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A Study for UNHCR

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Table of Contents

Methodology and Acknowledgments.....	2
Executive Summary.....	3
1. Introduction	5
1.1. Nationality and statelessness in Côte d'Ivoire: what's at stake?	5
1.2. What is "statelessness?"	6
1.3. Côte d'Ivoire's international obligations on nationality and statelessness.....	7
2. Political and Migration Context of Côte d'Ivoire.....	7
2.1. Defining elements of Houphouët-Boigny's immigration and integration policies.....	7
2.2. Turbulent decades: the rise of <i>Ivoirité</i> , instability, civil war, and political compromise.....	10
2.3. Contemporary stabilization of Côte d'Ivoire's migrant and foreign populations	13
3. Analysis of Côte d'Ivoire's Nationality Laws and their Implementation in Practice	14
3.1. The 1961 Nationality Code and an overview of its evolution	14
3.1.1. Nationality by origin.....	15
3.1.2. Who is a "foreigner?"	16
3.1.3. Two avenues for integrating "foreigners" and their descendants into the Ivorian citizenry.....	17
3.1.4. Overview of Nationality Code amendments and special nationality programs.....	18
3.2. Côte d'Ivoire's contemporary nationality laws and their implementation in practice	20
3.2.1. Nationality by origin.....	21
3.2.2. Acquisition of nationality as a matter of right: adoption or marriage	22
3.2.3. Acquisition of nationality by declaration.....	22
3.2.4. Acquisition of nationality by decision of public authority: naturalization and reacquisition of Ivorian nationality.....	23
3.2.5. Common requirements and effects of acquisition of nationality.....	25
3.2.6. Subsidiary acquisition of nationality by children of parents who acquire Ivorian nationality	26
3.2.7. Dual nationality.....	27
3.2.8. Loss and renunciation of nationality	28
3.2.9. Deprivation of nationality	29
3.2.10. Proving nationality before Ivorian courts and certificates of nationality.....	29
3.2.11. Statelessness safeguards and compliance with the statelessness conventions	30
3.2.12. Remaining gender inequalities in the Nationality Code	32
4. Legal Frameworks on Civil Status and Identification and their Interplay with Nationality Laws..	33
4.1. Birth registration and civil status.....	34
4.1.1. The legal framework on civil status	34
4.1.2. Practical challenges related to birth registration and civil status.....	36
4.1.3. Ordinance facilitating registration of births and deaths from the crisis period	37
4.2. Personal identification of nationals and foreigners in Côte d'Ivoire.....	38
4.2.1. Compromises on identification in the crisis-recovery process 2007-2010.....	38
4.2.2. Towards normalization of the identification system?	40
5. Profiles of Stateless Persons and Groups at Risk of Statelessness.....	41
5.1. Historical migrants and their descendants.....	41
5.1.1. Nationality concerns for Burkinabè, Malian, and Guinean migrants	41

5.1.2.	Intended beneficiaries of the integrationist policies in place at independence	45
5.1.3.	The case of those naturalized by collective decree in 1995 and their descendants	47
5.2.	Children of unknown parents	48
5.3.	Border populations	50
5.4.	Returnees, Ivorian refugee children born abroad, and internally displaced persons	50
5.5.	Contemporary migrants, including trafficked persons	52
5.6.	Individuals refused Ivorian national and voter ID cards for the 2010 elections	54
5.7.	Constructive acquisition and/or arbitrary deprivation of Ivorian nationality?	56
5.8.	Challenges in obtaining statelessness statistics	57
6.	Conclusion	59
7.	Recommendations	61
7.1.	To the Ivorian government	61
7.2.	To UNHCR	62
7.3.	To ECOWAS and ECOWAS Member States with nationals in Côte d'Ivoire	63
7.4.	To international organizations, the diplomatic community, and donors in Côte d'Ivoire	63
7.5.	To Ivorian civil society	64
8.	Annexes	65
8.1.	ANNEX I: Historical Evolution of Côte d'Ivoire's Nationality Laws and Regulations	65
8.2.	ANNEX II: Special Naturalization Procedure Pursuant to Linas-Marcoussis (2004-2007) and Special Acquisition of Nationality by Declaration Program (2014-2016)	68
8.3.	ANNEX III: Evolution of Legal Framework on Identification of Ivorian Nationals and Foreigners	74
9.	Bibliography	78
9.1.	Côte d'Ivoire Government and Legal Sources	78
9.2.	Other Government and Legal Sources	80
9.3.	Articles, Books, Manuscripts, Political Agreements, and Reports	81

Methodology and Acknowledgments

This report was researched and written by a consultant, Mirna Adjami. The author conducted six weeks of field research in Côte d'Ivoire between June and August 2014. Due to resource limitations, the author focused interviews in Abidjan and the city's outskirts, but also visited central Côte d'Ivoire (Daloa and environs), and western Côte d'Ivoire (Guiglo, Duékoué, Man, and surrounding areas). The original report was written by the author in English, has been translated into French, and is available in both languages. A draft of this report was shared with the Ministry of Justice and the *Service d'Aide et d'Assistance aux Réfugiés et Apatrides* (SAARA) of the Ministry of Foreign Affairs for comment and the final version incorporates comments made by the Ministry of Justice, SAARA, the Office of the United Nations High Commissioner for Refugees (UNHCR), and other stakeholders and has been updated with information received through December 2016. The author would particularly like to thank Mr. Paul Koreki of the Ministry of Justice, UNHCR, and Bronwen Manby, all of whom provided guidance and feedback throughout the development of this report, and acknowledge the insights of all interviewed. This report may be quoted, cited, uploaded to other websites and copied, provided that the source is acknowledged. The views expressed here are those of the author and do not necessarily reflect the official position of UNHCR.

Executive Summary

Côte d'Ivoire became party to the two international statelessness conventions in 2013 and has committed to resolving statelessness in its territory. Doing so will require uncovering and addressing the gaps in Côte d'Ivoire's nationality system, which encompasses the laws and regulations on nationality, civil status (including birth registration), and the identification of nationals and foreigners, as well as how the laws are implemented – or not – in practice. Côte d'Ivoire's migration and political context form the fundamental backdrop to this analysis.

Côte d'Ivoire is a country of immigration. Due to colonial forced migration policies, an estimated 13% of the country's population at independence in 1960 were immigrants. At the time, "immigrants" referred to those deemed of "foreign origin," i.e. who had not been born in the territory of Côte d'Ivoire but had settled there since their arrival. Net positive migration to Côte d'Ivoire continued for four decades until the end of the nineties. The majority of immigrants to Côte d'Ivoire come from neighboring West African States, in particular Burkina Faso (formerly known as Upper Volta), Mali, and Guinea. According to the 2014 census, 24% of Côte d'Ivoire's population – i.e. 5,490,222 of a total population of 20,671,331 self-identifies as "foreign,"¹ i.e. not having Ivorian nationality, although strikingly, 59% of those identified as "foreign" were born in Côte d'Ivoire.²

The 1961 Nationality Code enshrined as its fundamental principle that a child must be born to at least one Ivorian parent, regardless of place of birth, to automatically acquire Ivorian nationality by origin. Furthermore, the 1961 Nationality Code contained two special avenues for foreigners to acquire Ivorian nationality: a one-year facilitated naturalization program was available for foreigners present in Côte d'Ivoire at independence, whereas the possibility of acquisition of Ivorian nationality by declaration existed for children of migrants born in Côte d'Ivoire. Amendments made to the Nationality Code in 1972 closed the possibility of acquisition of Ivorian nationality by declaration for those born in Côte d'Ivoire to foreign parents; the amendments also did away with a provision that automatically granted Ivorian nationality to children born in Côte d'Ivoire to unknown parents. In practice, not one foreigner acquired Ivorian nationality during the one-year window for facilitated naturalization and only 36 individuals acquired Ivorian nationality by declaration while the procedure was available. Yet despite the fact that few foreigners formally acquired Ivorian nationality by law, many foreign migrants and their descendants exercised the rights of Ivorian nationals and were treated as such as a result of President Houphouët-Boigny's liberal policies from independence through the early 1990s.

Côte d'Ivoire's laws pertaining to civil status and identification play an important role in determining nationality, but have sowed some confusion. Birth registration records a child's place of birth and parentage. Although proof of birth registration is fundamental for any individual to either obtain proof of attribution of Ivorian nationality by origin or acquisition of Ivorian nationality by any other means, a significant part of the population born in Côte d'Ivoire have never had their births registered with civil registrars pursuant to law. For various reasons, Côte d'Ivoire's civil status system remains weak. In parallel, Côte d'Ivoire's systems for identification of nationals and foreigners have been subject to frequent amendment by law, and have been fundamentally arbitrary in practice over the decades. Only during two periods, namely between 1998 and 2000 and since Côte d'Ivoire began a new process of "ordinary identification" in 2014, has it been required of all individuals to present a birth certificate and a nationality certificate – the only document by law that confirms an individuals' nationality – to obtain an Ivorian identification card.

The great divide between Côte d'Ivoire's laws and their implementation in practice, combined with a decade of civil war and conflict, has contributed to the important prevalence of

¹ Institut National de la Statistique (INS), *Commentaires : Principaux Résultats du RGPH 2014*, 2014.

² INS, *Principaux Indicateurs : RGPH-2014 Résultats Globaux*, 21 December 2015, p. 2.

statelessness in Côte d'Ivoire. Statelessness is most likely to occur among a number of identified categories, such as: historical migrants and their descendants; children of unknown parents; border populations; refugees and returnees, particularly refugee children born abroad, and displaced persons; some categories of contemporary migrants or trafficked persons; and individuals refused Ivorian identification cards for the 2010 elections. Determining whether an individual is stateless in Côte d'Ivoire is a complex task. It requires an analysis on an individual basis, particularly given that migrants and their descendants from neighboring West African States can acquire nationality of their foreign parents by descent. As such, it is impossible to provide an accurate estimate of the numbers of stateless persons in Côte d'Ivoire.

This report sheds light on the ways statelessness can arise through the cracks in Côte d'Ivoire's nationality system. It concludes with a number of recommendations on necessary steps – such as nationality law reform, better identification of those who are stateless or at risk of statelessness, strengthening of the civil status system, and the transparent and uniform identification of nationals and foreigners – to resolve statelessness and ensure respect for the right to nationality.

1. Introduction

1.1. Nationality and statelessness in Côte d'Ivoire: what's at stake?

It is often asserted that questions of nationality and identity have been at the heart of the armed conflict that shook Côte d'Ivoire between 2002 and 2011. Yet less attention has been given to the flip-side of the nationality coin, namely to the phenomenon of statelessness, to its prevalence in Ivorian society, and to the stakes and challenges that statelessness presents to Côte d'Ivoire and the West African region in terms of political stability, human security, and the respect for human rights and the rule of law, all of which impact economic development and prosperity.

Côte d'Ivoire is a country of immigration. Yet its nationality laws have resulted in the long-term exclusion of generations of migrants and their descendants from the national citizenry. Furthermore, the disconnect between what laws say and policies implemented in practice has been the defining feature of Côte d'Ivoire's nationality system, as established in laws pertaining to nationality, civil status, and personal identification. These shifting sands of Côte d'Ivoire's laws and practices have not only allowed, but have even forced, people through the cracks in the Ivorian nationality system. This has left some without established legal ties to any State in the form of a recognized nationality.

UNHCR launched a Global Campaign to End Statelessness in 10 Years in November 2014 and adopted a Global Action Plan enumerating ten actions that States must take to this end. Côte d'Ivoire has the largest reported estimate of stateless persons or those of undetermined nationality in West Africa: 700,000.³ Addressing statelessness in Côte d'Ivoire will be critical to achieving the goals of the Campaign. Having acknowledged the presence of stateless persons in its territory, Côte d'Ivoire acceded to the two international statelessness conventions in 2013. It hosted the Ministerial Conference on Statelessness for the Member States of the Economic Community of West African States (ECOWAS) in February 2015.⁴ It has also pledged to undertake a series of measures to reduce the number of stateless persons in its territory and prevent statelessness from arising in further cases, among other measures, in accordance with the Abidjan Declaration undersigned at the 2015 ECOWAS Ministerial Conference.⁵ Since Côte d'Ivoire's crisis-recovery process began in 2007, the Ivorian government and UNHCR have embarked on a collaborative partnership to end statelessness in the country. To date, however, no comprehensive study on the Ivorian legal and policy framework that explains the causes and identifies the profiles of stateless persons or those at risk of statelessness has been undertaken. This report seeks to fill that gap.

Several disclaimers are in order from the start. This report does not address the question of land rights, which alongside nationality is often cited as a root cause of the Ivorian conflict. There are a few pertinent points, however, to keep in mind. First, Houphouët-Boigny's policy that "the land belongs to those who develop it," was integral to his integrationist approach towards foreigners, but bred resentment among local communities. The 1998 land law therefore forbids non-Ivorian nationals from owning land.⁶ As such, the prospect of land-ownership creates a clear incentive to formally possess Ivorian nationality today in a way that it never did before. Furthermore, given scope limitations, this report does not address the consequences of statelessness on the lives of those concerned and it was not possible to conduct a comprehensive

³ This figure has been provided by the Ivorian Ministry of Justice and reported in UNHCR's global statelessness statistics. UNHCR, *Global Trends 2015*, Table 7. An explanation and evaluation of this figure is provided in Section 5.8.

⁴ Materials from this conference are available at: <http://unhcr.org/ecowas2015/>.

⁵ *Abidjan Declaration of Ministers of ECOWAS Member States on Eradication of Statelessness*, 25 February 2015.

⁶ *Loi No. 98-750 du 23 décembre 1998 relative au domaine foncier rural*, Article 1.

stakeholder analysis mapping actors engaged in statelessness-related work. This report should therefore be seen as a first step towards a clearer identification of the populations of concern affected by statelessness in Côte d'Ivoire in order to craft the most appropriate solutions to address their concerns. But more needs to be done.

1.2. What is “statelessness?”

Article 15 of the Universal Declaration on Human Rights enshrines the universal norm that “everyone has a right to a nationality.” A corollary to this right is the increasing global consensus prohibiting statelessness. Two international treaties form the international legal foundation on statelessness. The 1954 Convention relating to the Status of Stateless Persons establishes the minimum standards of treatment that States must accord to stateless persons. The 1961 Convention on the Reduction of Statelessness establishes measures for States to undertake to ensure that statelessness does not arise at birth for children born in its territory, to its nationals abroad, upon loss or deprivation of a country’s nationality, and in the context of State succession.

Article 1 of the 1954 Statelessness Convention defines a stateless person as “a person who is not considered as a national by any State under the operation of its law.” Here, “law” is meant to “be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.”⁷ Whether a person is stateless is not just a question of applying a country’s law(s) but also how those laws and regulations are implemented in practice, which is a mixed question of fact and law.⁸ Determining whether a person is stateless requires identifying all of the countries with which an individual has a link, such as place of birth, filiation, marriage, or habitual residence,⁹ and then analyzing whether the person is considered as a national pursuant to the laws and policies of these States.

Some populations or groups can be “at risk of statelessness because they have difficulties proving they possess links to a State.”¹⁰ Birth registration is the most important document for establishing which country’s nationality a child can acquire as it provides an official record of place of birth and parentage. Birth registration rates in many developing countries are low, leaving significant portions of the general populace unregistered or without proof of identity. Yet it cannot be said in all instances that the failure to register one’s birth or to possess a birth certificate renders someone at risk of statelessness. Rather, lack of birth registration – or other forms of personal identification – becomes relevant for the following groups of persons who are at particular risk of statelessness: (1) people living in border areas; (2) individuals (sometimes ethnic or religious minorities or groups) who have perceived or actual ties with foreign States; (3) cross-border nomadic or semi-nomadic groups; and (4) migrant populations, particularly with successive generations of children born abroad.¹¹

This report addresses how gaps in nationality legislation, administrative obstacles including ones related to birth registration and other identification documentation, legal challenges related to nationality as a result of Côte d'Ivoire’s emergence as an independent State after colonialism, and discrimination contribute to statelessness in this context. It then identifies and discusses specific populations in Côte d'Ivoire that fall into all of the above generalized categories.

⁷ UNHCR, *Handbook on Protection of Stateless Persons*, 30 June 2014, para. 22.

⁸ *Id.*, para. 23.

⁹ *Id.*, para. 18.

¹⁰ UNHCR, *UNHCR Action to Address Statelessness: A Strategy Note*, March 2010, para. 33.

¹¹ *Id.*, para. 35.

1.3. Côte d'Ivoire's international obligations on nationality and statelessness

Côte d'Ivoire acceded to the 1954 and 1961 Statelessness Conventions in 2013. Côte d'Ivoire is also a State party to the major international human rights treaties with provisions limiting State sovereignty over nationality, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities. Of primary importance, these treaties enshrine the right of all children to a nationality and to prompt birth registration, prohibit discrimination on the basis of race, ethnicity, gender and disability status, and guarantee women equal rights as men in their ability to transfer their nationality to their children and spouses.

At the regional level, Côte d'Ivoire is party to the African Charter on Human and Peoples' Rights, as well as the African Charter on the Rights and Welfare of the Child, which also impose human rights obligations with respect to nationality matters. Furthermore, Côte d'Ivoire has been the subject of two decisions of the African Commission on Human and People's Rights, which has called upon the State to amend its Constitution and nationality laws to eliminate discrimination, reduce statelessness, and to redress other human rights abuses perpetrated through its national legal frameworks.¹² Côte d'Ivoire is also party to laws of the Economic Community of West African States (ECOWAS), which create a regional regime guaranteeing the free movement of persons and the rights of residence and establishment, as well as the notion of ECOWAS community citizenship.¹³

2. Political and Migration Context of Côte d'Ivoire

2.1. Defining elements of Houphouët-Boigny's immigration and integration policies

Côte d'Ivoire had been a magnet for settlement of peoples from neighboring West African areas now constituting Burkina Faso, Mali, Guinea, Liberia, and Ghana since pre-colonial times.¹⁴ It became a French colony in 1893 and comprised a population of 1,959,360 people in 1901. Côte d'Ivoire possessed fertile and uncultivated agricultural land, but had low population density. The French therefore began to forcibly recruit laborers from neighboring colonies for resettlement in Côte d'Ivoire. The largest source of manual laborers was in Haute Volta (Upper Volta), now Burkina Faso, which became a French colony in 1919. In 1932, France annexed part of Haute Volta to the land mass of Côte d'Ivoire.¹⁵ This facilitated the mass forced recruitment of Burkinabè to work on major projects, like the rail line between Abidjan and Ouagadougou and ports in Côte d'Ivoire, as well as develop Côte d'Ivoire's cocoa and coffee plantation economy.¹⁶ Although the colonial system

¹² *Mouvement Ivoirien des Droits de l'Homme v. Côte d'Ivoire*, African Commission on Human and Peoples' Rights, Communication No. 246/2002, 21-29 July 2009; and *Open Society Justice Initiative v. Côte d'Ivoire*, African Commission on Human and Peoples' Rights, Communication No. 318/2006, 25 February 2015.

¹³ For an overview of the ECOWAS laws related to nationality and statelessness, see Bronwen Manby, *Nationality, Migration and Statelessness in West Africa*, Dakar: UNHCR and IOM, 2015, pp. 81-87.

¹⁴ Kouadio Brou and Yves Charbit, *La Politique Migratoire de la Côte d'Ivoire*, Revue Européenne de Migrations Internationales, Vol. 10 No. 3, CERPA CERPOD ORSTOM – Migrations africaines, 1994, pp. 33-59.

¹⁵ For the period 1932-1947, the land of Haute Volta was known as Haute Côte d'Ivoire, or Upper Côte d'Ivoire, with the land mass of modern-day Côte d'Ivoire known as Basse Côte d'Ivoire, or Lower Côte d'Ivoire.

¹⁶ One way the French promoted resettlement was to transplant recruits into "colonial" or "Mossi" villages in central Côte d'Ivoire that carried the names of their towns of origin in Haute Volta. Cissé Chikouna, *Migration et Mise en Valeur de la Basse Côte d'Ivoire (1920-1960)*, Paris: Harmattan, 2013, pp. 120-123.

of forced labor was abolished in 1946¹⁷ and Haute Volta became again a distinct French colony in 1947, the number of Burkinabè migrants resettling to Côte d'Ivoire steadily grew in the decades to come.

Côte d'Ivoire's total population at independence in 1960 was 3.7 million people, of which 13% constituted "immigrants."¹⁸ "Immigrants," as then understood, referred to those residing in Côte d'Ivoire who had been born outside of Côte d'Ivoire's newly-recognized boundaries, but who had immigrated into the country prior to its independence and permanently settled there.

Félix Houphouët-Boigny ruled Côte d'Ivoire from the time of its independence on 7 August 1960 until his death in December 1993. He had a strong sense of West African unity that emerged from the important role he played in the French colonial Constituent Assembly. Houphouët-Boigny first founded the African Agricultural Union in 1944, and then the Democratic Party of Côte d'Ivoire (*Parti Démocratique de la Côte d'Ivoire*, or PDCI) in 1946 based on socialist principles. The PDCI joined forces with political parties from other countries from French West Africa and French Equatorial Africa, creating the African Democratic Rally (*Rassemblement Démocratique Africain*, or RDA) coalition in a unified struggle to gain greater rights towards independence from colonial France.

Under Houphouët-Boigny's leadership and in an era of high commodity prices for the country's principal exports of cocoa and coffee, Côte d'Ivoire's economy, hailed as the "Ivorian miracle," boomed. Recognizing the historical presence of migrants and the critical role they played in developing his country's economy, Houphouët-Boigny espoused liberal immigration policies that would define his regime. Côte d'Ivoire continued to be an important immigrant-receiving country from 1960 through the 1980s as growth continued in the cocoa, coffee, palm oil, and pineapple plantations. Burkinabè continued to constitute the largest immigrant group throughout these decades, with Malians and Guineans forming the second and third largest foreign groups.¹⁹

With respect to citizenship, Houphouët-Boigny supported a Convention on Dual Nationality elaborated in 1956. This was a project of like-minded leaders of former French colonies forming the *Conseil de l'Entente*, or Council of Understanding, comprising Benin, Côte d'Ivoire, Haute Volta, Mali, Niger, and Togo. According to Article 1 of this Convention, nationals of the contracting parties residing in the territory of another Council State would enjoy the same rights and obligations of the citizens of the host State.²⁰ Recognizing universal dual nationality would allow migrants to maintain

¹⁷ The forced labor system was abolished with the French Constituent Assembly's adoption of the "Houphouët-Boigny Law," named after the future Ivorian President, an elected deputy who led advocacy on this issue. Tony Chafer, *The End of Empire in French West Africa: France's Successful Decolonisation?*, Oxford, New York: Berg, 2002, pp. 63-64.

¹⁸ Ministère de la Justice and Ministère des Droits de l'Homme et des Libertés Publiques, *Draft Plan d'Action de la Côte d'Ivoire pour l'Eradication de l'Apatridie d'ici 2024*, September 2016, p. 5 (on file with author). The United Nations provides an overview of the evolution of the Ivorian population, including rate of migration, as well as future demographic projections from 1950 through the year 2100. See the United Nations Department of Economic and Social Affairs/Population Division, *World Population Prospects: The 2015 Revision, Volume II: Demographic Profiles*, 2015, pp. 217-220.

