are no grounds to rule on the alleged violations of the provisions of Articles 4 and 6 of the Charter. On the other hand, it rules that the provisions of Articles 1, 2, 3, 5, 12, 13, 14, 15, 18 and 22 have been violated.

## Amendment of Articles 35 and 65 of the Constitution

191. The Commission has already ruled in *Mouvement Ivoirien des Droits de l'Homme* that the provisions of Articles 35 and 65 of the Constitution of Côte d'Ivoire violate Articles 2 and 13 of the Charter. It reiterated this ruling in this Communication. Since the provisions concerned are still in force, therefore, there are grounds to prescribe their amendment.

## Amendment of the Nationality Law

192. The first petition of the Complainant on this point tends to request the State to incorporate provisions into its laws to make it possible to grant nationality to every child with relevant connection with Côte d'Ivoire. The request of reference involves the prescription of the implementation of both the United Nations Conventions on Statelessness and the African Charter on the Rights and Welfare of the Child to which Côte d'Ivoire is a party.<sup>67</sup> In all cases, the Commission considers that the appropriate implementation of these instruments, according to the relevant international Directives on the matter, is the most appropriate means of remedy for the observed violation of the right to legal recognition protected by Article 5 of the Charter. Consequently, it is proper to accede to this petition.

193. The second petition relates to documentation and the establishment of proof in the matter of nationality. On the issue of the introduction of a reliable birth registration system, the Commission notes that it is a general problem in Africa. However, it is extremely urgent to resolve this problem in a country like Côte d'Ivoire where there are more than 700, 000 of the 750, 000 of stateless peoples distributed in the 15 West African States, according figures of the United Nations High Commission for Refugees which are not challenged by the Government of the Respondent State. The Commission notes that, in general, the birth certificate, which is the reference document establishing the legal existence of a person, at least with regard to his place of birth and filiation. These two points also constitute the fundamental principles of recognition by the States of the link of nationality. It goes

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<sup>67</sup> Côte d'Ivoire ratified the Charter on 1<sup>st</sup> March 2002.

without saying that in a situation where the system for the registration of births, issuance of birth certificates and their security is ineffective, the enjoyment of the right to nationality is in danger. The Parties agree that the ineffectiveness as well as the discriminatory and partial nature of this mechanism is one of the main causes of the denial of nationality in Côte d'Ivoire. To ensure full access to nationality, it is therefore essential to introduce a birth registry system based on the birth certificate. With regard to people who have attained the age of majority, the issuance of a certificate attesting to their birth must be instituted as an obligation without discrimination, of which the refusal by the authorities must be accompanied by a justification in accordance with the law or a sanction with reasonable remedies.

194. With regard to the proof of nationality, the Commission considers that, as a matter of principle, it is the responsibility of the birth declarant or applicant for nationality. However, given the weaknesses of the system for the registration of births or for the delivery of related documents which are ascribable to the Respondent State, proof must be shared in the event where the document is lacking. Furthermore, given the realities in respect of traditions, lack of information, ignorance and socio-economic constraints, particularly for persons living in the rural areas, proof of birth or residence must take alternative written modes into account. The principle of the sharing of the burden of proof of nationality is also duly recognized by the provisions of Article 89 of the Ivorian Nationality Code. The Commission considers that it is reasonable and fair to admit the petition of the Complainant.

195. The third petition deals with the procedure on naturalization or regularization as well as the attendant remedies. In this regard, the Commission notes that among others, the prevailing law provides for a procedure on naturalization through a decision of the President of the Republic. Even if the initial application is submitted to the State Attorney, it is then forwarded to the Minister of Justice who has the prerogative of actually considering, ruling on and issuing a certificate of nationality. In the event of a dispute, the two possible remedies are non-contentious remedy before the said Minister and an appeal to the President of the Republic who « has discretionary powers in the matter ».<sup>68</sup>

196. The Commission notes that the State Prosecutor is an eminent actor of executive power and, on account of that, has monopoly over the process of the issuance of nationality documents in Côte d'Ivoire. The Commission