¹⁹ In 1961, approximately 300,000 persons of Burkinabè origin were present in Côte d'Ivoire among a total estimated population of around 3,000,000, or about 10%. Roger Decottignies and Marc de Biéville, *Les Nationalités Africaines*, Paris: Pedone, 1963, p. 177. The number of those of Burkinabè origin doubled between 1960 and 1975 (774,096 Burkinabè in Côte d'Ivoire in 1975), and again between 1975 and 1985 (1,565,104 Burkinabè in Côte d'Ivoire in 1988). The ranks of Malians in Côte d'Ivoire swelled from 353,873 in 1975 to 714,174 in 1988, whereas the number of Guineans increased from 98,789 in 1975 to 228,003 in 1988. Omar Merabet, *Rapport Final, Termes de Référence pour une étude sur le profil migratoire de la Côte d'Ivoire*, CIVI.POL and TRANSTEC, March 2006, p. 18.

²⁰ Alfred Babo, *La Politique Publique de l'Etranger et la Crise Sociopolitique en Côte d'Ivoire*, in *Côte d'Ivoire : La Réinvention de Soi Dans la Violence*, Dakar: CODESRIA, 24 September 2011, pp. 39-62.

ties with their countries of origin while promoting political and social integration in their host countries. Houphouët-Boigny faced staunch opposition from within the ranks of his party and the project was defeated in the National Assembly. The Dual Nationality Convention was similarly rejected throughout the *Conseil de l'Entente* in 1965.

A resentment of “foreigners” had been latent since colonial times.²¹ But the Ivorian debate over the Dual Nationality Convention further aroused protectionist views. This translated into amendments to the Nationality Code in 1972, closing the special avenues available for foreigners present in Côte d’Ivoire at independence to acquire Ivorian nationality on a favorable basis, leaving the normal process of naturalization available as the primary avenue for foreigners to acquire Ivorian nationality.

Ignoring the national protectionist sentiment, Houphouët-Boigny proceeded to implement his vision promoting liberal immigration combined with highly integrationist policies towards foreigners. The defining feature of Houphouët-Boigny’s “public policy on foreigners”²² was to eliminate distinctions between “foreigners” and “Ivorians” in practice. Foreigners in Côte d’Ivoire were granted full rights as Ivorian nationals, even if they did not acquire Ivorian nationality under Ivorian law. To promote his vision of Côte d’Ivoire as a powerhouse plantation economy, Houphouët-Boigny adopted by decree in 1963 his well-known policy that “the land belongs to those who develop it.”²³ The opportunity to cultivate unclaimed land was a tremendous draw that led not only to the arrival of new foreign migrants, but also the internal displacement of some Ivorian ethnic groups.

The equal treatment of “foreigners” as Ivorians extended even to core areas typically reserved for nationals such as voting.²⁴ From 1960 to 1980, those of West African origin were allowed to participate in Ivorian elections.²⁵ This was so, even though Article 5 of Côte d’Ivoire’s 1960 Constitution reserved the right to vote to “Ivorian nationals.”²⁶ Despite this, the 1980 Electoral Code relative to the election of parliamentarians in its Article 57 extended the right to foreigners as follows: “non-Ivorians of African origin registered on the voter lists will be able to take part in the vote.”²⁷ Pursuant to this, foreigners of African origin were allowed to register and vote in the 1990 multi-party elections, which saw President Houphouët-Boigny elected over his rival Laurent Gbagbo of the Popular Ivorian Front (*Front populaire ivoirien*, or FPI).

In sum, even though the Nationality Code and other laws distinguish between Ivorians and foreigners, this was not done in practice throughout Houphouët-Boigny’s regime, which granted West African residents of Côte d’Ivoire the same rights as Ivorians in all spheres of life. As long as Côte d’Ivoire’s economy thrived under Houphouët-Boigny, Ivorians accepted Houphouët-Boigny’s pro-immigration and integrationist positions. However, cracks appeared in Côte d’Ivoire’s tolerant diversity as soon as the economic crisis of the 1980s arrived. With the fall in export prices, resources became scarce, and politics became contested with the multi-party system. In the end, the rift

²¹ Christian Bouquet, *Le Poids des Etrangers en Côte d’Ivoire*, *Annales de Géographie*, Vol. 112, No. 630, 2003, pp. 115-145.

²² Babo, *supra* note 20.

²³ In French the policy is known as “*la terre appartient à celui qui la met en valeur*.” *Id.*

²⁴ Another area was public service, where Houphouët-Boigny placed many “Ivorian personalities of foreign origins” in high-profile positions in government, the army, and State enterprises. Ousmane Dembele, *Migration, Emploi, Pression Foncière et Cohésion Sociale en Côte d’Ivoire*, International Organization for Migration, 2009.

²⁵ *Id.*

²⁶ Article 5 of Côte d’Ivoire’s 1960 Constitution reads: “Suffrage is universal, equal and secret. Are voters, under conditions determined by law, all adult Ivorian nationals, of both sexes, who enjoy civil and political rights.”

²⁷ Epiphane Zoro-Bi, *Juge en Côte d’Ivoire : Désarmer la Violence*, Paris: Karthala, 2004, p. 81.

between the rules of the Nationality Code and their non-implementation in practice fueled divergent social perceptions of who were Ivorian nationals or foreigners.

2.2. Turbulent decades: the rise of *Ivoirité*, instability, civil war, and political compromise

The first turning point in Ivorian politics came in 1990. Faced with the country's economic crisis, the government under Alassane Ouattara – who was then Prime Minister – put in place a series of austerity measures and the Ivorian parliament passed a law in 1990²⁸ that required all foreigners, including citizens of ECOWAS Member States, to obtain and carry a resident permit, or *carte de séjour*, at all times.²⁹ This marked the beginning of an era of increasingly protectionist measures.

After Houphouët-Boigny's death in 1993, Henri Konan Bédié, a fellow PDCI leader assumed the presidency as his constitutional successor until fresh elections were organized in 1995. It appeared at first that Bédié would continue his predecessor's liberal policies in favor of integrating foreigners. For example, Bédié signed a collective decree in October 1995 naturalizing 8,133 "persons of Burkinabè nationality originally from the villages of Garango, Koudougou, Koupela, Tenkodogo, in Bouaflé Department, and the villages of Kaya, Koudougou, Ouagadougou, in Zuénoula Department."³⁰ This was a symbolic gesture of Bédié's support for this community of Burkinabè origin, which included several prominent figures in Ivorian society of Burkinabè descent.³¹

Furthermore, Bédié sought to institutionalize the right of foreigners to vote.³² A PDCI bill put forward in 1994 even sought to accord the right to vote to "non-national citizens of ECOWAS States, in application of the Protocol relative to community citizenship and registered on the voter list."³³ The bill was defeated.

Rather, the 1994 Electoral Code kept the 1960 Constitution's principle that only Ivorian nationals can vote, overwriting the 1980 Electoral Code's sanctioning of the participation of Africans of foreign origin in elections.³⁴ Furthermore, Article 49 of this Code introduced new criteria for the eligibility of presidential candidates: "No one can be elected President of the Republic if he is not at least 40 years of age and if he is not an Ivorian by birth, born to a father and mother themselves Ivorians by birth. He should never have renounced Ivorian nationality."³⁵ The same requirements were adopted with regards to the eligibility of parliamentary candidates.³⁶

Due to disputes over various aspects of the electoral process, Bédié's principal opponents, including the FPI's Laurent Gbagbo and the new Rally of the Republicans (*Rassemblement des*

²⁸ *Loi No. 90-437 du 29 mai 1990 relative à l'entrée et au séjour des étrangers en Côte d'Ivoire.*

²⁹ The goal of instituting resident permits was to generate revenue to finance the budget deficit. Sylvère Yao Konan, *Migration en Côte d'Ivoire : Profil National 2009*, International Organization for Migration, 2009.

³⁰ *Décret No. 95-809 du 26 septembre 1995 portant naturalisation des personnes de nationalité burkinabè originaires des villages de Garango, Koudougou, Koupéla, Tenkodogo dans le département de Bouaflé et des villages de Kaya, Koudougou, Ouagadougou dans le département de Zuénoula*, Journal Officiel No. 1 Edition Complémentaire (E.C.), 6 January 1996.

³¹ *Id.*

³² "Our position in the PDCI-RDA is clear. We are not going to take away the right to vote of those who have voted since 1945 in Côte d'Ivoire. It's simply not a question," Henri Konan Bédié, *Fraternité Matin*, 27 December 1993, as quoted in Sylvie Bredeloup, *La Côte d'Ivoire ou l'Etrange Destin de l'Etranger*, Revue Européenne des Migrations Internationales, pp. 9–10, Vol. 19, No. 2, 2003, pp. 85-113.

³³ The bill was put forward by Interior Minister Bombet. Reynald Blion and Sylvie Bredeloup, *La Côte d'Ivoire dans les Stratégies Migratoires des Burkinabè et des Sénégalais*, in *Le modèle ivoirien en questions : crises, ajustements, recompositions*, p. 727, B. Contamin and H. Memel-Fôte (Eds.), Paris: Karthala 1997, pp. 707-37.

³⁴ *Loi No. 94-642 du 13 décembre 1994 portant Code électoral*, Article 3.

³⁵ Article 50 of Law No. 94-642 declares ineligible "Ivorians who have obtained citizenship of another State."

³⁶ Law No. 94-642, Articles 77-78.

Républicains, or RDR) party's candidate Alassane Ouattara, boycotted the 1995 elections. In these contested circumstances, Bédié won the 1995 elections.

Once President, Bédié quickly grew hostile towards foreigners, becoming the founder of what would become known as the policy of "*Ivoirité*." Several public policy measures were adopted to ensure that "real Ivorians" would have preferential treatment in the labor market and public office.³⁷ In the spirit of *Ivoirité*, the Ivorian parliament passed a major rural land tenure law in 1998 that denied foreigners the right to be land-owners.³⁸ As discussed further in Annex III, additional legal amendments were made regarding the system of identification of Ivorians and foreigners in the lead-up to the 2000 elections, in particular tightening the documentary requirements for obtaining an Ivorian national ID card, which never came into effect due to intervening events.

Bédié's government was toppled in a military coup led by General Robert Guéï on 24 December 1999, plunging the country into deep political crisis. Political negotiations ensued in order to allow for the October 2000 presidential elections to take place. A major part of this compromise was the adoption of a new Constitution in 2000.

Article 35 of this supreme law anchored the principles behind the eligibility requirements to be president of Côte d'Ivoire that had first been adopted in the 1994 Electoral Code. According to Article 35:

The candidate for the presidential election should be at least 40, but no more than 75 years of age. He should be *Ivorian of origin*, born to a father and mother themselves *Ivorian of origin*. He should never have renounced Ivorian nationality. He should never have claimed another nationality. He is to have resided in Côte d'Ivoire in a continuous fashion for five years preceding the date of elections and have totalled 10 years of effective presence.

Note that the concept of "Ivorian of origin" here (*Ivoirien d'origine*) is narrower than that of attribution of Ivorian "nationality by origin" (*nationalité d'origine*) as understood in the Nationality Code as explored in detail in Sections 3.1.1 and 3.2.1 below. The 2000 Electoral Code also incorporated these eligibility criteria for the presidential office in Côte d'Ivoire.³⁹

The stringent eligibility criteria endorsed by the 1994 and 2000 Electoral Codes and the 2000 Constitution created a new public discourse of who can legitimately claim to be truly Ivorian. A social mythology emerged whereby ethnic groups typically associated with Côte d'Ivoire's South held fast to their own authenticity as indigenous Ivorians in opposition to people from northern Côte d'Ivoire. Many northern Ivorians had moved to the South to participate in the economic boom alongside foreign migrants; both groups were predominantly Muslim. Many southerners began treating all "new arrivals," understood as anyone not indigenous to the local community, as "foreigners," without distinguishing between northerners who are originally from Côte d'Ivoire or foreigners who might have originated in neighboring countries. This group, writ large, came to be known as the "Dioulas."⁴⁰

Public perceptions stigmatizing northerners as foreigners continued to mount in the lead up to the 2000 elections, particularly with respect to the RDR leader and presidential candidate, Alassane Ouattara, whose "Ivorianness" came into doubt. On the eve of the elections, the

³⁷ Babo, *supra* note 20.

³⁸ *Loi No. 98-750 du 23 décembre 1998 relative au domaine foncier rural*.

³⁹ *Loi No. 2000-514 du 1er août 2000 portant Code électoral*, Article 48.

⁴⁰ The term "Dioula" refers to a language from the Bambara (Mali) group widely spoken amongst historical migrant traders in the West African region and continues to be used today. Jean-Pierre Dozon, *La Côte d'Ivoire entre Démocratie, Nationalisme, et Ethnonationalisme*, *Politique Africaine*, No. 78, June 2008, pp. 45-62. The terms "allochtone" and "allochtone" are also used in Côte d'Ivoire to refer to foreign and internal migrants, respectively, in distinction to "autochtones" or indigenous inhabitants.

Constitutional Chamber of the Supreme Court disqualified Ouattara's candidacy for failure to meet the Article 35 criteria in light of questions expressed over personal documents, including his nationality certificate.⁴¹

In the context of widespread popular uproar regarding the October 2000 presidential elections, General Guéï declared himself President, but was forced to flee. This allowed Laurent Gbagbo to be proclaimed president as he garnered the most votes of the limited field of candidates. Côte d'Ivoire plunged into a two-year period marred by massive human rights violations and social tensions as political parties and their ethnic-based support groups vied in parliamentary and local elections in 2000 and 2001. This violence was marked by ethnic and religious stereotyping and targeting for abuse of northerners as foreigners and supporters of the RDR.⁴²

A failed coup led by General Guéï in September 2002 spurred armed violence by a rebel movement that quickly took control of areas in northern Côte d'Ivoire, resulting in *de facto* division of the country into rebel-held North and Gbagbo-controlled South.

In January 2003, President Gbagbo and the main political leaders of Côte d'Ivoire, and the rebel groups known collectively as the *Forces Nouvelles* (or New Forces), convened in France and negotiated a cease-fire accord known as the Linas-Marcoussis Agreement. Given that this was "a war of identification,"⁴³ the Linas-Marcoussis Agreement called for a special naturalization program to facilitate the acquisition of nationality by historical migrants and their descendants; the suspension of the identification program put in place by Gbagbo's government, and an end to violent abuse and administrative harassment of foreigners. The cease-fire did not hold.

The next breakthrough came with the Ouagadougou Peace Agreement (APO)⁴⁴ of March 2007. The APO called for holding mobile court hearings to provide late birth registration to those who had not declared their births to the civil registrars (a process that was suspended due to the *de facto* partition of the country); the reconstitution of destroyed civil registers, and an exceptional process coupling a new identification program with the drawing up of the final voter list. Each stage was marked by negotiated political compromises that departed from the formal legal requirements on how the laws governing nationality and identification are meant to interplay, as discussed further in Sections 4.2.1 and 5.6.

At the end of the voter registration process for the presidential elections in October 2010, 601,322 persons who sought to register to vote could not prove their identity and nationality and were excluded from the voter roll.⁴⁵ The process included a public dispute and appeal process, in

⁴¹ Cour Suprême - Chambre Constitutionnelle, *Liste définitive des candidats à l'élection du Président de la République du 22 octobre 2000*, Arrêt No. E 0001-2000 du 6 octobre 2000. In total, the Supreme Court Constitutional Chamber disqualified 13 candidates from running for president.

⁴² Human Rights Watch, *The New Racism: The Political Manipulation of Ethnicity in Côte d'Ivoire*, August 2001.

⁴³ Young patriot, quoted in Richard Banégas and Ruth Marshall-Fratani, *Côte d'Ivoire: Negotiating Identity and Citizenship*, in *African Guerillas: Raging against the Machine*, p. 81, Morten Boas and Kevin Dunn (Eds.), Boulder: Lynn Rienner, 2007, pp. 81-111.

⁴⁴ According to its French acronym *Accord Politique de Ouagadougou*. An English translation by the United Nations of the APO is available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2007/144.

⁴⁵ Cabinet du Premier Ministre, Ministre de l'Economie et des Finances, *Fiche Technique Relative au Traitement du Cas des Pétitionnaires Restés en Suspens au Terme des Opérations d'Identification*, 2013 (on file with author).

which the “old demons of *Ivoirité*”⁴⁶ resurfaced, foreshadowing the eruption of post-election violence when Gbagbo failed to concede the election victory to his run-off rival, Ouattara.⁴⁷

2.3. Contemporary stabilization of Côte d’Ivoire’s migrant and foreign populations

As anti-foreigner hostility grew under *Ivoirité*, so did the frequency and intensity of violent inter-communitarian conflicts throughout Côte d’Ivoire specifically targeting foreigners, or those perceived to be foreigners.⁴⁸ During this period in the 1990s, some foreigners, as well as children of foreigners born in Côte d’Ivoire left Côte d’Ivoire to return to the countries of their origins or ancestors. The outbreak of civil war in 2002 led to a further exodus. Côte d’Ivoire registered its first negative net rate of migration (per thousand) between 2005 and 2010 at -3.7.⁴⁹ Looking forward, the International Organization for Migration (IOM) projects that the influx of migrants to Côte d’Ivoire will grow smaller, given the population pressure on arable land and the stagnation in Côte d’Ivoire’s plantation economy. Nevertheless, IOM also projects that the overall size of the immigrant population will remain high as a result of the permanent installation of many migrants into Ivorian society,⁵⁰ combined with limited practical avenues for foreigners to acquire Ivorian nationality.

According to Côte d’Ivoire’s 2014 census, 5,490,222 of the total population of 22,671,331 are non-Ivorian – or 24.2%.⁵¹ Although complete disaggregated data of the 2014 census is not yet publicly available, the Ivorian National Statistics Institute (*Institut National de la Statistique*, or INS) has released striking results, which confirm that for the first time in Côte d’Ivoire’s history, well over half of the “foreign” population was born in Côte d’Ivoire. The below table, drawn from the published main findings of the 2014 census,⁵² demonstrates how the percentage of the foreign population in Côte d’Ivoire who were born in the country has essentially doubled in the past four decades:

Indicator	1975 Census	1988 Census	1998 Census	2014 Census
Percentage of total population identified as “foreign”	22.1%	28.1%	26%	24.2%
Percentage of “foreign” population born in Côte d’Ivoire	30%	42.7%	47%	59%

This remarkable statistic – that 59% of the contemporary foreign population in Côte d’Ivoire was born in the country – should give rise to serious reflection on the practical effects of Côte d’Ivoire’s restrictive nationality system. What does this say about Côte d’Ivoire’s decision to marginalize, rather than integrate, one of its most important resources for development? And what are the implications of the heightened dangers of people falling through the cracks of multiple

⁴⁶ Alfred Babo, *Les Usages Politiques de la Nationalité et Ses Risques Pour la Société Ivoirienne*, in *Conditions Pour la Consolidation de la Paix en Côte d’Ivoire*, p. 90, Rafael Grasa (Ed.), Barcelona: Institut Català Internacional per la Pau, 2014, pp. 89-108.

⁴⁷ Post-election violence was marked by the targeting and stereotyping of political opponents based on ethnic and religious grounds. Amnesty International, *They looked at his Identity Card and Shot him Dead: Six Months of Post-Electoral Violence in Côte d’Ivoire*, AFR 31/002/2011, 2011.

⁴⁸ Dembele, *supra* note 24.

⁴⁹ Konan, *supra* note 29. The United Nations has estimated that the net migration rate (per thousand) for Côte d’Ivoire in 2015 was 0.5, close to no immigration into Côte d’Ivoire. UN Department of Economic and Social Affairs/Population Division, *supra* note 18.

⁵⁰ *Id.*

⁵¹ INS, *supra* note 1, p. 2.

⁵² INS, *supra* note 2.

nationality systems and the potential consequences of a growing population without legal ties to the country in which they live or to any State?

3. Analysis of Côte d'Ivoire's Nationality Laws and their Implementation in Practice

Côte d'Ivoire's foundational 1961 Nationality Code,⁵³ which remains in force today, has been amended by no less than four laws enacted by the Ivorian parliament, as well as two presidential decisions.⁵⁴ Furthermore, an exceptional and temporary naturalization regime was established pursuant to two laws adopted by the Ivorian parliament in 2004, and two presidential decisions taken in 2005. Finally, a 2013 law established a special, temporary program to facilitate the acquisition of nationality by declaration.

Practical implementation of Ivorian laws is defined through decrees, which are prepared by relevant Ministries of the executive government, approved by the Council of Ministers, and published in the Official Journal (*Journal Officiel*). Another layer of practical instructions comes from relevant Ministries in the form of circulars (*circulaires*) or orders (*arrêtés*). To understand the full scope of Côte d'Ivoire's nationality laws, it is imperative to examine and take all accompanying decrees and administrative regulations into account. Annex I provides an overview list of the laws, presidential decisions, and some regulations that have amended and complemented the 1961 Nationality Code.

This section is divided into two parts. The first part highlights the choices made in the 1961 Nationality Code to privilege Ivorian nationality by origin and to create a separate regime for acquisition of Ivorian nationality for foreigners before outlining the amendments made to the 1961 Nationality Code over time. The second part turns to an analysis of Côte d'Ivoire's nationality laws that are currently in force, providing observations and distinctions between the letter of the laws and how they are implemented in practice.

3.1. The 1961 Nationality Code and an overview of its evolution

From its inception, the Ivorian Nationality Code has foreseen two main ways that a person can be an Ivorian national. On the one hand, a person can be an Ivorian by virtue of the automatic attribution of Ivorian nationality through nationality by origin (*l'attribution de la nationalité ivoirienne à titre de nationalité d'origine*). The 1961 Nationality Code foresaw attribution of nationality by origin to three groups: anyone born in Côte d'Ivoire unless both parents were "foreigners," to anyone born outside Côte d'Ivoire to at least one Ivorian parent; and to children of unknown parents found in Côte d'Ivoire.

On the other hand, an individual can acquire Ivorian nationality through one of three modes of acquisition. At the time of Ivorian independence, the 1961 Nationality Code included the following modes of acquisition of Ivorian nationality: (1) acquisition of Ivorian nationality by operation of law (*acquisition de plein droit*), applying to children adopted by Ivorian nationals and foreign women marrying Ivorian nationals; (2) acquisition of Ivorian nationality by declaration, applying to several categories of minor children born in the country; and (3) acquisition of Ivorian

⁵³ *Loi No. 61-415 du 14 décembre 1961 portant Code de la nationalité ivoirienne*. This law was published in the Official Journal on 20 December 1961. Its implementing decree, *Décret No. 61-425 du 29 décembre 1961 portant application du Code de la nationalité ivoirienne*, was published in the Official Journal on 18 January 1962.

⁵⁴ These, and subsequent presidential decisions on nationality carry the force of law as they were passed in conformity with Article 48 of the Constitution, which grants the President law-making power in exceptional circumstances.

nationality by decision of the public authorities, encompassing acquisition of nationality through naturalization and the reacquisition of Ivorian nationality.

3.1.1. Nationality by origin

Under French colonial rule and until independence, all individuals living in Côte d'Ivoire, regardless of their birthplace or migration history, were French subjects of French West Africa and the French Community.⁵⁵ The advent of Côte d'Ivoire as an independent State with delineated boundaries "had as an immediate consequence the arrival of an Ivorian nationality."⁵⁶ The first Ivorian legislators drafted a nationality law that was largely modeled on the French Nationality Code, reasoning that "Côte d'Ivoire remains like France, a country of immigration."⁵⁷ Although it might not have been the intention at the time, the choices made on various legislative points created the most restrictive nationality regime in West Africa.

The Ivorian legislators privileged the automatic attribution of Ivorian "nationality by origin," in the 1961 Nationality Code's Title II encompassing Articles 6-9, which was available for three categories of individuals. Article 6 conferred Ivorian nationality by origin for the first group as follows:

Is Ivorian, any individual born in Côte d'Ivoire except if both of his or her parents are foreigners.

Faced with the choice of whether to privilege the granting of nationality based on *jus soli* (nationality determined by place of birth) or *jus sanguinis* (nationality determined by country of parental descent), the deliberations prior to the adoption of the Ivorian Nationality Code reveal something of a circular paradox. The Ivorian legislators acknowledged evidentiary advantages of the *jus soli* system, which would only require proof of birth in modern-day territory of Côte d'Ivoire; by contrast, following a *jus sanguinis* regime would require proof of the Ivorian nationality of a person's parents. The explanatory memorandum to the 1961 Nationality Code explained the challenges as follows: "Linking nationality to descent entails in this case the requirement to prove that one's ascendants already possess the nationality that an individual claims. This proof becomes materially impossible to bring as long as the civil status system, which is its foundation, only dates to the recent past."⁵⁸ As such, "Article 6 enshrines as the principal behind nationality by origin, the first criteria, namely birth in the territory."⁵⁹ Nevertheless, the 1961 Nationality Code reserved a "subsidiary role"⁶⁰ for *jus sanguinis* acquisition of Ivorian nationality in Article 7, which attributes Ivorian nationality by origin to a second group, namely, those born outside of Côte d'Ivoire to an Ivorian parent.

Article 9 created a presumption of birth on Ivorian soil for children of unknown parents found in Côte d'Ivoire. Although the language of Article 9 was silent on the consequences of this presumption of birth in Côte d'Ivoire, the Interministerial Circular of 25 April 1962 established that implicit in this article was a corollary presumption of birth in Côte d'Ivoire to Ivorian parents for

⁵⁵ For an overview of citizenship rules in colonial French West Africa, see Manby, *supra* note 13, pp. 6-8.

⁵⁶ *Exposé des Motifs de la Loi de 1961 portant Code de la nationalité ivoirienne, présenté par le Président de la République* (on file with author) [hereinafter *Exposé des Motifs, 1961*].

⁵⁷ *Rapport de Monsieur Vamé Doumouya, Député, Annexe au Procès-Verbal de la Séance du Mercredi 8 Novembre 1961, Commission des Affaires Générales et Institutionnelles sur le Projet de Loi No. 41 portant Code de la nationalité ivoirienne* (on file with author).

⁵⁸ *Exposé des Motifs, 1961, supra* note 56.

⁵⁹ *Id.*

⁶⁰ *Id.*

children found of unknown parents.⁶¹ As such, Article 9 as implemented through the 1962 Circular created a rule that children of unknown parents found in Côte d'Ivoire constituted a third group of individuals to automatically acquire Ivorian nationality by origin. This provision of Article 9 was abrogated in 1972. No information is available on how many children might have benefitted from this provision when it was available.

Even though the legislators sought to strike a balance and include elements of both *jus solis* and *jus sanguinis*, the fact of the matter is that birth alone on Ivorian soil had no legal effect on an individual's nationality. As such, in practice the 1961 Nationality Code enshrined the primacy of *jus sanguinis*, or nationality by descent as its guiding principle.⁶²

3.1.2. Who is a "foreigner?"

A weakness of Article 6 was to provide a circular definition of Ivorians as those who are not "foreigners" without specifying who is considered to be a "foreigner." This gap in the country's nationality framework has allowed for various interpretations to come into play, whether through practice or through subsequent laws.

Nevertheless, the concept of "autochthony" defining Ivorians as those born on Ivorian soil, as opposed to foreigners who originate from outside of Ivorian territories, was already engrained in the legislators' conscience.⁶³ They acknowledged the contributions of foreigners since pre-independence times and "took into account the presence on our territory of these *non-original elements* who will have the possibility, under certain conditions, either to blend into our national melting pot, or to pursue their activities without having to renounce their nationalities of origin."⁶⁴ This presumed that all people in Côte d'Ivoire who were not born there had automatically acquired the nationality of their respective countries of origin.⁶⁵ The legislative history therefore implies a predominant reading that only children of parents born in Côte d'Ivoire prior to independence merited the privileged status of Ivorian nationality by origin at independence.

As for stateless persons, although the law is silent in their regard, the legislative history supports the view that they are to be considered as foreigners for the purposes of Article 6. During the legislative deliberations, the legal expert asserted that children born in Côte d'Ivoire to stateless parents are not entitled to Ivorian nationality by origin, unlike children born in Côte d'Ivoire to unknown parents, who are entitled to Ivorian nationality by origin.⁶⁶

⁶¹ The Interministerial Circular addresses this, instructing Courts of First Instance to issue nationality certificates indicating a person is Ivorian by origin for three categories, including children found in Côte d'Ivoire to unknown parents. *Circulaire Interministérielle No. 31/MJ/CAB 3 du 25 avril 1962 (1)*.

⁶² Even discussions in the National Assembly at the time acknowledged that Article 6, applying to anyone "born in Côte d'Ivoire, except if both of his or her parents are foreigners," effectively is to be interpreted as: "is Ivorian, any individual born to one Ivorian parent and one foreign parent." *Commission des Affaires Générales et Institutionnelles – Procès-Verbal, de la séance de travail du vendredi 24 novembre 1961 – sous la présidence de Monsieur DJESSOU Loubo. Messieurs TIXIER et SAINT ALARI, professeurs de droit, étaient les invités de la Commission* (on file with author) [hereinafter *Commission des Affaires Générales et Institutionnelles*].

⁶³ Babo, *supra* note 46.

⁶⁴ *Exposé des Motifs, 1961, supra* note 56.

⁶⁵ The founding Ivorian legislators assumed at independence that foreigners would be identified based on their birth outside Côte d'Ivoire as proven through birth registration: "It is difficult to distinguish an Ivorian from a Malian or from a Guinean, which is why nationality for us should be surrounded by many precautions. It is difficult to distinguish us one from another; it is only a birth certificate which can allow us to make this distinction." Mr. Jérôme Alloah, quoted in *Commission des Affaires Générales et Institutionnelles, supra* note 62.

⁶⁶ *Commission des Affaires Générales et Institutionnelles, supra* note 62. Some French legal commentators on Côte d'Ivoire's Nationality Code have expressed the view that based on the language of the article alone, a

3.1.3. Two avenues for integrating “foreigners” and their descendants into the Ivorian citizenry

The founding Ivorian legislators foresaw two special avenues for those deemed “foreigners,” i.e. those not born in Côte d’Ivoire who migrated to Côte d’Ivoire, and their descendants born in Côte d’Ivoire, to acquire Ivorian nationality.

3.1.3.1. *Special naturalization procedure*

Article 105 of the 1961 Nationality Code created a special naturalization procedure for foreigners with habitual residence in Côte d’Ivoire prior to independence. This was available for one-year. Those naturalized through this procedure could be exempted from the temporary restrictions (*incapacités*) placed on naturalized persons. The ability to take advantage of the Article 105 special naturalization procedure automatically lapsed by December 1962. This facilitated naturalization procedure remained, however, a non-automatic and discretionary procedure that required individuals to apply to naturalize subject to conditions of naturalization pursuant to the law. Not one person acquired Ivorian nationality through this special naturalization procedure that was available for a one-year window. This article has never formally been abrogated and is still contained in the Nationality Code.

3.1.3.2. *Nationality by declaration*

Articles 17-23 of Title III, Chapter I, Section 2, of the 1961 Nationality Code set forth a procedure for acquisition of nationality by declaration, which is a matter of right rather than one of the discretion of public authorities, such as naturalization. Article 17 defined the beneficiaries:

A minor child born in Côte d’Ivoire to foreign parents, can claim Ivorian nationality by declaration according to the conditions fixed in Articles 7 and following, if at the time of his or her declaration, he or she demonstrates at least five consecutive years of habitual residence in Côte d’Ivoire and if proof of his or her birth is made to the exclusion of any other mode of proof.

In practice, this article encompasses two categories of individuals. First, it includes anyone born in Côte d’Ivoire to foreign parents who had not yet attained majority at the time the Nationality Code entered into force on 20 December 1961. At the time, Article 2 of the 1961 Nationality Code set the age of majority at 21 years of age. In other words, anyone born in Côte d’Ivoire to foreign parents between 19 December 1940 and 19 December 1961 could have requested to acquire Ivorian nationality by declaration provided the five-years of habitual residency requirement was met and the application to acquire Ivorian nationality by declaration was submitted before reaching majority. Second, Article 17 also allowed that any child born in Côte d’Ivoire to foreign parents after the 1961 Nationality Code entered into force could submit a request to acquire Ivorian nationality by declaration provided the five-year residency requirement was met and an application for acquisition of nationality by declaration was submitted before reaching the age of majority.

Côte d’Ivoire was the only country of former French West Africa that did not incorporate a provision for double *jus soli*, whereby a person born in the country of one parent also born there is automatically attributed nationality by origin. This was also in contrast to neighboring West African

child born to stateless parents born in the country could acquire Ivorian nationality by origin. Decottignies and de Biéville, *supra* note 19, p. 177. That the Ivorian authorities have never implied a safeguard against statelessness through the granting of Ivorian nationality by origin to children of stateless parents born in Côte d’Ivoire in practice, lends support to the view expressed during the legislative deliberations, that stateless persons are to be considered as “foreigners” under Article 6.

countries that emerged from British colonial rule, which all allowed for a person born in the country of one parent also born there to become a national automatically at independence.⁶⁷

3.1.4. Overview of Nationality Code amendments and special nationality programs

Significant amendments to the 1961 Nationality Code were adopted by the Ivorian parliament in 1972.⁶⁸ This was prompted by two motivations. The first objective was to harmonize various provisions with a new Judiciary Act⁶⁹ and numerous civil laws on the family and age of majority, which were adopted since 1964 and which impacted on the formulation of several provisions of the 1961 Nationality Code.⁷⁰

The second objective of the 1972 amendments to the 1961 Nationality Code was to revoke the possibility of acquiring nationality by declaration, thereby abrogating Articles 17-23 from the Nationality Code.⁷¹ The reasons for this change are described in the Explanatory Memorandum to the 1972 law⁷² as follows:

The interest in assimilating foreigners residing in the territory as soon as possible in order to avoid the loss of population led the legislature to adopt a very liberal nationality policy... After applying the [1961 Nationality] Code for ten years, it has appeared necessary to consider amendments and modifications to certain provisions in order to... correct the excessive liberalism in matters of acquisition of nationality by way of declaration, which is not without its inconveniences.

The Explanatory Memorandum to the 1972 amendments elaborated further:

It may seem risky, in some respects even dangerous, to keep the combination of birth in Côte d'Ivoire and residence as a means of attributing nationality to minor children born to two foreign parents, when it is not certain that these minor children are fully assimilated into the Ivorian community or whether they will keep this nationality at majority, given that their parents themselves retain their other nationality of origin. This is why this present law opts to suppress this mode of acquisition of Ivorian nationality.

The amendments also repealed the second sentence of Article 9 of the 1961 Nationality Code, which created the presumption of birth in Côte d'Ivoire of foundlings and entitled them to acquire Ivorian nationality by origin.⁷³ Going forward, nationality by origin has only been available to children born in Côte d'Ivoire or abroad to at least one Ivorian parent under Articles 6 and 7.

⁶⁷ Manby, *supra* note 13.

⁶⁸ *Loi No. 72-852 du 21 décembre 1972, portant modification du Code de la nationalité ivoirienne*. For a complete list of laws, presidential decisions, and regulations that amended and complemented the 1961 Nationality Code, see Annex I. This law was published in the Official Journal on 25 January 1973 and therefore the amendments made to the 1961 Nationality Code entered into force on that day.

⁶⁹ *Loi No. 64-227 du 14 juin 1964 sur l'organisation judiciaire*. This law required that changes be made to Articles 57, 77, 78, 80, 81, 82, 85, 93, 97, 99, and 100, as well as the abrogation of Article 103 of the 1961 Nationality Code in order to reflect the new organization of the court system, with most nationality matters handled by the local Courts of First Instance (*Tribunaux de Première Instance*) where an individual lives.

⁷⁰ Articles 2, 6, 7, 11, 12, 30, 45, and 49 were redrafted and Article 47 and a section of Article 28 were abrogated.

⁷¹ The abrogation of the articles pertaining to acquisition of nationality by declaration further led to amendments to Articles 57 and 62, as well as the abrogation of Article 61.

⁷² *Exposé des Motifs du Projet de Loi de 1972 portant Modification du Code de la nationalité de 1961, présenté par le Président de la République, 1972* (on file with author).

⁷³ The motivations behind this amendment were not addressed in the Explanatory Memorandum to the law. Additionally, the 1972 amendments abrogated Article 10 of the 1961 Nationality Code, which stated that children of foreign diplomats were exempt from the provisions relating to children of foreigners in Articles 6-9.

Perhaps the Ivorian legislators were unaware that only 36 persons acquired nationality by declaration and that not one person applied to acquire Ivorian nationality through naturalization pursuant to Article 105. Regardless, the 1972 amendments to the Nationality Code demonstrated the undercurrent of nationalism in Ivorian politics that established Côte d'Ivoire as having the most restrictive nationality regime in West Africa. These amendments, however, had little practical impact on a continued liberal immigration policy and widespread administrative practices that integrated "foreigners" into Ivorian society as citizens under Houphouët-Boigny but did not formally attribute Ivorian nationality to them in accordance with the Nationality Code, leaving the door open for various public perceptions of who is and is not an Ivorian.

The Linas-Marcoussis Agreement of 2003 was the first text in which major political actors of all persuasions acknowledged the enormous divide between the entitlements and procedures according to the letter of the Nationality Code and problems with the law's implementation – or lack thereof – in practice. It called upon the government of national reconciliation to create an accessible temporary naturalization program that would apply to the beneficiaries of the former acquisition of nationality by declaration procedure previously foreseen in Articles 17-23 of the 1961 Nationality Code as well as those who could have benefited from the transitional naturalization option available for one year pursuant to Article 105. Linas-Marcoussis also called on lawmakers to remedy existing gender discrimination in acquisition of nationality through marriage, which was then only available to foreign women marrying Ivorian men.

The Linas-Marcoussis naturalization program was implemented through the adoption of two laws in 2004, four presidential decisions (supplementing and amending the 2004 laws), and one implementing decree passed in 2006. According to the Ministry of Justice's records, between 2005 and 2007, 540 naturalization decrees were signed, granting Ivorian nationality by naturalization to 773 adult petitioners and 557 minor children.⁷⁴

The most recent amendments to Côte d'Ivoire's Nationality Code and nationality-related measures came in 2013. First, additional changes to Articles 12, 13, 14, and 16 of the Nationality Code were made with the view to facilitate acquisition of nationality through marriage. Acquisition of nationality through marriage now occurs automatically on equal terms for foreign men and women marrying an Ivorian national at the time of a civil marriage ceremony.⁷⁵

Second, Law No. 2013-653 established special provisions regarding acquisition of nationality by declaration. This temporary procedure revived the goals of Linas-Marcoussis to resolve the situation of historical migrants who were entitled to acquire Ivorian nationality pursuant to Articles 17-23 and 105 of the 1961 Nationality Code, but failed to formally apply to do so. As set forth in the Explanatory Memorandum:

The political crisis that overcame our country and led to armed conflict in September 2002 brought to the agenda the question of the abnormally prolonged alien status of certain populations who, despite having totally integrated into the Ivorian social fabric and consider themselves as Ivorians, remain as a matter of law non-nationals, but without having another nationality. This is the case of immigrants from the colonial period and their children born on Ivorian soil.

⁷⁴ Ministère de la Justice, *Base de Données Numérique des Naturalisations de novembre 1962 à novembre 2015 : Statistiques Provisoires*, 2015 (on file with author).

⁷⁵ *Loi No. 2013-654 du 13 septembre 2013 portant modification des articles 12, 13, 14 et 16 de la Loi No. 61-415 du 14 décembre 1961 portant Code de la nationalité telle que modifiée par les Lois No. 72-852 du 21 décembre 1972 et No. 2004-662 du 17 décembre 2004 et les Décisions No. 2005-03/PR du 15 juillet 2005 et No. 2005-09/PR du 29 août 2005.*

This revived the simpler and non-discretionary declaration procedure rather than following the cumbersome, non-transparent naturalization procedure foreseen by Linas-Marcoussis. All individuals who acquire nationality through this declaration procedure will be entitled to enjoy full rights as Ivorian citizens pursuant to Article 42 of the Nationality Code.⁷⁶

By January 2016, 123,810 people had applied to acquire nationality by declaration, with 11,762 administrative nationality certificates issued by 30 November 2016, and the remaining files pending review or delivery of their nationality certificate. These figures demonstrate that this program has clearly been more successful than the Linas-Marcoussis naturalization program. Yet in light of the high number of foreigners in Côte d'Ivoire born in the country, many from historical migrants, the number of those who applied for nationality by declaration from 2014 to 2016 is still likely only a fraction of those who should be eligible under the program.

The links between the Linas-Marcoussis special naturalization program of 2004-2007 and the temporary acquisition of nationality by declaration program pursuant to Law 2013-653 are clear. Both sought to accord Ivorian nationality to those present in Côte d'Ivoire since independence who had failed to apply to formally acquire Ivorian nationality according to the options available between December 1961 and January 1973. There have been several pitfalls, however, in both programs. For one, there has been some confusion among the Ivorian legislators as to who the intended beneficiaries of Article 17 of the 1961 Nationality Code include. Further confusion has persisted with respect to the rights of legal descendants of the original beneficiaries of these programs to acquire subsidiary Ivorian nationality through these programs. These issues, as well as other commentary on these two special programs, are explored further in Section 3.2.3 and in Annex II.

In sum, this special program for acquisition of Ivorian nationality by declaration has been an important measure to correct the historical anomaly of the failure to grant nationality to all eligible residents and their descendants at the time of independence and beyond, but it has been limited in its impact due to legislative and procedural ambiguities as well as low public awareness of the program. In light of the limited number of applications to acquire Ivorian nationality by declaration pursuant to Law No. 2013-653, Côte d'Ivoire should extend this procedure again in the future without any time-bound limit as discussed further in Section 3.2.3. Furthermore, Section 5.1.2 below provides additional observations on the practical realities of the circumstances of those who are stateless or at risk of statelessness among historical migrants and their descendants, and will expand further on the challenges these individuals will face in meeting the procedural and documentary requirements in order to benefit from the special program to acquire nationality by declaration.

3.2. Côte d'Ivoire's contemporary nationality laws and their implementation in practice

Against the backdrop of the evolution of Côte d'Ivoire's nationality laws, this section turns to a more in-depth analysis of the nationality laws and measures that are currently in force, although it is intended as a preliminary, rather than exhaustive, discussion on the issues. In doing so, it provides observations not only on the letter of the law, but also on how these provisions are applied in practice. The goal of isolating this analysis from the history of policy changes is to provide an objective reading of the strengths and weaknesses of the Nationality Code and related laws, which will help identify legal gaps that contribute to the creation of statelessness in Côte d'Ivoire and will inform recommendations for further nationality reforms. The organization of this section reflects the organization of the Nationality Code, as amended and supplemented by relevant laws. Any

⁷⁶ In other words, persons who acquire nationality through declaration are *not* subject to the restrictions placed on naturalized persons through Article 43 of the Nationality Code, including the five-year ban on voting or exercising a public service function or liberal profession and the ten-year bar on running for elective office.

revisions of the Ivorian Nationality Code must also take into account Côte d'Ivoire's obligations as a State party to the two statelessness conventions, as discussed in detail in Section 0.

3.2.1. Nationality by origin

The foundational provision establishing Ivorian nationality by origin is set out in Article 6 as follows:

Is Ivorian:

- 1- The child born in Côte d'Ivoire in wedlock or legitimated, except if both of his or her parents are foreigners.
- 2- The child born in Côte d'Ivoire out of wedlock, unless his or her filiation is established to two foreign parents, or only one parent, who is also a foreigner.⁷⁷

For its part, Article 7 enshrines *jus sanguinis* for children born abroad to an Ivorian parent:

Is Ivorian:

- 1- The child born in wedlock or legitimated, born abroad to an Ivorian parent;
- 2- The child born out of wedlock, abroad, whose filiation is legally established with respect to one Ivorian parent.

Article 9 requires that birth and filiation must be established in accordance with Ivorian civil status law in order to have an effect with respect to nationality. Those who possess Ivorian nationality by origin pursuant to Articles 6 or 7 benefit from all rights attached to Ivorian nationality from birth, even if the facts that prove nationality by origin are established only after birth (Article 8).

There are several ways the language of Articles 6 and 7 could be streamlined to overcome persistent ambiguities and ensure that those who qualify can effectively possess Ivorian nationality by origin in practice. For example, if Ivorian legislators confirm that descent should serve as the primary principle behind Côte d'Ivoire's nationality law, as is its current effect, Article 6's reference to a child's birth in Côte d'Ivoire remains superfluous, given that the ultimate criteria for the attribution of Ivorian nationality by origin is birth to at least one Ivorian parent. Furthermore, who constitutes a "foreigner" remains undefined in Ivorian law and subject to arbitrary interpretation. It would be beneficial for future law reform to provide an explicit benchmark distinguishing who is to be considered a foreigner by law. Finally, the introduction of distinctions in Article 6 between those born in and out of wedlock, with the latter requiring legal filiation to at least one Ivorian parent for Article 6 to take effect, creates additional administrative obstacles for children born out of wedlock to demonstrate their right to Ivorian nationality by origin in light of the complex procedures to establish filiation.

Reformulating the Ivorian Nationality Code to reflect its ultimate preference for *jus sanguinis* would allow for the fusion of Articles 6 and 7. This, combined with eliminating distinctions between children born in and out of wedlock, could potentially yield a clear and simplified way of attributing Ivorian nationality by origin in a formula like: "Is Ivorian: the child born to one Ivorian parent."⁷⁸ Such a simplified formulation not only captures the underlying essence of Ivorian nationality by origin as originally designed by Côte d'Ivoire's founding legislators in 1961, but would also serve as

⁷⁷ In other words, one parent of a child born out of wedlock could be an Ivorian national, but if filiation is not established to the Ivorian parent, the child would not acquire Ivorian nationality by origin.