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<sup>68</sup> Côte d'Ivoire Law No 2013-653 of 13 September 2013 on special provisions on the acquisition of nationality by declaration, Arts 3-7.

considers that the dispute over a right as vital as the recognition of legal status, and of nationality in particular, must be subject to an independent, fair, impartial and equitable procedure. Only one organ of the State cannot at the same time be a judge in and a party to the granting of nationality. That is more so the reason why the recognition of the right to nationality is henceforth beyond the exclusive remit of the State which must comply with the international rules to which it has subscribed. Consequently, the judge must exercise a partition in the nationality dispute to independently and impartially determine whether the State has discharged its obligations. Côte d'Ivoire also recognizes this necessity because, under the provisions of its nationality Code, the State provides that civil law judges have jurisdiction to hear any nationality dispute. Incidentally, the Commission finds the considered application relevant and useful.

### **Implementation of Reforms on Rural Land Ownership**

197. The Commission only ruled on one potential violation of Article 14 with regard to the Dioulas. However, it admitted an actual violation in cases where victims would be subject to a prejudice already suffered as a result of the application of the *Rural Land Act* before the reforms of 2004 and 2013. In these circumstances, it is proper to prescribe an effective implementation of reforms as well as redress of prejudices which would have been suffered as a result of the application of the former provisions of the Law.

### **Payment of Damages**

198. In accordance with the established jurisprudence of the Commission, the violation of rights protected by the Charter entitles victims to damages, including monetary remedy.<sup>69</sup> Having said that, the Commission considers that the Complainant must provide an evaluation and prove the prejudice suffered.<sup>70</sup>

199. In this Communication, the nature of the violations is ample evidence of the prejudice suffered. However, since the Complainant has not quantified the said prejudice, the Commission will bear the responsibility of providing it. In this regard, the Commission notes that the main aim of the redress is founded on the *restitutio in integrum* principle which requires that the victim is reinstated in the situation prior to the violation. Where it is impossible to reinstate him, any violation will be resolved through compensation. On the

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<sup>69</sup> See *Good v. Botswana* op. cit. Para 245 ; *Antoine Bissangou v. Congo* Communication 253/02 (2006) AHRLR 80 (ACHPR 2006) ; *Emgba Mekongo Louis v. Cameroon* Communication 59/91 (2000) RADH 60 (CADHP 1995) para 2.

<sup>70</sup> See *Good* op. cit.



other hand, it should be ensured that the redress is fair, adequate, effective, sufficient, appropriate, victim-friendly and proportionate to the prejudice suffered.<sup>71</sup>

200. When placed in the context of human rights, this principle is mitigated. The objective here is not to punish the State or to enrich the victim by granting him an exorbitant and unreasonable compensation. It is particularly inappropriate to prescribe compensation when the prejudice suffered is as material as that the highest compensation would not be able to right the wrong. Where necessary, the most appropriate practice includes, among others, a public acknowledgement of the violation, rehabilitation and the building of memorial sites.<sup>72</sup> In most similar situations, the Respondent State will be required to act promptly in order to bring an end to the violation and to prevent the occurrence of fresh violations. Whatever the case, the adoption of prompt and effective measures to finally put an end to the sufferings of the past may in themselves constitute an effective redress.

201. In the case in point, the main violation deals with the denial of nationality. It is a right which represents a strong symbol: that of both the legal and social recognition and also that of dignity. The Commission considers that for a violation as symbolic as that one, it is proper to prescribe an equally token redress. To be specific, the highest monetary compensation could not replace attacks on the dignity suffered by the Dioulas for decades. Incidentally, immediate rehabilitation is a much more appropriate redress.

202. On violations which are the result of this main violation, the Commission notes that they were resolved in a material loss, particularly of a monetary nature. For example, the expropriation of lands, the loss of promotion or potential employment, and the enjoyment of socio-economic development witnessed by Côte d'Ivoire. However, the Commission has already ruled that some of these prejudices are merely potential, particularly those relating to ownership and work. The others, such as equality, freedom of movement or participation can only be the subject of monetary compensation; unless it is proven that their violation has caused material or financial losses, which is not the case in this situation.