⁷⁸ Recently, Senegal adopted the first amendments to its Nationality Code, also inspired by the French model at independence in 1960, with a similar simplified provision in its Article 5: "Every child born to a Senegalese first-degree ascendant [parent] is Senegalese." *Loi No. 2013-05 portant modification de la Loi no. 61-10 du 07 mars 1961 déterminant la nationalité, modifiée* [Senegal].

the sole legal text defining who is “Ivorian” going forward. Furthermore, any review of Articles 6-9 governing Ivorian nationality by origin must reintroduce a safeguard against statelessness for foundlings in line with Côte d’Ivoire’s obligations under the 1961 Statelessness Convention.

3.2.2. Acquisition of nationality as a matter of right: adoption or marriage

Acquisition of nationality as matter of right (*de plein droit*), is one of three modes of acquiring nationality set out in Title III of the Ivorian Nationality Code. It can be achieved either for a child who is adopted by at least one Ivorian parent (Article 11) or through marriage (Articles 12-16).

With respect to marriage, pursuant to the Nationality Code as most recently amended in this regard in 2013, both a woman and a man of foreign nationality marrying an Ivorian acquires Ivorian nationality automatically at the time of a civil marriage ceremony (Article 12).⁷⁹ A foreign spouse, however, who wishes to conserve his or her nationality of origin, retains the ability to decline the acquisition of Ivorian nationality if declared prior to the civil marriage ceremony (Article 13).⁸⁰

Despite the Ivorian legislators’ best intentions to streamline acquisition of Ivorian nationality through marriage, the automatic conferral of nationality upon marriage might be counter to the free will of the foreign spouse.⁸¹ It is also worth examining whether the automatic grant of Ivorian nationality upon marriage is easy to administer.⁸² Most significant, however, is the fact that very few people will be affected by these nationality provisions, given that so few marriages are celebrated in accordance with civil law. The partial results of the 2014 census revealed that only 8.4% of all marriages were conducted before civil registrars in accordance with laws.⁸³ Questions can be raised as to the advantages and disadvantages of the current law’s inclusive provision that liberally grants Ivorian nationality automatically upon civil marriage ceremonies or relying on the affirmative expression of free will of a foreign spouse, which might change in time over the course of a marriage, to acquire Ivorian nationality by option.

3.2.3. Acquisition of nationality by declaration

The possibility of acquiring Ivorian nationality by declaration as originally foreseen in Articles 17-23 of the 1961 Nationality Code, though abrogated in 1972, was revived for a limited two-year period starting 24 January 2014 as established by Law No. 2013-653 of 13 September 2013⁸⁴ and its implementing decree and administrative regulations. The modalities pertaining to this exceptional program are described in detail in Sections 3.1.4 above and Annex II.

⁷⁹ Several laws and presidential decisions in 2004 and 2005 (listed in Annex I) addressed the issue of acquisition of nationality by marriage, in particular, by creating a system in which a foreign spouse did not automatically acquire Ivorian nationality at a civil marriage ceremony, but rather had to opt, through a solemn declaration undertaken at the civil marriage ceremony, to acquire Ivorian nationality. The 2013 law restores the system of automatic conferral of Ivorian nationality upon marriage as was foreseen by law until 2004.

⁸⁰ The Ivorian government can oppose, by decree, the acquisition of Ivorian nationality by a foreign spouse within six months of the time of the civil marriage ceremony in Côte d’Ivoire (Article 14) or of the time a marriage abroad is registered by Ivorian diplomatic or consular authorities (Article 15). A foreign spouse does not acquire Ivorian nationality if the marriage is declared null and void.

⁸¹ This would be the case, for example, for a foreign spouse who was unaware of the automatic acquisition of Ivorian nationality upon marriage who wishes to conserve his or her nationality of origin (and does not wish to have dual nationality), but fails to make a declaration declining Ivorian nationality at the time of marriage.

⁸² Effective implementation of the law and ensuring that the will of a foreign spouse is respected requires training of civil registrars regardless of whether oaths are taken to acquire or decline Ivorian nationality.

⁸³ INS, *supra* note 1, p. 3.

⁸⁴ *Loi No. 2013-653 du 13 septembre 2013 portant dispositions particulières en matière d’acquisition de la nationalité par déclaration.*

To summarize briefly, recall that Article 17 of the 1961 Nationality Code allowed minor children born in Côte d'Ivoire to foreign nationals to acquire Ivorian nationality by declaration provided they had five years of consecutive residence in Côte d'Ivoire and their births were registered with the civil registration office pursuant to law. The founding Ivorian lawmakers did not envisage a time-limit on this procedure, but rather included this right to opt to acquire Ivorian nationality by declaration as a means of integrating minor children born in Côte d'Ivoire to foreigners. This right to opt for Ivorian nationality by declaration was abrogated by the 1972 amendments to the Nationality Code, which entered into effect on 25 January 1973.

The 2013 law that revived the declaration procedure for a two-year time window made this option available again to the former beneficiaries of the declaration program that was foreseen in Article 17 of the Nationality Code, as well as for those who were eligible to apply for facilitated naturalization under Article 105 of the 1961 Nationality Code, which was available for a one-year period for foreigners with habitual residence in Côte d'Ivoire prior to independence. To summarize, the 2013 special declaration procedure was available to the following three categories of individuals:

- Category 1: Persons born in Côte d'Ivoire to foreign parents and aged less than 21 years of age on 20 December 1961;
- Category 2: Persons having had uninterrupted habitual residence in Côte d'Ivoire prior to independence on 7 August 1960;
- Category 3: Persons born in Côte d'Ivoire to foreign parents between 20 December 1961 and 25 January 1973.

Regrettably, through modifications made in the implementing decrees and administrative regulations to Law No. 2013-653, there remained confusion – as a matter of law, as well as practice – as to the scope of the eligibility of the descendants of any or all of the three distinct categories of beneficiaries of this program. In practice, the failure of the original beneficiaries of Article 17 to acquire Ivorian nationality by declaration, as was their right until 25 January 1973, has deprived two, potentially more, successive generations of the original migrants' children and descendants from also acquiring Ivorian nationality.⁸⁵

As the discussion in Annex II highlights, there are many pitfalls in *ad hoc* law-making, which has been prevalent in Côte d'Ivoire since 2000. To reach the maximum number of beneficiaries and their legal descendants, the acquisition of nationality by declaration program should be extended indefinitely. That said, lawmakers should more carefully draft any subsequent laws and regulations to clarify the scope of the program and to ease the proof requirements of the program, as discussed further in Section 5.1.2 below.

3.2.4. Acquisition of nationality by decision of public authority: naturalization and reacquisition of Ivorian nationality

Section 2 of Title III, Chapter 1 of the Ivorian Nationality Code establishes two modes of acquisition of Ivorian nationality by foreigners “by decision of public authority,” namely through naturalization or through a request to have Ivorian nationality reinstated (Article 24).

3.2.4.1. *Naturalization*

⁸⁵ Given that Article 45 of the Nationality Code only allows minor children of adults who acquire Ivorian nationality by any of the various modes to also acquire Ivorian nationality in a subsidiary manner, the only avenue available to adult descendants of historical migrants to acquire Ivorian nationality would be through naturalization, provided they meet the criteria for naturalization required by law.

Naturalization applicants must prove habitual residence in Côte d'Ivoire for the five years preceding the submission of a request (Article 26). The residence requirement is reduced to two years for a foreigner born in Côte d'Ivoire and for those who render important services to Côte d'Ivoire, such as through artistic, scientific, or distinguished literary talents, or the introduction of useful industries or inventions (Article 27). Only persons having reached 18 years of age can apply to naturalize (Article 29),⁸⁶ with the exception of minors who qualify for naturalization under Article 28(1) and (2).

Several categories of persons can naturalize without fulfilling any minimum residence requirement pursuant to Article 28. These include the following:

- (1) a foreign minor child born outside of Côte d'Ivoire, if one of his or her parents acquires Ivorian nationality through the other parent during his or her lifetime;
- (2) the minor child of a foreigner who acquires Ivorian nationality who does not otherwise acquire Ivorian nationality as a matter of right under Article 46 [married minor children or a minor child who served in the armed forces of his or her country of nationality];
- (3) the wife and adult children of a foreigner who acquires Ivorian nationality;
- (4) [abrogated];
- (5) or a foreigner who has rendered exceptional services to Côte d'Ivoire or for whom naturalization presents an exceptional interest for Côte d'Ivoire

The following requirements for naturalization apply to all applicants, except for a person who has rendered exceptional services or presents exceptional interests to Côte d'Ivoire: a person must be of good conduct and moral character (Article 31), of healthy mind, and after a physical exam, judged not to constitute a burden or danger to society (Article 32). Acquisition of nationality through naturalization is accorded by decree and after investigation. A successful applicant must maintain habitual residence in Côte d'Ivoire at the time a naturalization decree is signed (Article 25). Requirements regarding the physical exam of a foreign applicant for naturalization and the fees are established by decree (Article 33).

Although Côte d'Ivoire's five-year residency requirement for naturalization is not in itself onerous, the requirements of Article 31 and 32 run the risk of discrimination in violation of Article 18 of the Convention on the Rights of Persons with Disabilities.⁸⁷ No facilitated avenue for naturalization exists for stateless persons.

Very few foreigners have successfully acquired Ivorian nationality by naturalization. It is also difficult to state the exact number of those who have done so. In 2015, the Ministry of Justice published a digitized official database containing all decrees of naturalization that have been published in the Official Journal, the government's official legal register or gazette. According to this database, 32,819 people acquired nationality through naturalization between 1962 and 2012 through 7,121 signed decrees published in the Official Journal. The number of decrees is inferior to the number of those naturalized as minor children eligible to acquire subsidiary Ivorian nationality through the naturalization of their parents pursuant to Article 45 of the Nationality Code were subsumed in the decrees concerning their parents.⁸⁸ Note that this figure only counts once the collective naturalization decree of 8,133 persons of Burkinabè origin signed by President Bédié in October 1995 and published in a special edition of the Official Journal in January 1996. Furthermore,

⁸⁶ Those who are at least 18 years old can apply to naturalize without prior authorization, whereas minors between 16 and 18 can apply to naturalize through the parent with paternal authority or a legal guardian acknowledged by law (Article 30). Minors less than 16 years old can only apply to naturalize through a foreign parent or legal guardian who maintained at least five years of habitual residence in Côte d'Ivoire (Article 30).

⁸⁷ Côte d'Ivoire ratified this convention in January 2014.

⁸⁸ Information contained in this paragraph has been confirmed by the Ivorian Ministry of Justice in e-mail correspondence with the author and UNHCR in April 2016.

the many minor children of the 8,133 naturalized persons of Burkinabè origin in Bédié's collective decree who also acquired subsidiary Ivorian nationality by naturalization pursuant to Article 45, are not accounted for in the "total" figure of 32,819 in the Ministry of Justice's official database.

Previously in 2010, the Ministry of Justice conducted a manual count not only of the naturalization decrees published in the Official Journal, but also of the records of the Ministry of Justice's naturalization service, which has issued administrative attestations affirming the naturalization of individuals, particularly children who benefit from subsidiary naturalization through their parents. This review yielded an estimate that 92,760 individuals possessed Ivorian nationality by naturalization at that time (2010).

Côte d'Ivoire's population censuses are another independent source for estimates of the size of the naturalized population given that the censuses consider "naturalized" as an Ivorian ethnic category. Côte d'Ivoire's 1998 census classifies 88,714 people as naturalized Ivorian nationals, representing 0.8% of the Ivorian population at that time. The partial results of the 2014 census revealed that naturalized persons constitute only 0.6% of the total Ivorian population, or approximately 136,027 people.⁸⁹

In sum, there are enormous obstacles that prevent naturalization from playing an effective role in integrating foreigners into the Ivorian citizenry, as well as confusion regarding who is actually naturalized. Despite efforts by the Ministry of Justice to create a digitized database of naturalization decrees, naturalized persons in Côte d'Ivoire and their descendants are likely to continue to face hurdles in proving their nationality status.

3.2.4.2. Reacquisition of nationality

The process of reacquisition of Ivorian nationality (known in French as *réintégration*) is available to those who previously possessed this nationality and who lost or renounced it, for example in order to acquire another nationality of a State which prohibits dual nationality, and wish to have their Ivorian nationality reinstated. This is a discretionary, non-automatic procedure like naturalization. Reacquisition of nationality is accorded by presidential decree after investigation (Article 34) and upon proof of prior possession of Ivorian nationality (Article 36). Reacquisition of nationality can occur at any age provided an individual maintains habitual residence in Côte d'Ivoire at the time of request. Reacquisition of nationality, however, is excluded for anyone deprived of Ivorian nationality (Article 37), unless that person renders exceptional services or presents an exceptional interest to Côte d'Ivoire (Article 38).

3.2.5. Common requirements and effects of acquisition of nationality

Section 4 of Title III, Chapter 1 concludes with a number of common provisions applicable to several modes of acquisition of Ivorian nationality. First, if residency is a condition of acquisition of nationality, a person must have complied with all laws pertaining to the entry and stay of foreigners in Côte d'Ivoire (Article 39).⁹⁰ Second, any foreigner who is subject to an expulsion order or an order of house arrest cannot acquire or reacquire Ivorian nationality in any manner, unless this order is

⁸⁹ INS, *supra* note 1, p. 3.

⁹⁰ In light of the changing rules regulating the stay and identity of foreigners in Côte d'Ivoire discussed in Section 4.2, Article 39 of the Nationality Code's requirement of lawful stay might represent a significant barrier for acquisition of Ivorian nationality by foreigners. It presents a particular hurdle for stateless persons as discussed in Section 3.2.11 below. It would, however, be interesting to see how stringently Article 39 is being applied in the recent special program promoting acquisition of nationality by declaration in practice. Regardless, future law reform should reconsider including explicit exceptions to this broad rule so as not to otherwise exclude those deserving of acquiring Ivorian nationality from doing so in practice.

repealed (Article 40). Finally, any time spent under house arrest or in fulfilling a prison sentence cannot count towards duration of residence for any of the modes of acquisition of Ivorian nationality.

Those who acquire Ivorian nationality, except for those who naturalize, are entitled to benefit, from the date of acquisition, from all the rights attached to Ivorian nationality, subject to any special laws (Article 42).

By contrast, naturalized foreigners are subject to the following restrictions (*incapacités*) pursuant to Article 43: (1) the naturalized national cannot be invested with any elected function or office for which Ivorian nationality is required for 10 years; (2) the naturalized national cannot vote when Ivorian nationality is a requirement for enrollment on the voter lists for five years; and (3) the naturalized national cannot be named to public functions attributed by the State, become a member of the legal bar, be named as a titleholder of a ministerial office, or exercise a liberal profession that is regulated by national order for five years. The naturalization decree can waive these restrictions for those who naturalize for rendering exceptional services or presenting exceptional interests to Côte d'Ivoire.

3.2.6. Subsidiary acquisition of nationality by children of parents who acquire Ivorian nationality

Article 45 allows for minor children to acquire Ivorian nationality as a matter of right according to the same mode of acquisition as their parents, provided that filiation is established in conformity with Ivorian law. This article, however, continues to discriminate against women in their ability to confer Ivorian nationality on their children and raises a risk of statelessness. According to Article 45(1), a minor child (born in wedlock or legitimated) acquires Ivorian nationality as a matter of right at the time that his or her father acquires Ivorian nationality. By contrast, only the minor child (born in wedlock or legitimated) of a *widowed* mother who acquires Ivorian nationality will also acquire Ivorian nationality. In other words, a woman who has acquired Ivorian nationality cannot confer subsidiary Ivorian nationality upon her children unless her spouse has died. This relic of gender discrimination should be rectified in future nationality law reform efforts.⁹¹

Article 46, however, prohibits married minor children or children who are serving or who have served in the armed forces of their country of origin from acquiring Ivorian nationality through their parents pursuant to Article 45. Furthermore, Article 47 prevents a minor child from acquiring Ivorian nationality via his or her relevant parent or legal guardian if the child was subject to an expulsion order, assigned to house arrest, convicted for a crime or infraction with a sentence of more than six months' imprisonment, or failed to comply with Côte d'Ivoire's laws regarding the entry and stay of foreigners.

The rules regarding subsidiary acquisition of Ivorian nationality by minor children with at least one parent who acquires Ivorian nationality are extremely complex. Indeed, a full picture of this regime requires placing Article 45 (which maintains gender-discriminatory rules, but allows for acquisition of Ivorian nationality as a matter of right for children according to the same mode as a parent) parallel to Article 28, which provides two special avenues for minors to acquire Ivorian nationality by naturalization. Given that naturalization entails certain restrictions on public life for five to ten years (Article 43), but that acquisition of Ivorian nationality as a matter of right through adoption, marriage, or declaration does not, it would be beneficial for the rules on subsidiary

⁹¹ Article 45(2) allows for another category of minor children born out of wedlock to acquire Ivorian nationality if the child's parent who exercises parental authority, as understood in Article 9 of the Law on Minors, acquires Ivorian nationality.

acquisition of Ivorian nationality to be clarified further in any future revision of the Nationality Code, which will contribute to the reduction of statelessness among children going forward.

3.2.7. Dual nationality

Côte d'Ivoire's Nationality Code addresses dual nationality only in describing when it is a ground for the automatic loss of Ivorian nationality on the one hand, or a condition for an individual to request permission to renounce Ivorian nationality by decree on the other. Given the potentially high number of Ivorian nationals who might possess dual nationality, this section addresses the topic of dual nationality in its own right and not only as a ground for loss of nationality as it is treated in the Nationality Code.

It is best to start with underscoring where the Nationality Code explicitly prohibits dual nationality. Article 48 provides: "An adult Ivorian who voluntarily acquires a foreign nationality, or who declares to have taken on such a nationality, loses Ivorian nationality."⁹² This loss is considered to occur automatically upon voluntary acquisition of a second nationality. Yet there is no effective supervision of this provision. In the absence of an enforcement mechanism, an Ivorian national who voluntarily acquires a second nationality in adulthood can very well continue to live and function with his or her Ivorian nationality until this nationality is contested.⁹³

Article 49 is the other provision that addresses dual nationality: "An Ivorian, even a minor, who by effect of foreign law possesses a dual nationality, can be authorized by decree to lose his or her Ivorian nationality." In effect, Article 49 foresees dual nationality as a protection against statelessness, although the legislative history has never acknowledged this as such.

There are numerous ways in which an individual might permissibly become a dual national of Côte d'Ivoire and another country. Dual nationality can arise at birth for children born to one Ivorian parent and a foreign parent who possesses a nationality that is also automatically conferred to the child. Dual nationality can also arise at birth for a child of an Ivorian parent or parents born in a country that confers automatic *jus soli* citizenship on those born within its territory. A foreign national who acquires Ivorian nationality through any of the available modes – through marriage, adoption, declaration, or naturalization, for example – would become a dual national. Given that foreign spouses marrying Ivorian nationals now acquire Ivorian citizenship automatically, it can be expected that the numbers of dual nationals will in fact rise. All of the aforementioned scenarios would require that the nationality laws of a person's non-Ivorian foreign nationality also allow dual nationality for dual nationality to be effective.

In sum, given that the Ivorian Nationality Code only addresses dual nationality: (1) as a ground for the automatic loss of Ivorian nationality for Ivorian citizens who voluntarily acquire a second nationality in adulthood, and (2) as a condition for renunciation of Ivorian nationality subject

⁹² Article 48(2) conditions loss on the authorization by the Ivorian government for 15 years from the time a person is inscribed in the census tables. This language was adopted verbatim from the French nationality code at the time of independence. "Census tables" refers to the French practice of determining those subject to mandatory military service. This provision was to prevent individuals from eluding mandatory military service. The Ministry of Justice has confirmed to the author that Côte d'Ivoire has not maintained census tables for over twenty years. These conditions under which loss of nationality could be subject to government authorization no longer exist; loss of nationality under Article 48 is therefore automatic.

⁹³ This has arisen in the case before the Ivorian Constitutional Council of Mr. Souhalo Tioté, whose candidacy for the 2011 Ivorian parliamentary elections was contested and rejected for having automatically lost his Ivorian nationality by acquiring French citizenship through naturalization when he was over 40 years old. Conseil Constitutionnel, *Décision No. CI-2011-EL-054/17-11/CC/SG relative à la requête de Monsieur Bamba, Baba tendant à la contestation de l'éligibilité du sieur Tioté Souhalou aux élections législatives de décembre 2011* (on file with author).

to the authorization of a governmental decree, it is implicit in the Nationality Code, as well as accepted in widespread practice, that other forms of dual nationality are permitted by Ivorian law, including for people who possess two nationalities from birth.

3.2.8. Loss and renunciation of nationality

The Ivorian Nationality Code distinguishes between the loss/renunciation (Title IV, Chapter 1 entitled “*perte*”)⁹⁴ and deprivation (Title IV, Chapter 2, entitled “*déchéance*”) of nationality with the difference between these categories in the consequences. In general, the Code foresees loss/renunciation in instances where an Ivorian acquires another nationality. Given that such loss can occur automatically, however, loss resembles deprivation in several instances. Nevertheless, for individuals who have lost Ivorian nationality pursuant to the instances set forth in Title IV, Chapter 1, the Nationality Code allows such individuals to apply to reacquire Ivorian nationality pursuant to Articles 34-38. By contrast those individuals who are deprived of their nationality pursuant to Article 54 are not eligible to apply to reacquire Ivorian nationality unless the conditions for the deprivation of nationality in Article 54 are legally expunged. The rules contained in both chapters pertaining to loss, renunciation, and deprivation are problematic with respect to the 1961 Convention on the Reduction of Statelessness on a number of procedural due process points, as well as for the lack of safeguards against statelessness, and should be revised to bring the Nationality Code into conformity with its treaty obligations.

The Ivorian Nationality Code foresees five scenarios for the loss or renunciation of Ivorian nationality. The first two circumstances in Articles 48 and 49 are discussed above.⁹⁵

With respect to loss, Article 51 allows an Ivorian woman marrying a foreigner to conserve her Ivorian nationality unless she makes an oath that she wishes to renounce her Ivorian nationality prior to a civil marriage ceremony. This provision establishes strict formal conditions a woman must follow to submit an oath of renunciation. It also contains a safeguard against statelessness, in that an oath of renunciation of Ivorian nationality is only valid when a woman proves she acquires or can acquire the nationality of her husband according to the nationality laws of his country. This provision respects the free will of an Ivorian woman to choose whether to retain or renounce her Ivorian nationality upon marriage to a foreigner, but perpetuates gender inequality in offering the option to renounce Ivorian nationality through declaration only to Ivorian women, and not to Ivorian men, marrying foreigners.

To achieve full gender equality in this regard, Article 51 can be amended in a gender-neutral manner and could even be harmonized with Article 49. In other words, one uniform renunciation procedure could be adopted for individuals who acquire dual nationality (through marriage as in Article 51 or other means as in Article 49) and a choice could be made as to whether the procedure to obtain authorization to renounce nationality would involve either the issuance of a decree on the part of State authorities or through a solemn oath by the concerned individual.

There are two additional grounds for loss of Ivorian nationality. Article 52 provides for the automatic loss by decree of Ivorian nationality for Ivorian nationals who comport themselves as nationals of a foreign country.⁹⁶ Article 53 foresees loss of Ivorian nationality if someone continues to occupy a post in the public service or army of a foreign State, in spite of an injunction made by the

⁹⁴ Although the Title of the Nationality Code only mentions “loss” explicitly, the Code foresees several scenarios according to which Ivorians can voluntarily renounce or “repudiate” their nationality.

⁹⁵ In all cases, Article 50 provides that a person who loses Ivorian nationality is freed from his or her allegiance to Côte d’Ivoire either at the time of the voluntary acquisition of nationality in adulthood (Article 48) or at the time of the signing of the decree authorizing the renunciation of nationality (Article 49).

⁹⁶ The consequences of such loss of Ivorian nationality in Article 52 can also be extended to the concerned individual’s spouse and minor children, provided that they also possess a foreign nationality.

Ivorian government to resign from this post, unless the concerned individual proves the impossibility of resigning from this post. The loss becomes effective after six months from the injunction through the adoption of a decree declaring automatic loss of Ivorian nationality for the person concerned. Although the Nationality Code classifies Articles 52 and 53 as instances of loss of nationality, they technically represent instances of deprivation of nationality in that they occur at the discretion of the government and with no safeguards against statelessness.

3.2.9. Deprivation of nationality

Anyone who acquires nationality by any mode (as opposed to Ivorians by origin) can be deprived of their Ivorian nationality pursuant to Article 54 for any of the following four reasons: (1) if the person is convicted of any crime or infraction against the internal or external security of the State; (2) if the person is convicted of any act qualified as a crime or infraction against institutions; (3) if the person engages in any acts, to the benefit of a foreign State, that are incompatible with being Ivorian and prejudicial to the interests of Côte d'Ivoire; and (4) if the person is convicted in Côte d'Ivoire or abroad of an act qualified as a crime by Ivorian law and that would result in a sentence of at least five years' imprisonment. Deprivation of nationality, however, can only occur if the proscribed acts happen within 10 years of the time an individual acquires Ivorian nationality and within two years of the commission of the proscribed offense (Article 55).

Deprivation of nationality can also be extended to the relevant person's spouse and minor children on the condition that these family members are of foreign nationality and continue to retain their foreign nationality after having acquired Ivorian nationality (Article 56).

3.2.10. Proving nationality before Ivorian courts and certificates of nationality

Civil law courts have jurisdiction to preside over nationality matters in Côte d'Ivoire (Article 77). Questions of a person's status as an Ivorian national or as a foreigner are considered matters of "public order" and anyone can bring a claim to prove his or her Ivorian nationality before the court with jurisdiction over the place of his or her birth, or in Abidjan, should someone be born outside of Côte d'Ivoire (Articles 78, 80). Ivorian public prosecutors represent the interests of the State, in defending or challenging an individual's nationality, though third parties can intervene (Articles 82, 83, 84).

Article 89 of the Nationality Code addresses matters of burden of proof before courts on nationality matters. In general, this burden lies with the person bringing a claim to prove or disprove Ivorian nationality. However, possession of a certificate of nationality creates a presumption of the Ivorian nationality of the titleholder. A party who contests the Ivorian nationality of a person in possession of a nationality certificate would then bear the initial burden of proof.

Proof of nationality can be proffered by various means depending on the mode of acquisition of Ivorian nationality. For those who acquire nationality by declaration, a copy of the registered declaration constitutes proof of this act, although the authenticity of such a document can be contested by the public prosecutor (Articles 63, 83). For an individual who reacquires nationality or acquires nationality through naturalization, a copy of the relevant decree or a copy of the Official Journal in which the decree was published can serve as proof (Article 92).

Certificates of nationality remain the primary form of proof of Ivorian nationality. They can only be delivered by the Presidents of Courts of First Instance, a designated magistrate, or a local judge to persons who meet the burden of establishing their Ivorian nationality (Article 97). Certificates of nationality must cite the legal provision according to which an individual qualifies as an Ivorian national, whether nationality by origin or specifying the mode of acquisition of nationality. According to Article 98: "[A certificate of nationality] is authoritative until proven otherwise."

Interministerial Circular No. 31/MJ/CAB 3 of 25 April 1962 governed the issuance of certificates of nationality until recently. It established the courts' territorial jurisdiction over the issuance of such certificates and the role of the Ministry of Justice of supervising and overseeing their issuance. Annex B to this circular provided approximately a dozen official model forms that were to be used for issuing certificates of nationality. For those attributed nationality pursuant to Article 6, nationality certificates were to be entitled: "Certificate of Nationality: Petitioner of Ivorian nationality by origin by his or her birth in Côte d'Ivoire," and presented special instructions to judges:

Fact to verify: Birth in Côte d'Ivoire. This birth constitutes a presumption. However, it is your responsibility to verify the birthplace of one or both parents of the petitioner, when it appears to you, for example, upon examining the names on the birth certificate of the petitioner, that they are foreigners. Whatever the outcome of your evaluation, you will request instructions from the Ministry of Justice.

These instructions reinforced the understanding that although the 1961 Nationality Code did not define who constitutes a "foreigner," it implicitly linked being a foreigner to place of birth outside of Côte d'Ivoire. They created, however, a dangerous practice, whereby it was permissible, even potentially necessary, for judges issuing nationality certificates to exercise subjective discretion in questioning a person's origins on the basis of social stereotyping of a person's family name.

A new circular issued by the Ministry of Justice on 30 June 2014 supersedes the Interministerial Circular of 1962 governing nationality certificates in light of the Council of Minister's decision in 2014 to issue "secure judicial certificates" going forward.⁹⁷ The new secure nationality certificates issued by courts no longer distinguish in their titles the method by which an individual possesses Ivorian nationality (i.e. nationality by origin versus other means).⁹⁸ This also means that the standard paragraph cited above regarding proof with respect to those who possess Ivorian nationality by origin is also no longer included. These are laudable measures.

3.2.11. Statelessness safeguards and compliance with the statelessness conventions

At no time has the Ivorian Nationality Code included any explicit reference to statelessness. However, the deliberations regarding the 1961 Nationality Code indicate that care was taken to ensure that statelessness would be avoided, but only in the context of Articles 13 and 51 of the Nationality Code on marriage, which were reserved at the time for women. Article 13 allowed foreign women marrying Ivorian men to decline to acquire Ivorian nationality by submitting a declaration at the time of the civil marriage ceremony, whereas Article 51 allows Ivorian women marrying foreigners to retain their Ivorian nationality, unless they file a declaration renouncing their Ivorian nationality upon marriage.

To safeguard against statelessness for Articles 13 and 51, the implementing decree⁹⁹ and Interministerial Circular¹⁰⁰ required women to bring proof, in the form of an official attestation, that either the laws of the country of her foreign spouse's allow her to acquire nationality through marriage or that the laws of her country of origin allow women to retain nationality upon marriage

⁹⁷ Ministère de la Justice, des Droits de l'Homme, et des Libertés Publiques, *Note Circulaire No. 8 du 30 juin 2014* (on file with author). This point has been confirmed by the Ministry of Justice via correspondence in April 2016.

⁹⁸ This practice diverges from the requirement established in Article 98 of the Nationality Code to include this information. It is this Article, however, which should be reformed in any future law reform effort in order to harmonize and neutralize nationality certificates.

⁹⁹ *Décret No. 61-425 du 29 décembre 1961 portant application du Code de la nationalité ivoirienne.*

¹⁰⁰ *Circulaire Interministérielle No. 31/MJ/CAB 3 du 25 avril 1962 (1).*

to foreigners. The Interministerial Circular explicitly discusses statelessness avoidance in these scenarios:

Verifying points (a) and (b) [requiring documentary proof of possession of another nationality upon submission of a declaration to either decline acquisition of Ivorian nationality or to renounce Ivorian nationality upon acquisition of a foreign nationality through marriage] will permit the Minister of Justice to refuse to register the declaration if it is established that the person concerned who is declining to acquire or renouncing Ivorian nationality, but who neither preserves nor acquires a foreign nationality, will become stateless.¹⁰¹

That the legislative history of the 1961 Nationality Code and its implementing regulations make two references to statelessness¹⁰² indicates that the Ivorian legislators and Ministry of Justice officials at the time were aware of the phenomenon of statelessness, or at least the predominant practice at that time of avoiding statelessness in the context of nationality changes incurred through marriage. It can therefore be inferred that the Ivorian legislators did not intend to adopt safeguards against statelessness in any other domain.

Having acceded to both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness in 2013, Côte d'Ivoire is obligated to review its national legislation and bring it in compliance with the international standards contained in these treaties.¹⁰³ Although Article 3 of the Nationality Code establishes that provisions on nationality contained in international treaties to which Côte d'Ivoire is party can be directly applied, even if they contradict domestic legislation, this has proven impossible to implement in practice in the absence of formal amendments to the laws.

With respect to the 1961 Convention on the Reduction of statelessness, Côte d'Ivoire must amend the Nationality Code to incorporate a number of important principles from that treaty. For example, Article 1 of the 1961 Convention requires States to grant nationality to children born in their territory if they would otherwise be stateless. This grant of nationality can occur at birth by operation of law or upon application. The 1961 Statelessness Convention allows States to adopt some conditions in this regard. For example, States can require that stateless children born in their territory have had habitual residence to acquire nationality. Note, however, that the treaty allows the condition of *habitual* residence, but that it does not allow States to require *legal* residence.¹⁰⁴ As such, when incorporating this principle into national law, Côte d'Ivoire will need to review Article 39 of the Nationality Code to either exempt stateless persons from this requirement, or revise the requirement for the benefit of others.

Article 2 of the 1961 Convention requires: "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State." The original language of Article 9(2) of Côte d'Ivoire's 1961 Nationality Code read in conjunction with the Interministerial

¹⁰¹ *Circulaire Interministérielle No. 31/MJ/CAB 3 du 25 avril 1962 (1), Section 2.*

¹⁰² The first reference to statelessness in the available legislative history was made during the deliberations of the Committee on General and Institutional Affairs where it was posited that Article 6 did not allow children of stateless parents born in Côte d'Ivoire to acquire Ivorian nationality by origin. See discussion in Section 3.1.2.

¹⁰³ Côte d'Ivoire's Nationality Code is already in compliance with the 1961 Statelessness Convention with respect to Article 4 and Article 7(3) of that treaty, in that its *jus sanguinis* regime grants Ivorian nationality to all children born abroad to at least one Ivorian parent, and does not foresee loss of nationality for residence abroad.

¹⁰⁴ UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, 21 December 2012, para. 41.

Circular of 25 April 1962 had exactly this effect (at least in principle if not practice), but this was abrogated in 1972. When incorporating the obligation to grant nationality to foundlings, it would be advisable for Côte d'Ivoire to adopt simpler and clearer language than that used at independence and to ensure that it is retroactive, allowing the numerous children of unknown parentage to resolve their situation of statelessness.

Articles 7 and 8 of the 1961 Statelessness Convention require that Contracting States not permit the loss of nationality, or deprive someone of nationality, if such loss or deprivation would render an individual stateless. Article 51 of the Ivorian Nationality Code is compliant in this regard, though it should be amended to be gender-neutral. However, the loss and deprivation provisions contained in Articles 52, 53, 54, 55, and 56 of the Ivorian Nationality Code must be brought in line with this principle. To achieve this, it might be more expedient to adopt a general safeguard against statelessness with respect to loss or deprivation of nationality, rather than tweaking changes to all pertinent articles.

As for bringing Ivorian law in compliance with the 1954 Statelessness Convention, although “it is implicit in the 1954 Convention that States must identify stateless persons within their jurisdictions so as to provide them appropriate treatment in order to comply with their Convention commitments,”¹⁰⁵ the creation of a statelessness determination procedure is not necessarily required, or appropriate, in all circumstances.¹⁰⁶ In the case of Côte d'Ivoire, many migrants at risk of statelessness can articulate some ties to a foreign country of origin, even if it is not possible to establish a formal legal tie with that State. As such, it will be necessary to pursue some form of nationality verification procedure on a bilateral basis. This will likely result in the confirmation of a foreign nationality in some cases.¹⁰⁷ That said, certainly some individuals will not be able to establish nationality with any State. For those people, it is imperative to adopt concrete measures to grant a statelessness status to ensure a legal identity, offer fundamental human rights protections in line with the 1954 Convention, and establish a facilitated path to acquire Ivorian nationality.

3.2.12. Remaining gender inequalities in the Nationality Code

Several passages in the Nationality Code continue to contain distinctions based on gender. Although not all of these provisions affect statelessness, any future comprehensive reform of the Nationality Code must achieve full gender equality in nationality matters in fulfillment of Côte d'Ivoire's human rights obligations under international law. In addition to the relic of gender inequality contained with respect to Article 45(1) (limiting the right of women who are not widowed to pass subsidiary acquisition of Ivorian nationality to their minor children as discussed in Section 3.2.6 above), gender-specific rules that have an unequal impact on women and their spouses must also be reviewed and revised with respect to: Articles 28(3) (regarding facilitated naturalization for husbands), 99 (issuance of provisional nationality certificates upon acquisition of Ivorian nationality through marriage), and 101 and 102 (these two articles contain time-limited transitory rules regarding acquisition of Ivorian nationality through marriage that were only in effect in 1962 and are currently superfluous in the Code).

¹⁰⁵ UNHCR, *supra* note 7, para. 8.

¹⁰⁶ *Id.*, para. 58.

¹⁰⁷ Nationality verification procedures assist individuals in a territory where they have difficulties obtaining proof of their nationality status. Such procedures often involve an accessible, swift and straightforward process for documenting existing nationality, including the nationality of another State. *Id.*, para. 60.

4. Legal Frameworks on Civil Status and Identification and their Interplay with Nationality Laws

Ivorian nationality laws cannot be viewed in isolation. In fact, Ivorian civil status laws (and foreign civil status laws for non-nationals) are of foundational importance. No individual can establish Ivorian nationality by origin without proving his or her filiation to at least one parent who is an Ivorian national. Birth certificates are the first official record of a child's basic facts of existence and legal identity, providing information on place of birth and parentage. Implementing regulations to the Ivorian Nationality Code require all individuals to present a birth certificate to acquire nationality through any mode, including declaration, marriage, adoption and naturalization.

Laws pertaining to identification of Ivorian nationals and foreigners also have important ramifications in terms of nationality and statelessness. Certificates of nationality are the only documents accepted by law as constituting proof of Ivorian nationality. Yet national identification (ID) cards play a greater role in day to day life, given that all Ivorians are obliged by law to carry proof of their identity in the form of an Ivorian national ID card. As such, the legal framework, combined with the realities of the identification practices must also be considered when determining whether an individual has Ivorian nationality or might be stateless.

Although Côte d'Ivoire's system of personal identification has been subject to heavy regulation, the issuance of national ID cards has been highly discretionary for most of its history. Under President Houphouët-Boigny, local police and sub-prefectural officials exercised discretion in issuing national ID cards. In light of the liberal and integrationist policies of the time, little scrutiny was placed to verify the Ivorian nationality status of individuals. As such, many individuals of foreign origin were able to obtain Ivorian national ID cards, even Ivorian passports, without having to apply for a certificate of nationality.

Starting in 1990, in light of growing concerns over the liberal issuance of the yellow national ID cards issued under Houphouët-Boigny, the authorities introduced a new generation of green national ID cards. However, due to technical and budgetary reasons, in part related to political succession at the time, the new green national ID cards were not issued until 1998. Between 1990 and 1998, administrative attestations of identity were issued to supplement the yellow national ID cards in circulation. With the passage of a new law in 1998, it became mandatory for an individual to present a nationality certificate as well as a birth certificate to obtain a green national ID card. As such, between November 1998 and January 2000, 3,756,871 green national ID cards were issued, which were valid until February 2001.

From this time onwards, however, the country's identification system effectively ceased to function due to the political and military crisis, marking an era of even greater arbitrary and discretionary issuance of informal identification papers. As part of the negotiated crisis-recovery process, the dysfunctionality of the identification system was overlooked and political compromises were made in order to launch a special identification program starting in 2007 that would simultaneously issue national identity cards and voter cards for the 2010-2011 elections.

This section provides an overview of the most salient elements of the bodies of law relating to civil status and personal identification in Côte d'Ivoire, as well as of the greatest challenges faced in their implementation and practice over the years. This will help clarify how statelessness and the risks of statelessness arise with respect to various populations.

4.1. Birth registration and civil status

4.1.1. The legal framework on civil status¹⁰⁸

Côte d'Ivoire adopted its foundational Civil Status Law in 1964, which has been amended only twice, in 1983 and 1999.¹⁰⁹ Like the Nationality Code, this text is inspired by French laws and practices on civil status that are similar to those of many civil law traditions. It creates the legal framework and procedures in relation to an individual's obligations to declare major changes in his or her civil status – namely birth, death, and marriage – in an official manner to the appropriate State authorities.

The Civil Status Law requires that all births in Côte d'Ivoire be declared and registered before the civil registration office of the administrative district of birth within three months from the time of birth, regardless of the nationality of the child concerned.¹¹⁰

The following persons are authorized to declare the birth of a child: either of the child's parents, the parents' parents or next of kin, or any person who attended the birth, regardless of where the birth took place. Birth records must include the following information regarding both the mother and father of the child concerned, unless neither of the parents of a child is identified, and the person who declares the birth of a child (when a non-parent): family name, given name, profession, address of residence, and nationality (Article 42). The Civil Status Law does not require individuals – be they parents or other witnesses – to present personal identification documents to register the birth of a child. Rather, factors related to a child's background can be recorded based on oral testimony. That said, it is common practice in some locations that the civil registrars demand to see the personal identification documents of the parents and where such documents are absent, sometimes refuse to register the birth of their children.

A birth certificate¹¹¹ serves as the foundational proof of a person's identity, attesting not only to date and place of birth but also to parentage – two critical factors generally required for attribution of nationality. In the Ivorian context, which follows the *jus sanguinis* principle of requiring that at least one parent is an Ivorian national for a child to acquire Ivorian nationality by origin, the identification of parentage in a birth certificate is crucial. Yet birth registration in Côte d'Ivoire has no legal value with respect to serving as *proof* of one's Ivorian nationality. Civil registrars do not have expertise in nationality determination and no proof of citizenship of the parents is required when registering a child's birth. It is therefore interesting that the nationality of a child's parents is recorded in the civil registers. The statement of parents' nationality in civil registers might be based on either self-identification, which is not necessarily representative of one's actual nationality, or on the subjective and potentially arbitrary evaluation of the civil registrars. Although

¹⁰⁸ Acknowledging the difficulties of translating civil law concepts on civil status into English, a language adapted to the common law legal system and unfamiliar with civil status procedures, the author has followed the guidance of the International Commission on Civil Status with respect to translation. International Commission on Civil Status, *Translator's Note*, available at: <http://www.ciec1.org>. As such, the author uses the general term "civil status" to translate the general concept of *état civil*; "civil registrar" to translate "*officier de l'état civil*" (the authority responsible for registration); "civil registration office" for "*centre d'état civil*," and "register" for "*registre*" (the book in which records are kept).

¹⁰⁹ *Loi No. 64-374 sur l'Etat Civil du 7 octobre 1964, modifiée par les lois No. 83-799 du 2 août 1983 et 99-691 du 14 décembre 1999.*

¹¹⁰ The current deadline of three months to register births was adopted by revised Article 42 of *Loi No. 99-691 du 14 décembre 1999 portant modification de la Loi No. 64-374 du 7 octobre 1964 relative à l'état civil.*

¹¹¹ Should an individual wish to have proof that one's birth has been legally declared, he or she can request a copy of an extract of the person's relevant entry in the appropriate civil register. This reports uses "birth certificate" for "*extrait d'acte de naissance*" (or "birth certificate copy") when referring to this documentary evidence.

the Civil Status Law requires that the nationality of a child's parents is recorded in the civil registers, the law does not allow this information on parents' nationality to be included on the birth certificate copy issued to individuals (unless a request is made by legal descendants of an individual or by a court) (Article 46). In practice, however, this distinction is often not followed, given that there is no standard form for birth certificate copies and local civil registration offices can develop their own forms.

The act of declaring a child's birth is to be free of charge according to Ivorian law, and individuals should in principle only pay the nominal fee of a fiscal stamp to obtain a birth certificate copy at the time of declaration or subsequently (which currently stands at 500 CFA Francs, or around 1 US Dollar). Acquiring a birth certificate copy (which incurs a nominal fee) is not an obligation, although this is often unknown, resulting in the reluctance among some to even declare a child's birth within the three-month legal limit. In practice, however, additional fees are often levied at the local level, such as fees for research, transcription, printing, or to cover transportation costs of civil registrars who travel to villages for the purpose of registering births and issuing birth certificate copies.

Individuals whose births have not been declared within three months can no longer register their birth before local civil registrars. Rather, they must go to the local courts to obtain a *jugement supplétif*, or late birth certificate, allowing for the late birth registration of a birth in the local civil register.¹¹² Individuals can obtain a copy of their *jugement supplétif* from the court. It is typically more expensive to go through the process of obtaining a *jugement supplétif* proving one's birth than following the procedure proscribed by law within three months of a child's birth before local civil registrars.

The Ministry of Justice seeks to regulate the tariffs of judicial acts, which should range from 500 CFA Francs (approximately 1 US Dollar) to obtain a regular birth certificate copy, up to 5,000 CFA Francs (approximately 10 US Dollars) to obtain a *jugement supplétif* in the case of those under 15.¹¹³ However these attempts to regulate costs through official instructions and their dissemination and display in courts and civil registration offices have been unsuccessful. In practice, the amount charged by courts varies greatly depending on the local jurisdiction and often on the age of the person concerned, as the cost of *jugements supplétifs* is not regulated for those over 15. It can range from 3,000/5,000 CFA Francs (approximately six to ten US Dollars) to 30,000 or even 50,000 CFA Francs (or about 60 to 100 US Dollars). *Audiences foraines*, or mobile court hearings, organized by the government, NGOs, or UN agencies are a common way of facilitating free or cheaper access to late birth certificates by bringing judges, doctors (required to establish applicants' age), and clerks to towns and villages where there is a high demand for late birth registration, and covering all or part of the costs entailed to receive hundreds of birth declarations a day.

Côte d'Ivoire's Civil Status Law also requires that foundlings, defined in Article 46 as found newborns, also comply with the normal birth registration procedures. It is the person who finds such a newborn who should take the foundling to the civil registration office in the location where the baby is found. An "affidavit of discovery" is drawn up indicating the date, hour, place, and circumstances in which a child is found, apparent age, and any other information about the baby's identification, as well as the name of the person or authority who found the baby. From this

¹¹² Articles 82-84 of the Civil Status Law. Typically, an individual should obtain an attestation of the local civil registrar that the person's birth was not registered within the three-month deadline, known as a certificate of unsuccessful research (*certificat de recherches infructueuses*), then go to the local court to present witness testimony as to circumstances of birth as required by law. The court issues a *jugement supplétif*, to be transmitted to the local civil registration office for transcription in the local registers.