203. Furthermore, with regard to the high number of concerned victims, and considering that the Complainant has filed a dispute which is more of a public than personal interest, it would be illusory to envisage the prescription

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<sup>71</sup> See *Loayza Tamayo v. Peru* (1998), *Velasquez* (1989), *Aloeboetoe v. Surinam* (1993) of the Inter-American Human Rights Court; *Djot Bayi v. Nigeria* (2009) of the ECOWAS Court of Justice. See also in general, REDRESS *Reaching for Justice: The right to reparation in the African Human Rights System* (2013).

<sup>72</sup> See *Loayza Tamayo* ; *Velasquez* ; *Aloeboetoe*, op. cit.

of financial redress, particularly considering the nature of the rights concerned. In the view of the 700, 000 persons affected by the violations, the only objective of some 300 testimonies produced by the Complainant was to defend the cause by representative sampling of the entire target population. Under these circumstances, the Commission considers that material or monetary redress is not appropriate and that it is proper to prescribe a token compensation and the immediate adoption of administrative, legislative, regulatory and practical measures to put an end to the violations and to avoid their recurrence in future.

204. The Commission notes that under the provisions of Article 112(2) of its Rules of Procedure, when a ruling has been made against a Respondent State, the parties must, within one hundred and eighty (180) days from the notification of the ruling, inform the Commission in writing of all the measures taken or in the process of being taken by the Respondent State to give effect to the ruling.

#### **Decision of the Commission on the Merits**

##### **The Commission, For these reasons,**

205. States that there are no grounds to making a ruling on the allegations of violation of Articles 4 and 6 of the Charter.
206. Declares on the other hand that the Republic of Côte d'Ivoire has violated the provisions of Articles 1, 2, 3, 5, 12, 13, 14, 15, 18 and 22 of the Charter.
207. Consequently, it:
- i. Strongly recommends that the Republic of Côte d'Ivoire should amend the provisions of Articles 35 and 65 of its Constitution in accordance with the provisions of Articles 2 and 13 of the Charter.
  - ii. Particularly recommends that the Republic of Côte d'Ivoire should ensure that its nationality law should be consistent with the provisions of Articles 2 and 5 of the Charter, the relevant provisions of the African Charter on the Rights and Welfare of the Child and the United Nations Conventions

on Statelessness, in the strict respect of the relevant international Directives on the matter.

- iii. Earnestly recommends that the Republic of Côte d'Ivoire should adopt more prompt legislative and administrative mechanisms to implement measures necessary for the recognition of Ivorian nationality by origin of the Dioulas through a simplified declaration procedure; to ensure that other victims acquire nationality through the most favourable mode by means of the successive legislations adopted since the establishment of nationality by applying principles of retroactivity and established rights and privileges ; to provide for independent, equitable and impartial legal remedies to take cognizance of the nationality dispute.
- iv. Further recommends that the Republic of Côte d'Ivoire should introduce or, where applicable, improve upon an effective and non-discriminatory birth registration system which makes the birth certificate as proof of nationality before the attainment of majority; to institute the access to nationality documents as a right for citizens and, for the relevant authorities, an obligation accompanied by sanctions in the event of an unjustified and discriminatory failure; and to share the burden of proof between the applicant and the State in the event of a dispute on the usual place of residence or a claim to nationality with written alternative modes of proof.
- v. Further recommends that the Republic of Côte d'Ivoire should return the lands or compensate the victims who would have been expropriated through the application of the rural land law and implement prompt and effective measures for the purposes of an effective implementation of new reforms.

- vi. Finally requests the Republic of Côte d'Ivoire to forward to it a written report on measures taken to implement these recommendations within one hundred and eighty (180) days of the notification of this ruling.

**Adopted at the 17<sup>th</sup> Extraordinary Session of the African Commission on Human and Peoples' Rights, held from 18 to 28 February in Banjul, The Gambia.**