¹¹³ *Décret No. 2013-279 du 24 avril 2013 portant tarification des émoluments et frais de justice en matière civile, commerciale, administrative et sociale tel que modifié par le décret no. 2014-259 du 14 mai 2014.*

affidavit, the local civil registrars establish an act substituting a declaration of birth. This act should indicate the baby's gender and names assigned to the baby, as well as fixing an approximate birth date. The inclusion of such detailed instructions on how to register the births of found children in the 1964 Civil Status Law reflects the fact that the 1961 Nationality Code foresaw that such children were presumed to be born in Côte d'Ivoire and were entitled to acquire Ivorian nationality by origin.

The Civil Status Law in its Chapters III and IV foresees strict rules for how civil registration offices are to maintain and handle the registers.¹¹⁴ A supplementary decree adopted in 1965¹¹⁵ establishes procedures to be followed with respect to civil status obligations of Ivorians abroad.

4.1.2. Practical challenges related to birth registration and civil status

Although the procedures of the Civil Status Law might appear clear-cut on paper,¹¹⁶ there is great variance in how they are implemented in practice at the local level and there are many barriers to the proper functioning of the Ivorian civil status system. This helps explain why the current rate of birth registration among children under five years old in Côte d'Ivoire is 65%.¹¹⁷ This is nevertheless an improvement compared to the rate of birth registration of under 5 year-olds in 2006 (only 55%).¹¹⁸ The current rate of birth registration among children less than 18 years of age is 76.1%.¹¹⁹

The Ivorian civil status system suffered tremendously during the political and military crisis. All government authorities, including civil registration offices and courts, ceased to function in the central, northwestern, and western zones under rebel control¹²⁰ and the archives of many civil registration offices were destroyed.

Many individuals lost their birth certificates or *jugement supplétif* during the conflict as they were forced to flee, and proof of their birth registration was lost as civil registration offices were destroyed. In light of the complexity and scale of this phenomenon, the formal procedures for reconstituting registers foreseen in Articles 85-88 of the Civil Status Law have been adapted in practice to a procedure as follows. Persons whose births were declared in a lost or destroyed register must obtain a certificate from the local civil registration office attesting that following inquiries, the record is no longer there (*certificat de recherches infructueuses*); they must then go to the local court with this certificate and a request to reconstitute his or her birth record; courts can then issue a decision ordering the local civil registrar to transcribe the relevant facts in the local

¹¹⁴ For example, no blank spaces or pages are allowed in the registers; any corrections noted in the registers must be signed by the civil registrar; the registers are to be produced in duplicate copies and shared with the local courts at the end of each year, after which the court president must mark and sign each page after verification of compliance with legal requirements; correcting any errors, such as a simple misspelling of a name, requires an individual to obtain a court order authorizing correction. Articles 16, 17, 18, 21 and 28-81.

¹¹⁵ *Décret No. 65-431 du 23 décembre 1965, Etat Civil des Ivoiriens à l'Etranger.*

¹¹⁶ For example, one expert study on the civil status system concluded that problems with the Ivorian civil status system are not a result of the law but rather the lack of their harmonized implementation in practice. Louis Lohle-Tart and Henri Hovette, *L'Etat Civil Normalisé par l'Application de la Loi*, Unpublished draft dated 30 November 2007 (on file with author). Other commentators, however, recommend simplifying the civil status system.

¹¹⁷ Institut National de la Statistique (INS) and ICF International, *Enquête Démographique et de Santé et à Indicateurs Multiples de Côte d'Ivoire 2011-2012*, 2012, p. 365.

¹¹⁸ *Id.*

¹¹⁹ *Id.*, p. 366.

¹²⁰ Nevertheless, many local civil registration offices continued to function on an informal level. For example, in the absence of receiving official register books from the national printing office, some local authorities purchased school notebooks, charged nominal fees, and proceeded to "register" births or produce other civil status documents, failing to comply with any of the formal procedures set forth by law.

register of the current year; individuals then return to their local civil registrar for the information to be transcribed; once this is done, they can request to obtain a birth certificate copy from the local civil registrar. Needless to say this is a lengthy, costly, and discouraging procedure.¹²¹

Several reports describe numerous cultural obstacles that exist and hinder the proper functioning of civil status systems.¹²² An unpublished survey conducted by the Ivorian National Statistics Institute, with UNFPA, UNICEF, and UNHCR in 2013 of five regions in western Côte d'Ivoire¹²³ that have the lowest rates of birth registration reveals some fascinating results, such as:

- The judicial oversight foreseen in the Civil Status Law is not done in a systematic fashion. Only 70% of duplicate civil status registers are properly shared with local courts.
- 42.2% of births occur at home and not in health centers.
- Less than 45% knew that the act of declaring a child's birth is free according to Ivorian law.
- 55% were aware of the three-month deadline by law to register births.
- 54% thought that only fathers can register births of their children, while only 35% properly identified that either parent is authorized to do so.

4.1.3. Ordinance facilitating registration of births and deaths from the crisis period

A special presidential ordinance was passed in September 2011¹²⁴ to facilitate the registration of births and deaths that occurred in Côte d'Ivoire during the political-military crisis, temporarily waiving the Civil Status Law's three-month deadline to register births (Article 41) and 15-day time limit to register deaths, for births and deaths that took place in all central, northern and western zones under occupation from 20 September 2002 through 31 July 2011, and between 30 November 2010 and 31 July 2011 (the period of post-election violence) in all territories of Côte d'Ivoire. A law passed in 2013¹²⁵ extended the opportunity to register these births through 31 July 2014.

These legal measures relaxing the deadlines for birth registration during Côte d'Ivoire's decade-long crisis represent an important initiative to rectify some of the consequences of the collapse of Côte d'Ivoire's civil status system. According to statistics published in the yearbook on civil status produced by the Ministry of the Interior, a total of 901,512 births were registered between 2012 and 2014 pursuant to the special law.¹²⁶ While promoting birth registration certainly contributes to efforts to prevent statelessness, birth registration can neither reduce statelessness on its own nor resolve the risks of statelessness, given the interlinkages between Côte d'Ivoire's civil status, personal identification and nationality systems.

¹²¹ Details regarding current practice with respect to obtaining birth certificates for those who properly registered their births in localities with lost or destroyed civil status registers were gleaned from an interview with the Norwegian Refugee Council in Abidjan on 2 July 2014. There is no official study or statistics on how frequently this procedure is followed.

¹²² Aline Aka-Lamarche, *Etude sur les Obstacles Administratifs et Culturels à la Déclaration des Faits d'Etat Civil en Côte d'Ivoire*, Norwegian Refugee Council, March 2010.

¹²³ INS, UNFPA, UNICEF, UNHCR, *Etude de base sur les Centres d'Etat-Civil et les connaissances, les Attitudes et les Pratiques des Populations des Régions de Gbéké, du Guémon, du Kabadougou, du Tonkpi, et du Worodougou en Matière d'Etat Civil*, 2013, Unpublished report (on file with author).

¹²⁴ *Ordonnance No. 2011-258 du 28 septembre 2011 relative à l'enregistrement des naissances et des décès survenus durant la crise*. This ordinance entered into force on 29 December 2011 and was valid until 30 July 2012.

¹²⁵ *Loi No. 2013-35 du 25 janvier 2013 portant modification de l'article 2 de l'Ordonnance No. 2011-258 du 28 septembre 2011 relative à l'enregistrement des naissances et des décès survenus durant la crise*.

¹²⁶ Direction des Etudes, de la Programmation et du Suivi-Evaluation, Ministère d'Etat, Ministère de l'Intérieure et de la Sécurité, *Annuaire des Statistiques d'Etat Civil 2014*, August 2016, p. 25 (on file with author).

Massive investment is needed to render Côte d'Ivoire's civil status system effective in light of these and other enormous practical challenges. Systemic reform began during the country's post-conflict recovery process with the Program to Modernize Côte d'Ivoire's Civil Status System.¹²⁷ Further efforts are therefore necessary to encourage the Ivorian government to fundamentally revitalize its civil status system, not just in the interests of the prevention and reduction of statelessness, but also as a fundamental tool for child protection and crucial element for the rule of law more generally.

4.2. Personal identification of nationals and foreigners in Côte d'Ivoire

It is mandatory for all Ivorians older than 16 years of age to carry a national ID card as administrative proof of their identity before all administrative authorities or the police. This obligation has been in place since 1962.¹²⁸ In the same year, a circular was passed creating an ID card for foreigners.¹²⁹ These two laws remained unchanged for almost thirty years. As discussed above, President Houphouët-Boigny imposed his own vision for his country's migration and integration policies through informal practices, rather than strict compliance with the nationality laws and implementing regulations. In particular, Côte d'Ivoire's identification program, marked by the liberal distribution of Ivorian documents, was an important instrument in implementing his welcoming, melting-pot vision of the country. The first changes to the identification laws came in 1990 with the introduction of a resident permit scheme for foreigners.

The period 1998-2007 saw a series of legal amendments related to the identification of Ivorian nationals and foreigners. None of these measures were fully implemented in practice. Rather, highly informal and arbitrary personal identification documents were issued and carried during this time. Nevertheless, the legislative changes adopted in this period with respect to foreigners underscored how hostile the political environment was and how the successive regimes – from Bédié to Guéi to Gbagbo – instrumentalized the identification system as a tool of their restrictive nationality policies. An overview of the evolution of legislative developments on identification is provided in Annex III.

4.2.1. Compromises on identification in the crisis-recovery process 2007-2010

Practical breakthroughs overcoming the stalemate in Côte d'Ivoire's identification system finally came with the signing of the APO in March 2007, which observed the following on identification:

The signatory parties to the present Agreement have recognized that the identification of the Ivorian and foreign populations living in Côte d'Ivoire constitutes a major preoccupation. The absence of a clear and coherent identification system, as well as the absence of uniform administrative documents attesting to the identity and nationality of individuals, constitutes a source of conflict.

The signatories to the APO therefore agreed to a timeline for undertaking a series of measures that would have a concrete and practical impact on the civil status and identification

¹²⁷ *Programme de Modernisation de l'Etat Civil en Côte d'Ivoire* (MECCI). This project received financial support from international donors including the World Bank, the United Nations system, and the European Union in the crisis-recovery period prior to the 2010 elections. The program has been somewhat revived since 2013 through small-scale pilot projects funded in part by international donors such as the United Nations Peacebuilding Fund.

¹²⁸ *Loi No. 62-64 du 20 février 1962 portant institution de la Carte Nationale d'Identité.*

¹²⁹ *Circulaire No. 1138 du 13 juin 1962*, as discussed in Office Nationale d'Identification (Côte d'Ivoire), *Historique*.

systems including: (1) mobile court hearings, or *audiences foraines*, to deliver *jugements supplétifs* to those – both nationals and foreigners – who were born in Côte d’Ivoire and had never declared their births in accordance with laws;¹³⁰ (2) a process to reconstitute civil status registers that had been lost or destroyed due to the political and military crisis; (3) the relaunching of the identification process; and (4) voter registration leading up to the establishment of a new voter list.

The greatest political compromise of the APO¹³¹ was to relax the proof of identity necessary to obtain a national ID card and to be registered on the forthcoming voter list. Decree No. 2007-647¹³² codified the APO’s political deal regarding identification, with Articles 4 and 5 creating a two-step approach. First, in the immediate and short term, all persons on the voter list validated by the Independent Electoral Commission (CEI) for the forthcoming elections would automatically obtain Ivorian national ID cards. For that process, all those on the 2000 voter list were automatically re-registered for the new voter list, while all other persons over 18 years of age not on the 2000 voter list would only have to produce either a copy of their birth certificate or *jugement supplétif* in order to undergo a series of background checks as described in Section 5.6 below to be registered on the 2010 voter list and obtain a national ID card. By contrast, a second process of “ordinary identification” for the future would require applicants for national ID cards to produce not only a birth certificate or *jugement supplétif* but also a certificate of nationality.

Between 2007 and 2010 therefore, birth certificates and *jugements supplétifs* became the only identification document required to obtain a national ID card and vote in the forthcoming elections as an Ivorian national. This was so despite the fact that any statement of the nationality of a person’s parents on such documents are not, in fact, a definitive determination or judgment of their nationality.

All stages related to the issuance of *jugements supplétifs*, identification, and the drawing up of the new voter list in implementation of the APO in the lead-up to the 2010 elections encountered popular resistance revolving around the issue of properly distinguishing foreigners from Ivorian nationals. In spite of this, the crisis-recovery process proceeded towards the final adoption of a revised voter list. The results of the special civil status and identification efforts are as follows: the mobile court program led to the late birth registration of and issuance of late birth certificates to 750,000 persons between September 2007 and September 2008,¹³³ and 250,000 civil status registers were reconstituted between May 2008 and May 2009 pursuant to the special program that emerged from the APO.¹³⁴

As for the results of the first stage of the extraordinary identification program, after a long and contentious process of background checks, the CEI certified the final voter list including 5,725,721 Ivorian nationals, all of whom were issued Ivorian national ID cards. This number is significantly lower than the figure of 8,663,149 that the Prime Minister’s office put forward in 2005 as its estimated number of Ivorian nationals above 18 who would be eligible to vote based on the population projections of the National Statistics Institute.¹³⁵ Furthermore, 601,322 persons applied

¹³⁰ This special program of mobile court hearings followed the normal rules with respect to late birth registration; in other words, it only required an individual to produce the oral testimonies of two witnesses in order to establish the facts surrounding their birth and background, including their parents’ nationality.

¹³¹ Ouagadougou Political Accord, Sections 1.3.1 and 1.3.2. An English translation by the United Nations of this Agreement is available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2007/144.

¹³² *Décret No. 2007-647 du 20 décembre 2007 portant conditions d’établissement, d’obtention et de forme de la Carte Nationale d’Identité*.

¹³³ UN, *Eighteenth progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire*, S/2008/645, 13 October 2008, para. 28.

¹³⁴ Mission d’Observation Electorale de l’Union Européenne, *Rapport Final, Election Présidentielle 31 octobre – 28 novembre 2010*, 25 January 2011 [hereinafter EU Election Observation Mission].

¹³⁵ *Id.*

for and were refused Ivorian national ID cards through this process as a result of questions surrounding their Ivorian nationality. They were placed on a “gray list,” and were excluded from participating in the 2010-2011 elections. Section 5.6 below explores in further detail the exceptional process by which Ivorian nationality was determined in the 2007-2010 post-conflict recovery period, with consequences for today and beyond.

4.2.2. Towards normalization of the identification system?

After a hiatus of four years, the National Identification Office (*Office National d'Identification*, or ONI) resumed issuing national ID cards in July 2014, but now according to the “ordinary identification process” foreseen in the APO.¹³⁶ A decree adopted in June 2014 confirmed that from then on, applicants for national ID cards must present to the National Identification Office an Ivorian certificate of nationality and a birth certificate or *jugement supplétif*.¹³⁷

As the process of ordinary identification has rolled out since July 2014, this is the second time in Côte d'Ivoire's history, after a short period from 1998 to 1999, that obtaining a national ID card is systematically linked in practice with presenting a certificate of nationality in addition to proof of birth registration. The ordinary identification process began one year before Côte d'Ivoire was to hold presidential elections. The final 2010 voter list was accepted as the baseline for the revised list in 2015.¹³⁸ National ID cards, as well as nationality certificates, were the two documents required to be registered as a new voter in 2015.¹³⁹ The Ivorian government estimated that there were 3.5 million Ivorians without national ID cards who would be eligible to receive them. By November 2014, having observed the slow rate of issuance of national ID cards (507 per day), the government instituted a new program of mobile court hearings under a “*guichet unique*” or single-window model, to facilitate the provision of *jugements supplétifs* as well as nationality certificates. The mobile courts were held from February to June 2015 and resulted in the issuance of 570,808 nationality certificates and 232,826 *jugements supplétifs*.¹⁴⁰

A process for revising and updating the voter list took place from 1 June 2015 to 12 July 2015 to prepare for the October 2015 elections, which resulted in the registering of 332,788 new voters on the voter list.¹⁴¹ The definitive 2015 voter list included a total of 6,300,142 persons. This was a disappointing outcome of the electoral list revision process, given that the Ivorian government had estimated (based on population projections undertaken by the National Statistics Institute) that at least three million Ivorian nationals eligible to vote did not possess nationality documentation (national ID cards, obtained on the basis of nationality certificates).¹⁴²

What happened to those on the “gray list” who had been refused ID and voter cards in 2010 over doubts surrounding their Ivorian nationality? To date, no special measure has been taken to address their fate. If the Ivorian government's position is that the “gray list” is resolved, and that any individual without ID documents can proceed to obtain nationality certificates and national ID cards

¹³⁶ *Projet de Communiqué du Conseil des Ministres du Mercredi 02/10/2013* (on file with author).

¹³⁷ *Décret No. 2014-319 du 4 juin 2014 portant conditions d'établissement, d'obtention et de forme de la Carte Nationale d'Identité*, Article 4.

¹³⁸ *Décret No. 2015-344 du 13 mai 2015 fixant les modalités d'établissement de la liste électorale*, Article 3.

¹³⁹ *Id.*, Article 6.

¹⁴⁰ Statistics from the Direction Générale de l'Administration Territoriale (DGAT), Ministère d'État, Ministère de l'Intérieur et de la Sécurité, shared with UNHCR in August 2015 (on file with author). Note that the mobile court hearings were unable to rule on all applications that came before them, including 45,654 requests for nationality certificates and 232,826 requests for *jugements supplétifs*.

¹⁴¹ Plateforme de la Société Civile pour l'Observation des Elections en Côte d'Ivoire, *Déclaration Finale sur l'Observation de la Révision de la Liste Electorale*, 24 July 2015.

¹⁴² *Id.* and Radio France International, *Côte d'Ivoire: Décevante Campagne de Révision de la Liste Electorale*, 17 July 2015.

pursuant to the ordinary identification scheme, the persons concerned should be informed of this fact. This continues to raise concerns about the risk of statelessness among those who appeared on the “gray list” of 2010, as well as other individuals who are refused nationality certificates or national ID cards in the ongoing ordinary identification program that began in 2014, as discussed further in Section 5.6.

5. Profiles of Stateless Persons and Groups at Risk of Statelessness

Given Côte d’Ivoire’s migration history and the complexity and interlinkages between its nationality law framework and its civil status and identification systems, it comes as no surprise that people fall through the cracks and are unable to either acquire, or prove, a nationality – whether that be of Côte d’Ivoire or another State. In Côte d’Ivoire, as elsewhere, statelessness determination requires a complex analysis on an individual case-by-case basis. This involves first identifying all countries with which an individual has ties, such as through birth, filiation, marriage, or habitual residence, and then determining whether any of those identified countries considers the individual as a national, either as a matter of law or as a matter of practice.¹⁴³

But who exactly does statelessness affect in Côte d’Ivoire? This section elaborates on the profiles and considerations related to various categories of persons affected by statelessness in Côte d’Ivoire before sharing some concluding observations regarding challenges of obtaining statistics relating to statelessness in this country.

5.1. Historical migrants and their descendants

Historical migrants to Côte d’Ivoire and their descendants born in the country likely comprise the largest group affected by statelessness in Côte d’Ivoire. This is a result of the high levels of immigration to the country dating back to pre-independence times, as well as the weaknesses inherent in the civil status systems in all West African States. Today, it is projected that about 24% of Côte d’Ivoire’s current population are considered to be “foreigners.”¹⁴⁴

There are numerous challenges involved in affirming whether someone who falls within this general category of historical migrants and their descendants are stateless, or even at risk of statelessness. Importantly, the nationality laws of the countries with the highest numbers of migrants to Côte d’Ivoire, namely Burkina Faso,¹⁴⁵ Mali,¹⁴⁶ and Guinea,¹⁴⁷ all apply *jus sanguinis* rules in attributing nationality based on descent even to those born abroad, as does Côte d’Ivoire. This attribution of nationality occurs automatically at birth. A person born outside these countries wishing to obtain recognition of their nationality must prove that he or she has one parent with the nationality of that country, which can present numerous challenges. This subsection will first address some concerns particular to the Burkinabè, Malian, and Guinean migrant communities in Côte d’Ivoire, before discussing statelessness considerations related to the acquisition of nationality by declaration program and to the particular case of Burkinabè naturalized by collective decree in 1995 and their descendants.

5.1.1. Nationality concerns for Burkinabè, Malian, and Guinean migrants

According to the 1998 population census, around 2.2 million persons in Côte d’Ivoire were designated as Burkinabè nationals. Even if the movement of Burkinabè from Côte d’Ivoire back to

¹⁴³ UNHCR, *supra* note 7, paras. 18, 23-24.

¹⁴⁴ See discussion in Section 2.3 above.

¹⁴⁵ *Code de la famille et de la nationalité* [Burkina Faso], 1996.

¹⁴⁶ *Code de la nationalité malienne*, 1995.

¹⁴⁷ *Code civil* [Guinea], 1983.

Burkina Faso began in the late 1980s, the trend and phenomenon of “return” really came to a head after the outbreak of politico-military tensions in 1999 and civil war in 2002. A study conducted among “returnees” in 2010 revealed that many Burkinabè born in Côte d’Ivoire are establishing deep roots in multiple locations and sustainably investing in both countries, their “host” country, i.e. Côte d’Ivoire, as well as their “country of origin,” Burkina Faso.¹⁴⁸ A new phenomenon is increasingly emerging of “circular mobility,” “divided migrants,” or those who establish “transnational multi-residences,” with family and business ties in both countries.¹⁴⁹

How does a person of “Burkinabè origin” establish that he or she is in fact a Burkinabè citizen? Nationality certificates are the primary legal form of proof of Burkinabè nationality. They can only be obtained through the civil courts in Burkina Faso; in other words, there is no way to obtain a Burkinabè nationality certificate abroad.¹⁵⁰ In practice, there are two different requirements to obtain a Burkinabè nationality certificate. Those born in Burkina Faso to at least one parent also born in Burkina Faso are to provide a copy of their birth certificate plus a copy of the birth certificate of the relevant parent. Those born abroad must proffer a copy of their birth certificate and the certificate of nationality of their Burkinabè parent.¹⁵¹ As for national ID cards, which have been biometric since 2004, Burkinabè authorities also distinguish levels of proof, with more stringent requirements placed on those not born in Burkina Faso.¹⁵²

In November 2013, Burkina Faso began issuing biometric consular identification cards for its nationals living in Côte d’Ivoire.¹⁵³ A person must provide a copy of his/her birth certificate, either a Burkinabè ID card, passport, or prior version of a Burkinabè consular card obtained in Côte d’Ivoire, and must pay a fee of 7,000 CFA Francs. The new biometric consular cards are valid for three years and former hand-written consular cards ceased to be valid in 2014.¹⁵⁴

How easy or difficult it is for Burkinabè of the diaspora to obtain these documents in practice? The baseline requirement in all cases is that an individual at least possess proof of birth registration. Beyond that, it appears that obtaining documents is sometimes easy, sometimes hard.

Many Burkinabè in Côte d’Ivoire have successfully obtained the new biometric consular ID cards.¹⁵⁵ That said, others have not been able to obtain biometric Burkinabè consular cards, most often for lack of possession of a birth certificate. Consular delegates at the local level continue to exercise some level of discretion. For example, some will accept that someone is a Burkinabè national based on a birth certificate alone, without any other documentary proof of family ties to

¹⁴⁸ Sihé Ney, *De la Migration à la Circulation, le Cas des Migrants Burkinabè « partagés » entre le Burkina Faso et la Côte d’Ivoire*, International Migration Institute, 2010.

¹⁴⁹ *Id.*

¹⁵⁰ *Code de la Famille et de la Nationalité* [Burkina Faso] 1996, Articles 228-230.

¹⁵¹ Ministère de la Justice, des Droits Humains, et de la Protection Civile [Burkina Faso], *Certificat de Nationalité*.

¹⁵² Burkinabè ID cards can be obtained from police stations throughout the country. Those born in Burkina Faso must provide a copy of their birth certificate, whereas those born abroad must provide a copy of their certificate of nationality. Chronique du Gouvernement [Burkina Faso], *L’Identification sans équivoque des personnes physiques, une composante essentielle pour le renforcement de l’Etat de droit et le développement économique d’un pays*, 29 October 2013.

¹⁵³ Prior hand-written consular cards from regional representatives were disparaged for being untrustworthy.

¹⁵⁴ They can be obtained from consulates in Abidjan, Bouaké, and Soubré or from mobile registration teams. Le Patriote, *La Grande Interview: SEM Justin Koutaba: Toutes les Conditions sont Réunies pour un Deuxième Miracle*, 19 November 2013.

¹⁵⁵ Ironically, Burkinabè migrants could vote in Côte d’Ivoire from 1960 through 1990, but cannot vote in elections held in Burkina Faso to this day. Sylvie Bredeloup, *Stratégies Identitaires et Migratoires des Ressortissants Africains Résidant à Abidjan : Quelle Evolution Possible ?* in *Frontières de la Citoyenneté et Violence Politique en Côte d’Ivoire*, Jean-Bernard Ouedraogo and Ebrima Sall (Eds.), Dakar: CODESRIA, 2008, pp. 125-148.

Burkina Faso, if the person's parents' names are deemed to be "Burkinabè." Others might accept a previously-obtained consular card, whereas others might reject that and request to see other forms of proof of nationality, such as a biometric Burkinabè ID card or passport.

Some Burkinabè born in Côte d'Ivoire who returned to Burkina Faso have faced difficulties confirming their Burkinabè nationality.¹⁵⁶ Take for example, the case of Dabiré, born in Abidjan in 1978 to a Burkinabè father himself born in Burkina Faso and a Burkinabè mother born in Côte d'Ivoire. Upon his arrival in Burkina Faso in 1992 he could not prove his Burkinabè nationality: "When I wanted to obtain a certificate of nationality, I was offended. They refused me, they said nothing proves that I am a Burkinabè national."

These practices raise compelling questions on nationality and citizenship for historical Burkinabè migrants and their descendants in Côte d'Ivoire. Although Burkinabè in Côte d'Ivoire might have retained cultural, linguistic, or familial ties to their country of origin, many came to consider themselves as Ivorians under Houphouët-Boigny because they were treated as such and some even obtained Ivorian documentation. Only after the legal regime on identification changed and *Ivoirité* reinforced public perceptions that those of Burkinabè origin are foreigners, did many Burkinabè migrants obtain *cartes de séjour* or consular cards. In other words, the hostile climate towards foreigners that grew from the 1990s through the 2000s forced people to embrace their foreignness, with some obtaining proof, such as through consular cards, of their Burkinabè nationality based on their Burkinabè descent, and others remaining without personal identification documents. If someone possesses a Burkinabè consular card issued in Côte d'Ivoire, but cannot obtain a nationality certificate in Burkina Faso, would it mean that this person is stateless? This highlights that further reflections are necessary in "home countries" like Burkina Faso to ease documentary requirements to ensure that all those who automatically acquire nationality through *jus sanguinis* at birth, even if born abroad, can obtain appropriate nationality documentation to prove that fact.

Malians constitute the second largest migrant community in Côte d'Ivoire, with 792,258 counted in Côte d'Ivoire's 1998 census, of which 405,675 (or 51.2%) were born in the country.¹⁵⁷ The Malian population is divided between seasonal migrants who often returned to Mali to work in their family fields, and more settled migrants. At the height of anti-foreign tensions in 2002, the Malian government assisted in the evacuation of around 300,000 persons out of Côte d'Ivoire to Mali.¹⁵⁸ By 2003, some of them began to return to Côte d'Ivoire.¹⁵⁹

Several analysts have observed that migrants of Malian origin maintain ties with their country of origin, which has facilitated the acquisition of Malian identification documentation. For example, the Malian government exempts Malians abroad from taxation, which has encouraged significant financial transfers from Malian migrants abroad. Furthermore, Malians residing abroad in Côte d'Ivoire have been able to vote and participate in national elections in Mali since 1998. This has helped foster national political conscience among Malian migrants tying them to their country of origin.¹⁶⁰ Nevertheless, "many [migrants] established themselves in their host country [Côte d'Ivoire], formed families, and never dreamed of returning to Mali. These people, for the most part,

¹⁵⁶ Florence Boyer and Eric Lanoue, *De retour de Côte d'Ivoire: Migrants Burkinabè à Ouagadougou*, in *Peuplement de Ouagadougou et Développement Urbain : Rapport Provisoire*, Florence Boyer and Daniel Delaunay (Eds.), Paris: IRD, 2009, pp.75-101.

¹⁵⁷ Badou Essoh, *Recensement Général de la Population et de l'Habitation de 1998, Volume IV : Analyses des Résultats : Tome 1 : Etat et Structure de la Population*, Institut National de la Statistique, June 2001.

¹⁵⁸ Bakary Camara, *Les Conséquences de la Crise Ivoirienne sur Deux Circonscriptions Administratives de Mali Sud entre 2002 et 2006*, 2008, p. 332.

¹⁵⁹ Merabet, *supra* note 19, p. 20.

¹⁶⁰ Bredeloup, *supra* note 155, pp. 136-137.

never returned, or if they did have ties with their villages in Mali, it was to send their children to visit their country of origin.”¹⁶¹

Guineans constitute the third largest migrant community in Côte d’Ivoire, having numbered 230,387 in Côte d’Ivoire’s 1998 census. Certainly some Guineans arrived in Côte d’Ivoire prior to independence, but others also came to Côte d’Ivoire after independence.¹⁶² One leading migration researcher observed that many people of Guinean origin fled Côte d’Ivoire *en masse* after the civil war erupted in Côte d’Ivoire in 2002 and that very few of them had returned.¹⁶³

Two Guinean embassy and consular officials¹⁶⁴ shared that they estimate the current population of Guinean nationals in Côte d’Ivoire to be around 1 million, acknowledging, however, that they do not have any reliable statistics to support this view. At its current state of development, the Guinean government is unable to provide adequate personal identification or nationality documentation. For example, it is estimated that only 20% of Guinean nationals living in Guinea possess a national ID card.¹⁶⁵ Guinea began issuing more secure consular cards to its nationals in Côte d’Ivoire in October 2013 which the Guinean consular official claimed will significantly reduce fraud and raise confidence and respect for the titleholders of the new card. This card costs 2,000 CFA Francs and is valid for two years. To obtain a card, an applicant must submit a registration form and supporting documentation establishing Guinean nationality, including any copies of prior consular cards obtained in Côte d’Ivoire. The Guinean authorities admit to providing consular cards to some individuals who present themselves without any documentation, even without a birth certificate, and without witness testimony. The officials explained they conduct around five interviews per week with applicants in such situations and that they have a series of questions regarding language or socio-cultural issues to determine whether a person indeed has ties to Guinea or not.

In conclusion, what do these issues indicate with respect to the potential prevalence of statelessness or the risks of statelessness among historical Burkinabè, Malian, and Guinean migrants and their descendants in Côte d’Ivoire? First, it is dangerous and incorrect to make generalized conclusions with respect to the nationality, or stateless, status of those in this group. Some migrants possess documentation establishing ties to their country of origin that serve as proof of nationality, while others have no documents or knowledge that would enable them to assert a connection that would be accepted as proof of nationality. This underscores that solutions to prevent statelessness must be found not only in Côte d’Ivoire, but also in the countries of origin of migrants. As such, an individual determination of a person’s potential statelessness status, or levels of risk of statelessness is required. It is nevertheless imperative to acknowledge that some people in this group are likely stateless and others are at high risk of statelessness if preventive measures are not taken for them to acquire nationality documentation of one of the countries to which they can demonstrate ties.

Finally, as some of the case examples elaborated further below will demonstrate, individuals and communities who are the most marginalized to begin with are those most likely to be found to be stateless or at risk. This is due to a combination of reinforcing factors such as illiteracy and poverty. In urban or village-based communities, documentation problems are widespread, but avenues for solutions in some cases can be found (though often requiring money and other means that present practical obstacles). When asked whether there were individuals or groups who truly

¹⁶¹ Camara, *supra* note 158, p. 331.

¹⁶² Bredeloup, *supra* note 155, p. 138.

¹⁶³ Merabet, *supra* note 19, p. 20.

¹⁶⁴ Interview, Abidjan, July 2014.

¹⁶⁵ Bronwen Manby, *Citizenship Law in Africa, Third Edition*, Cape Town: African Minds, 2016, p. 118, citing Jaap van der Straaten, *Towards Universal Birth Registration in Guinea: Analysis and recommendations for civil registration reform in Guinea for Government and UNICEF*, Civil Registration Centre for Development - CRC4D, December 2013.

possessed no documentation with complex migratory and family histories, time and again, members of urban and village communities interviewed for this report recommended traveling to meet people in “*les campements les plus enclavés*” or the most isolated camp settlements. These communities are the farthest from the reach not only of public authorities, but also of the zone of intervention of even the most engaged humanitarian actors.

5.1.2. Intended beneficiaries of the integrationist policies in place at independence

The Ivorian legislators adopted Law No. 2013-653 with the explicit intention of correcting the historical anomaly that “certain populations who, despite having totally integrated into the Ivorian social fabric and considering themselves Ivorians, remain non-nationals as a matter of law, but without having another nationality.”¹⁶⁶ In other words, the legislators were motivated in part to reduce statelessness through this measure. Recall that the 2013 declaration program was extended to the following three general categories of beneficiaries, although ambiguities prevailed as to whether and which legal descendants of these categories also qualified: (1) persons born in Côte d’Ivoire to foreign parents aged less than 21 years on 20 December 1961; (2) foreigners with uninterrupted habitual residence in Côte d’Ivoire prior to 7 August 1960; and (3) persons born in Côte d’Ivoire to foreign parents between 20 December 1961 and 25 January 1973.

What can be said of the likely impact on reduction of statelessness of this program? Interviews and observations of the program during the initial period for the submission of requests to acquire nationality by declaration¹⁶⁷ revealed that the majority of those who applied to acquire Ivorian nationality through the declaration procedure possess a foreign nationality and are not stateless. Most often, possession of a consular card, which may or may not have been included as part of an application, indicates that an individual has strong ties to another country. As such, although this program is important for preventing statelessness among a group generally at risk of statelessness, it will be impossible to measure the actual reduction of statelessness through the declaration program based on the information provided in an applicant’s dossier alone.

In fact, it is rather likely that few stateless persons will be able to acquire Ivorian nationality through the declaration program. By design of the procedure, the Ivorian government requires that all applicants provide a copy of their birth certificate. Depending on family circumstances, historical migrants who only possess birth certificates – and have no documentation indicating their nationality (such as a nationality certificate or a national ID card) – can certainly be at risk of statelessness unless certain measures are taken to establish a legal bond to any of the countries with which they have ties. Nevertheless, the possession of a birth certificate in itself is already the first and most important step required to begin to undertake this process.

To illustrate this point, say a woman was born in Côte d’Ivoire to Malian parents in 1970 and possesses a birth certificate with the date and place of her birth and the names of her parents. *Prima facie*, this woman qualifies as a beneficiary of the Ivorian declaration program. Yet possession of a birth certificate also empowers the woman to document automatic acquisition of Malian nationality through descent if she presented herself to Malian consular authorities with the proof of her filiation to Malian parents.

The outlook might change with some different hypothetical facts. For example, say this woman was born in Côte d’Ivoire to Malian parents in 1970, but her birth was never registered. If she has lived in Côte d’Ivoire without any documentation all her life, she could be at a higher risk of statelessness. The level of this risk would depend on numerous circumstances: Does she have other documentary proof of her parentage? Are her parents still alive and available to testify to the facts

¹⁶⁶ *Exposé des Motifs, Projet de Loi portant Dispositions Particulières en Matière d’Acquisition de la Nationalité par Déclaration*, 2013 (on file with author).

¹⁶⁷ Interviews conducted throughout Côte d’Ivoire in June, July, and August 2014.

of her birth to obtain a *jugement supplétif*? If not, are there other community members who could testify to help obtain a *jugement supplétif*? Has she lived in the same community her whole life or has she moved around much within Côte d'Ivoire?¹⁶⁸

These hypotheticals help clarify that by requiring that applicants proffer birth certificates, the Ivorian authorities are favoring those who not only present lower risks of statelessness, but are less likely to be stateless because a birth certificate could be used otherwise to potentially establish the automatic acquisition of nationality based on descent of their country of origin. Ultimately, this argues in favor of finding solutions, even on a bilateral basis, for late birth registration to those who need it the most.

Finally, field observations of how the rules related to the acquisition of nationality by declaration program were implemented in practice revealed that at least some people who fall within the three categories of potential beneficiaries were unable benefit from the program because they cannot provide documentary evidence either required by law or in practice by local officials.

For example, one elderly man in Guiglo in western Côte d'Ivoire had a birth certificate confirming the date and place of his birth in Haute Volta and his parentage. He testifies that he was subject to forced displacement and labor prior to independence; but he only has documentation confirming his presence in Côte d'Ivoire starting in 1961. The local prefecture officials refused to accept his application to acquire Ivorian nationality through declaration as a result of lack of proof of presence in Côte d'Ivoire in 1960 and prior years. This man possesses a birth certificate from Haute Volta, has maintained ties with Burkina Faso, and already obtained a new biometric Burkinabè consular card issued this year. This is a case that demonstrates: (1) that there are certainly people who would qualify to acquire Ivorian nationality by declaration if some of the documentary requirements were eased (or if testimonial evidence had been allowed explicitly by law); and (2) nevertheless the risk of statelessness for such persons is potentially low provided they have a birth certificate.

Interviews also revealed that contradictory information contained in various legal texts and public information materials as to the descendants of which categories of beneficiaries can apply dampened the submission of applications. This is illustrated in the case of three brothers, all born in Côte d'Ivoire in 1983, 1992, and 1998 to Burkinabè parents. Their Burkinabè father was born in 1929 in Haute Volta and had immigrated to Côte d'Ivoire prior to independence and lived there until his death eight years ago. The brothers have copies of their father's birth certificate, death certificate and an official employment document proving that their father worked in Côte d'Ivoire between 1961 and 1989 for the same agricultural collective (done to calculate his pension). Having been born after 1973, none of these men qualify themselves as direct beneficiaries of the declaration program.

The elder brother approached the First Instance Court in Guiglo as well as the Guiglo Sub-Prefecture to apply to acquire nationality by declaration as a descendant of a beneficiary. Both authorities refused to accept his application. Putting aside difficulties in documenting their father's presence in Côte d'Ivoire in 1960 and years prior, this case demonstrates the confusion that existed as to which descendants can acquire nationality by declaration based on their filiation.¹⁶⁹

¹⁶⁸ This last question is important because someone who has lived permanently with the same community is more likely to find witnesses to testify to the circumstances of her birth. The more detached a person is from the community of her birth, the more difficult it becomes to provide accurate information to obtain a *jugement supplétif* that would prove filiation for the purposes of acquiring nationality.

¹⁶⁹ These men would seem to qualify as beneficiaries in the second category identified pursuant to Article 2 of Law 2013-653: "Persons having had their habitual residence without interruption in Côte d'Ivoire prior to 7 August 1960 and their children born in Côte d'Ivoire," or under Article 1 of Decree No. 2013-848, which states

With their father's birth certificate, his history of succession of *cartes de séjour*, and a recent Burkinabè consular card, the brothers can obtain biometric Burkinabè consular cards. The eldest brother, however, remains profoundly disappointed that he cannot acquire Ivorian nationality through the declaration program. Although he is a Burkinabè national, he has not applied for a biometric Burkinabè consular card because he still hopes to acquire Ivorian nationality. As he explained, he feels Ivorian, considers himself Ivorian and wants to be Ivorian.¹⁷⁰

This discussion of the program for acquisition of Ivorian nationality by declaration underscores that no generalized conclusions can be drawn with respect to how it will impact reduction of statelessness in Côte d'Ivoire, unless an individual analysis is done pertaining to each applicant's background. Furthermore, it even suggests that the program's evidentiary requirements, including the necessity for applicants to produce a birth certificate or *jugement supplétif*, limited the potential impact in extending Ivorian nationality to those who qualify for it, as well as in reducing statelessness. As a program adopted to implement a goal set out in the Linas-Marcoussis Agreement endorsed by all Ivorian political actors at the time, the program is admirable in correcting the historical injustice according to which historical migrants have been unable to acquire Ivorian nationality in accordance with the law, as was their right during the window available to them from December 1961 to January 1973.

5.1.3. The case of those naturalized by collective decree in 1995 and their descendants

The 8,133 inhabitants of the Mossi "colonial villages" who acquired Ivorian nationality through collective naturalization decree signed by Bédié in 1995¹⁷¹ merit special consideration as to their historical and contemporary experiences with nationality and stateless.

The acquisition of Ivorian nationality for these individuals and their descendants became effective upon the publication of the collective naturalization Decree No. 95-809 published in the complementary edition of the Official Journal on 6 January 1996.¹⁷² This edition of the Official Journal listed the names of each concerned individual, indicating their date of birth and the names of their parents. Pursuant to Article 45 of the Nationality Code, all unmarried minor children of individuals named in the 1995 decree, as published in the Official Journal, were to acquire subsidiary Ivorian nationality by naturalization, even if their names did not figure in the decree and Official Journal, provided that filiation can be established.¹⁷³

Given the xenophobic environment from the late 1990s throughout the 2000s and discrimination against perceived foreigners, many of those included in the 1995 collective naturalization decree and their descendants faced great difficulties in proving their Ivorian nationality in practice. Many applied for, but were denied national ID cards. Others turned to the courts, some of which refused them nationality certificates. Those who obtained nationality

that descendants of all three categories can benefit from the special declaration program. Yet *Circulaire Interministérielle No. 6 MJDHLP/MEMIS du 27 mars 2014* departs from the law and decree and designates only the descendants of the first category, namely persons born in Côte d'Ivoire to foreign parents aged less than 21 on 20 December 1961, as beneficiaries of this program.

¹⁷⁰ Note that this man and his brothers could apply to acquire Ivorian nationality through naturalization with the reduced residency requirement having been born in Côte d'Ivoire. Asked if they would do so, they cited the high costs of the procedure and hopelessness given that no one they knew who applied from 2005 to 2007 under the special naturalization program were unsuccessful.

¹⁷¹ See discussion *supra* in note 16.

¹⁷² Decree No. 95-809, *supra* note 30.

¹⁷³ However, minor children can only acquire nationality under this provision through their fathers or widowed mothers. See discussion in Section 3.2.6 above.

certificates or ID documents faced the experience that local authorities or even low-level police officers at roadblocks would tear up their papers, denying their Ivorian nationality in practice.¹⁷⁴

Can such persons who have been naturalized as a matter of law but denied proof of their Ivorian nationality in practice qualify as “stateless” as understood in Article 1 of the 1954 Statelessness Convention? Did the level of discrimination against “perceived foreigners” by Ivorian authorities reach the level where it indicated that the State no longer considered them nationals? Or is this a case where their nationality is not in question, but their rights as citizens were violated?¹⁷⁵ If the concerned individuals were consistently denied the right to obtain Ivorian nationality certificates or other Ivorian ID documents; denied the right to vote, take on a public service post or a liberal profession, or other rights attached to nationality, the conclusion might be reached that indeed, the Ivorian government had changed its position and did not consider these people as its nationals.¹⁷⁶ This is an interesting case where the State’s position on these individuals’ nationality has changed over time.

At the very least, those who benefited from the naturalization decree but cannot obtain documentation of their Ivorian nationality in practice can be said to be at risk of statelessness.¹⁷⁷ In light of this, the Ivorian Ministry of Justice, with assistance from UNHCR, has undertaken a number of measures to ensure that those who acquired Ivorian nationality through the 1995 collective naturalization decree can obtain official proof of their nationality and benefit from the rights attached to that nationality in practice. Over several years, the Ministry of Justice compiled and reproduced copies of the 1995 decree and the 6 January 1996 edition of the Official Journal with the names of all naturalized individuals. It conducted a series of trainings with magistrates and other local officials and directly assisted individuals with obtaining nationality certificates. It is hoped that with the increased awareness of the rights of these individuals, all those concerned and their descendants will be able to obtain proper documentation of their Ivorian nationality. Their situation should certainly continue to be monitored.

5.2. Children of unknown parents

Section 3.1.4 above explained how the 1972 amendments to the Nationality Code closed the only legal avenue for children found in Côte d’Ivoire of unknown parents to acquire nationality. Côte d’Ivoire acceded to the 1961 Statelessness Convention in 2013. It now has a legal obligation to grant Ivorian nationality to children born in its territory who would otherwise be stateless, as well as to grant its nationality to foundlings found in its territory. Although Article 3 of the Ivorian Nationality Code establishes that international treaties take precedence over Ivorian law in nationality matters, even where contradictory, this is impractical and cannot be relied upon to overcome various practices that either render children stateless or place them at heightened risk of statelessness.

¹⁷⁴ Ousmane Diallo, *Koupéla, Tenkodogo, Garango et Koudougou : La vérité sur les 8000 naturalisés*, Nord-Sud, 18 March 2013.

¹⁷⁵ The UNHCR *Handbook on Protection of Stateless Persons* provides several relevant passages to assist in this analysis, including in paragraph 43: “In cases where there is evidence that an individual has acquired nationality through a non-automatic mechanism dependent on an act of a State body, subsequent denial by other State bodies of rights generally accorded to nationals indicates that his or her rights are being breached. That being said, in certain circumstances the nature of the subsequent treatment may point to the State having changed its position on the nationality status of that individual, or that nationality has been withdrawn.”

¹⁷⁶ Whether they would be stateless would depend on whether the individuals have otherwise obtained Burkinabè nationality.

¹⁷⁷ These individuals fall within two of the classic categories of groups at risk of statelessness, namely: individuals with perceived or actual ties with foreign States, and migrant populations and their descendants. As always, an ultimate determination would need to be done on a case-by-case basis and would depend on whether a person does or does not clearly possess proof of another nationality.

Rather, Côte d'Ivoire must urgently adopt implementing legislation, including administrative regulations addressed to courts, civil registrars, and social services agencies, to provide clear instructions to reduce statelessness and the risk of statelessness among children, as well as children who have now attained majority and are unable to prove their nationality due to their childhood circumstances.

Statelessness can arise among various categories of vulnerable children. Some children are orphaned when their parents die. Some parents simply abandon their children. This might be due to cultural practices; for example, in some ethnic groups children born in a certain birth order are said to bring bad luck and are abandoned. Disabled children are particularly vulnerable to being abandoned by their parents at various ages.

Abandoned children and other children of unknown parents are highly unlikely to have their births registered. Given the lack of ties to a community and the inability to prove parentage, it is nearly impossible to legally establish the nationality of these children. Only a minority of abandoned children are cared for in orphanages. Many abandoned children are informally raised by communities, although seldom formally adopted in accordance with civil status procedures. Other children struggle as street children. Where no one can attest to a child's date, place of birth, or parentage, it is impossible to obtain a *jugement supplétif* and to prove nationality.

Various humanitarian actors and child protection social services have negotiated compromise solutions in some cases. For example, one NGO interviewed¹⁷⁸ runs several children's homes in Côte d'Ivoire. Each home seeks to develop personal relationships with local courts, which yields interim solutions. For example, one children's home on the outskirts of Abidjan has obtained *jugements supplétifs* for children in its care, which either leaves blank or writes the name of the care providers in the home for the child's parents; this same center has also obtained nationality certificates from these courts for some children. In another children's home, the courts provide a *jugement supplétif* for the birth registration of the children, writing in the full name of the institution's male director as their father, and selecting one of the center's female staff as their mother – in both cases the nationality of the parents is indicated to be Ivorian. Another independent child services NGO operating in Abidjan has made arrangements with the local Guardianship Court to deliver a "provisional authorization of identity card," that can be used as an identity document to help enroll the child in school.¹⁷⁹

While these solutions meet some urgent child protection needs, they are not sustainable solutions for these children into adulthood as they involve side-stepping formal legal requirements and can therefore be called into question by national identification officials or courts in the future.¹⁸⁰ Children's social services agencies admit that such individuals likely face tremendous difficulties in obtaining identification documentation and are vulnerable to social exclusion. Once children reach majority, they ultimately fall outside of the intervention mandates of these agencies. No study has yet been conducted on the prevalence of statelessness among children in Côte d'Ivoire and the impact of such statelessness on the children concerned.

¹⁷⁸ Interviews, Abidjan and outskirts, June-July 2014.

¹⁷⁹ Interview, Abidjan, June 2014.

¹⁸⁰ Furthermore, some government agencies, for example the National Identification Office, can require that a certificate of nationality be obtained within a specific time period for various purposes. There is currently no database of nationality certificates that are issued, so should a person who has obtained one lose it, he or she would need to appear again *de novo* before a court with proof to obtain another one. The Ministry of Justice is currently considering ways to create a database of nationality certificates to overcome this issue.

5.3. Border populations

Côte d'Ivoire shares land borders with the following five countries: Liberia, Guinea, Mali, Burkina Faso, and Ghana. Where cross-border ethnic communities are undocumented and mobile and/or are stigmatized or marginalized in society, members of these groups can run the risk of statelessness.¹⁸¹

The Ivorian Ministry of Justice has identified one such sub-ethnic group whose members might be stateless or at risk of statelessness, namely, the Lobi. Lobi communities are found across southeastern Burkina Faso, northeastern Côte d'Ivoire, and northwestern Ghana. In colonial times, the Lobi resisted French efforts to participate in the colonial population census process.¹⁸² In addition to those in the West of the country, the towns and villages in northeastern Côte d'Ivoire continue to have some of the lowest rates of birth registration in the country.¹⁸³ In the absence of more detailed information about the potential cross-border mobility and local administrative perceptions of the Lobi in the Zanzan region, it is difficult to draw any insights or conclusions about the potential consequences for statelessness or nationality that might present in this region. Further field research and study on this ethnic group and region would certainly be merited as part of a broader exploration of nationality and statelessness issues that might be present in Côte d'Ivoire's North.

Given time and resource limitations inherent in this study, it was not possible to visit and evaluate potential regional specificities in relation to the prevalence of statelessness in border regions. For a more comprehensive understanding of the potential local dynamics related to statelessness, further research should be done in the following regions: southwestern Côte d'Ivoire towards the border with Liberia; southeastern Côte d'Ivoire towards Ghana; northeastern Côte d'Ivoire towards the borders with Burkina Faso and Ghana, and the northwestern region towards the borders with Mali and Guinea.

5.4. Returnees, Ivorian refugee children born abroad, and internally displaced persons

Field research in western Côte d'Ivoire conducted for this report revealed several insights into the potential prevalence of statelessness or the risk of statelessness among the populations of former Ivorian refugees who have returned to Côte d'Ivoire, including by UNHCR-assisted repatriation from Liberia; returnee children born to Ivorian refugees abroad, and internally displaced persons (IDPs).

Once post-election violence subsided in 2012, UNHCR began assisting with the repatriation of Ivorian refugees.¹⁸⁴ The majority of Ivorian refugees originated from western Côte d'Ivoire, one of the regions the most affected by the civil war and absence of civil administration from 2002 onwards. As such, returnees have been arriving back, many having lost their identification documents due to their displacement, to towns and communities where the civil status registers had been destroyed and only partly reconstituted. Having *prima facie* been identified and registered as

¹⁸¹ Manby, *supra* note 13.

¹⁸² Bazié Boubie, « *Compter Pour Planifier* » dans *la Politique Administrative Coloniale en Pays Lobi du Burkina Faso*.

¹⁸³ Direction des Etudes, de la Programmation et du Suivi-Evaluation, Ministère d'Etat, Ministère de l'Intérieur et de la Sécurité, *Annuaire des Statistiques d'Etat Civil 2015*, September 2016, Section 4.5. Furthermore, according to a UNDP study of the geographic distribution of the rates of rejection of national ID cards in the 2007-2010 election process, the Department of Bouna in Zanzan was only one of two departments to have a rejection rate of over 40%. Bouna's rate of ID card rejection was 40.21% while the Department of Zouan-Hounien in the 18 Montagnes Region of western Côte d'Ivoire had 56.77%. PNUD/PACE Excel Spreadsheet, *Populations Croisées Négativement*, par CEL, 29 November 2009 (on file with author).

¹⁸⁴ The number of Ivorian refugees abroad swelled to 154,824 in end 2011 and stood at 71,959 in end 2014. UNHCR, *Global Trends 2011*, Table 2 and UNHCR, *Global Trends 2014*, Table 2.

Ivorian nationals who fled Côte d'Ivoire,¹⁸⁵ returning refugees certainly constitute a vulnerable group that faces documentation problems. As such, UNHCR and its Ivorian government partner, the Service for Aid and Assistance to Refugees and Stateless Persons (*Service d'Aide et d'Assistance aux Réfugiés et Apatrides*, or SAARA), are assisting returnees in obtaining personal identification documentation.

Whether returning refugees can be said to be at risk of statelessness depends on the circumstances of the communities concerned. For example, UNHCR and SAARA assisted in facilitating birth registration in the village of Doké on the Bloléquin road close to Liberia in western Côte d'Ivoire. Although many people in this village fled to Liberia during the post-election violence, they have now returned to their home village. The community is almost entirely made up of ethnic Ivorian Guéré who speak the Guéré language. They are well organized with the village chief presiding over local community matters. In tight-knit homogeneous ethnic communities such as Doké, given that people are able to testify on behalf of each other to establish their identity without much contestation, this community generally does not present a high risk of statelessness.

The case of children of Ivorian refugees born abroad is more complex and unregistered refugee children born abroad who have returned to Côte d'Ivoire can certainly be considered to be at risk of statelessness.

Ivorian law requires that Ivorian births abroad are registered with heads of Ivorian diplomatic missions or consular agents abroad.¹⁸⁶ These missions are to share duplicate copies of their civil registers with the Department of Legal and Consular Affairs of the Ivorian Ministry of Foreign Affairs in Abidjan, which is the only national entity in Côte d'Ivoire authorized to deliver copies of consular registration of birth abroad. However refugees, by nature of their status, are unable to contact consular authorities of the home country they have fled. Where refugee children born abroad have complied with local birth registration procedures in the country of birth in exile, birth certificates proving this foreign registration are not legally valid for administrative or judicial purposes in Côte d'Ivoire.

Upon return to Côte d'Ivoire, children of Ivorian refugees who have not registered their births with Ivorian consular officials are nevertheless required to fulfill their civil status obligations, including establishing a *jugement supplétif* of birth abroad. Only the First Instance Court in Abidjan has subject-matter jurisdiction to process civil status matters that occurred abroad. Needless to say, costs related to travel to Abidjan can be prohibitive for returnee families. For their part, returnee children born in exile with foreign birth certificates must have their birth records transcribed in both the consular registers abroad as well as with the Ministry of Foreign Affairs in Abidjan.¹⁸⁷ This is also a cumbersome affair.

UNHCR and SAARA are developing practical solutions to provide birth registration to returned Ivorian refugee children. They are developing revisions to the implementing decree and circular of the law on civil status with regards to Ivorians abroad, which would allow children born abroad, including in asylum countries, to register their births in the civil registration offices where their parents or legal guardians reside upon return. This would be a commendable effort to contribute to the prevention of statelessness among this population and advocacy efforts should be pursued to ensure the adoption of this bill as soon as possible by the Ivorian government. The longer it takes for returnee families to resolve birth registration of their children, the more complicated the procedure will become and the greater the risk of statelessness.

¹⁸⁵ Confirming the nationality status (or statelessness status where applicable) of the individual refugee concerned is inherent in the refugee registration process.

¹⁸⁶ *Décret No. 65-431 du 23 décembre 1965, Etat Civil des Ivoiriens à l'Etranger.*

¹⁸⁷ According to UNHCR, among returnees who had been in exile in Liberia, 36% have never had their births registered, while 9% require transcription of a birth or marriage certificate produced in Liberia.

IDPs¹⁸⁸ are particularly vulnerable to losing identification documentation, with many having fled the regions most affected by conflict. As noted elsewhere, the mere facts of having lost documentation or coming from regions with destroyed public administration and civil registers are not sufficient to raise the risk of statelessness; rather other traits, such as having a migrant background or having ties, or perceived ties, with foreign States, would need to be present. Further analysis of the risks of statelessness and documentation issues of those who have experienced internal displacement in Côte d'Ivoire should be undertaken.

5.5. Contemporary migrants, including trafficked persons

Less than half of all foreigners in Côte d'Ivoire have migrated there from their countries of origin in their lifetimes. The liberal rules related to freedom of movement in ECOWAS countries means that many migrants have been able to travel and continue to subsist without personal identification documentation. Most migrants who arrived in Côte d'Ivoire after a certain age are able to articulate at least some facts about their country of birth, parentage (when parents are known), and circumstances of their migration. With this information, it is often possible to establish a link to their countries of origin, even if this might require various administrative steps and the assistance of community organizations or international agencies with cross-border ties. As such, most undocumented migrants are not stateless.

However, children of undocumented migrants born in a host country, particularly those born in Côte d'Ivoire where it is difficult for foreigners to acquire nationality, or born in a third-country, can be at risk of statelessness.¹⁸⁹ Much will depend on an individual's circumstances, such as the time spent in a host country, and the level of contacts maintained with the country of origin.

The move of many States to adopt systems of biometric identification might raise the risk of statelessness among undocumented migrants. For example, local consular delegates previously had a wide range of discretion in determining whether someone was Burkinabè. According to the new biometric system, consular agents require applicants for consular cards to proffer a copy of a birth certificate. As such, presumably a higher portion of the Burkinabè migrant community in Côte d'Ivoire will face a harder time obtaining consular cards than in the past. As migrants have children in their host country, the longer they remain without documentation, the harder it will be to establish ties to their original country of origin.

There are some communities made up primarily of recent Burkinabè migrants where this latent risk of statelessness remains present. Take, for example, the village of Thomasset on the outskirts of Abidjan, an agricultural community with planters and field workers, some of whom are seasonal, living in informal field settlements (*campements*). Interviews revealed that many Burkinabè workers in this community had immigrated to Côte d'Ivoire within the last twenty years or so. Many are undocumented, but can nevertheless articulate the year and circumstances of their family and immigration histories; most came to Côte d'Ivoire after they had attained majority. Again, their undocumented status renders them neither stateless nor immediately at risk of statelessness. However a risk of statelessness can increase over time, in particular for their children born in Côte d'Ivoire.

¹⁸⁸ The 2010-2011 post-election violence in Côte d'Ivoire resulted in the internal displacement of around one million persons. Brookings LSE Project on Internal Displacement, *Livelihoods, Gender and Internal Displacement in Côte d'Ivoire: Between Vulnerability and Resiliency*, April 2013. After the crisis subsided by 2012, most of those internally displaced have returned to their homes. It was estimated that around 40,000-80,000 persons remained displaced in 2014. Internal Displacement Monitoring Center, *Côte d'Ivoire Country Profile*.

¹⁸⁹ Manby, *supra* note 13.

This can be illustrated in the case of Omar,¹⁹⁰ born in Burkina Faso in 1966, who came to Côte d'Ivoire in 1988 and is in a customary marriage with a Burkinabè woman. Both Omar and his wife never had their births registered in Burkina Faso and have never possessed any identification documentation. They have four children; the first born in Burkina Faso in 1987, and three others born in Côte d'Ivoire in 1989, 1992, and 1996. None of their children's births have been registered. They live in the Burkinabè settlement community in Thomasset. Their youngest child attends the local school even without documentation. Their second youngest child also attended the local primary school but was unable to continue past the CM2 level (around the age of 10-11) because she has no ID documents. It would appear that Omar, his wife, and eldest child would not be able to obtain new Burkinabè biometric consular card without any birth certificates from Burkina Faso. His three youngest children could obtain *jugements supplétifs* documenting their birth in Côte d'Ivoire. With that, it would be up to the discretion of the Burkinabè consular officials to determine, based on the information about their parents, whether to accord them Burkinabè consular cards. What would happen if Omar and his wife were to pass away? The most at risk of statelessness would be the eldest son. At his age and given his long-term residence in Côte d'Ivoire, Omar would face tremendous hurdles in obtaining a Burkinabè birth certificate. His case underscores how special arrangements between Côte d'Ivoire and its neighboring States will be necessary to effectively prevent statelessness.

Trafficked persons can be at acute risk of statelessness. No studies exist that document the estimated prevalence of trafficking in Côte d'Ivoire. One study from 2006, however, looked at exploited trafficked children in coffee and cacao plantations.¹⁹¹ It found that the exploited children were primarily teenagers between the ages of 14 and 18, with boys typically working in the plantation fields and girls employed as domestic personnel. With respect to their nationality, this study found that they were mostly of Burkinabè, Malian, Guinean, and Béninois origin. Anecdotally, several Ivorian humanitarian organizations and other international agencies consulted in 2014, including UNICEF,¹⁹² shared their general impression that most trafficked persons they encounter do not possess any personal identification documents.

In light of this, it is safe to say that trafficked persons, particularly undocumented minor children of foreign origin are at high risk of statelessness, with limited legal avenues for establishing filiation and therefore nationality. Some nongovernmental organizations have developed cross-border networks and in a few, isolated, cases have successfully repatriated trafficked migrant children to their countries of origin.¹⁹³ These are certainly the exceptions, rather than the rule.

The case of Ali, interviewed by UNHCR in western Côte d'Ivoire for the purposes of this study,¹⁹⁴ captures the complex dynamics of migration, internal trafficking, and statelessness. Ali was born in 1981 in a town in the East of Côte d'Ivoire. His parents abandoned him, but he grew up among the Burkinabè community there and speaks Mooré. At six years old, an "aunt" took him and brought him to Gbapleu in western Côte d'Ivoire. The "aunt" left him with a man who subsequently gave him to another man, who forced him to work on his cocoa plantation for seven years. Aged 13, he went back to see the first man, an important business person in Gbapleu, asking to be reunited with his family. Instead, he was forced into further labor for seven years. In 2012, Ali decided to go to the town of his birth to look for his parents. To travel, a Burkinabè man in the community gave him the Burkinabè consular card of his deceased son. Ali stayed in the town of his birth in eastern Côte d'Ivoire for three months. The Burkinabè village chief there told him that his mother was

¹⁹⁰ Interview, Thomasset, July 2014. Name changed.

¹⁹¹ Study by Doh and Sissoko A, quoted in Merabet, *supra* note 19.

¹⁹² Interviews, Abidjan, July 2014.

¹⁹³ Interviews, Abidjan, June-July 2014.

¹⁹⁴ Interview, August 2014. A multimedia feature on Ali's story is available at: <http://kora.unhcr.org/stateless-alone-invisible/>.

Burkinabè but had died many years ago and that his father was unknown. The “aunt” who had taken him away had sold him into forced labor. She is also now dead. Ali returned to Gbapleu and has found temporary work as a field laborer to survive. He recently tried to obtain a genuine Burkinabè consular card, on the basis of the information he had found out about his origins, but the Burkinabè consular authorities refused to give him one because he had no documentary proof of his birth or parentage and because he had used an old consular card that was not his. He lives desperate and ostracized from the Burkinabè communities of his birth, as well as where he has lived for over twenty years.

5.6. Individuals refused Ivorian national and voter ID cards for the 2010 elections

The final voter list for the 2010 presidential elections was validated in September 2010 after a three-year process that combined the drawing up of this list with the identification of Ivorian nationals. It certified 5,725,720 Ivorian nationals as eligible to vote. This number represented 86.3% of all who applied to register to vote (6,636,263), but only 66% of the Prime Minister’s estimated total voter population (8,663,149) based on projections calculated by the National Statistics Institute.¹⁹⁵

In this process, 601,322 persons who applied for Ivorian ID and voter cards were rejected and placed on what was called the “gray list” for having undetermined nationality. To date, the status of those on the “gray list” has not been resolved. What can be said about the statelessness and nationality considerations of those included on this list?

Recall that the Ouagadougou Peace Agreement (APO) of 2007 called for the launch of mobile court hearings to assist people with obtaining *jugements supplétifs* in order to participate in the national identification and voter registration schemes. For the voter list, anyone on the 2000 voter list would automatically obtain Ivorian national ID cards and be re-registered for the forthcoming elections. With respect to identification of Ivorian nationals from 2007 to 2010, the APO relaxed the documentary conditions and only required that applicants produce a birth certificate or *jugement supplétif* to prove their identity to be checked by the government.¹⁹⁶

An Interministerial working group devised a system to check the names of those who came forward to register to vote against what it called the “merged database of Ivorian nationals,” and the “merged database of foreigners.”¹⁹⁷ If the named applicant was not found in the databases, the names of the applicant’s parents were checked to see if they could be found in the databases.¹⁹⁸

The 12 historical databases used for this exercise included: the 1990 and 1995 voter lists; the 1998 census; lists of the administrative agencies that managed social insurance and pensions of the private and public sectors; the list of public servants; the list of those who acquired Ivorian nationality through naturalization; the database of those who held the green national ID cards issued between November 1998 and January 2000; civil status records, including information on *jugements supplétifs* issued in the 2007 mobile court hearings; and the database of *cartes de séjour* issued to ECOWAS and non-ECOWAS citizens.¹⁹⁹

Given the history of the amendments made to the identification laws and concerns about how they were – and more often were not – implemented in practice, serious questions remain

¹⁹⁵ EU Election Observation Mission, *supra* note 134.

¹⁹⁶ See discussion in Section 4.2 above.

¹⁹⁷ Atoine Adou and Moktar Lam, *Identification – Enregistrement Electronique de la Population & des Electeurs: Cas de la Côte d’Ivoire*, European Commission / UNDP Thematic Workshop on information Technology and Elections Management held in Mombasa, Kenya from 5-9 March 2012.

¹⁹⁸ Notre Voie, *Crise Ivoirienne, Liste électorale provisoire – Le DG de l’INS explique le mécanisme du croisement*, 9 October 2009.

¹⁹⁹ Adou and Lam, *supra* note 197.

about the reliability of this methodology.²⁰⁰ This is even more the case in light of concerns about how each database developed and how nationality might have been evaluated differently in each. Despite these reservations, this methodology for elaborating the voter list was endorsed by the government.

For the provisional voter list, 5,300,586 checked positive for appearing on the 2000 voter list or the merged database of Ivorian nationals (the “white list”); 49,682 appeared in the merged database of foreigners (the “black list”); and the remaining 1,033,985 failed to appear on either the 2000 voter list or the merged databases of Ivorian nationals and foreigners (“gray list”).²⁰¹ The provisional voter lists were published at polling centers, though not in a consistent manner, and no explicit information about the “gray list” was made public.²⁰² A phase for submission of disputes and appeals followed in a tense environment marked by the lack of transparency.²⁰³ The definitive voter list totaling 5,725,720 Ivorians was approved in September 2010 and certified by the UN’s Special Representative of the Secretary General in Côte d’Ivoire. After this review process, 601,322 persons remained on the “gray list.”²⁰⁴

Review and resolution of unresolved identification and voter registration cases on the “gray list” was suspended in the lead-up to the 2010 elections and remains unaddressed by the Ivorian government to this day.²⁰⁵ The Ivorian Ministry of Justice and National Identification Office (ONI) appear to consider that the cases of those on the “gray list” are resolved. This would mean that any Ivorian without personal documentation can now participate in the ordinary identification process to obtain a national ID card.

Participating in the ordinary identification process does seem like the best way for those on the “gray list” – i.e. those who have self-identified as Ivorian and came forward to obtain national ID and voter cards confirming as much – to obtain a transparent determination of their Ivorian nationality status. At a minimum, however, due process requires that the Ivorian government inform those who were on the “gray list” of this fact.²⁰⁶ It is likely, however, that some individuals will appear before courts to obtain nationality certificates but will be determined not to be Ivorian nationals. This underscores that going forward, additional efforts must be undertaken to link Ivorian nationality determination before the courts with other procedures to assist individuals in having a foreign nationality confirmed or statelessness status identified.

The advent of the ordinary identification system has finally brought the onus of Ivorian nationality determination before the courts, which is what has always been foreseen by the

²⁰⁰ The process of merging these databases was not transparent. It is still unknown what happened to individuals who might have been identified as Ivorian nationals in one database but as foreigners in another. Stanislas Djama, *Croisement des Données: Soro demande des Réglages*, Nord-Sud, 5 August 2009.

²⁰¹ Commission Electorale Indépendante (CEI), *Note d’Orientation Générale: Affichage de la Liste Electorale Provisoire 2009 et Gestion des Réclamations*, November 2009.

²⁰² Carter Center, *Report #3 on Voter Verification, Claims and Objections of Provisional Voters List (November-December 2009)*, 1 February 2010.

²⁰³ It was unclear how decisions were ultimately made. Some violent clashes occurred where political partisans sought to remove people on the white list. Another cross-check resulted in the deletion of 55,948 individuals from the provisional list. EU Election Observation Mission, *supra* note 134.

²⁰⁴ Cabinet du Premier Ministre, Ministre de l’Economie et des Finances, *supra* note 45, p. 3.

²⁰⁵ In March 2013, the Prime Minister’s office issued a factsheet, describing those on the “gray list” as “petitioners whose citizenship could not be traced back to the historical databases [and] ... petitioners who presented supporting evidence and proof that was deemed insufficient [to establish Ivorian nationality].” Cabinet du Premier Ministre, Ministre de l’Economie et des Finances, *supra* note 45, p. 3.

²⁰⁶ The National Democratic Institute recommended as much prior to the 2015 elections: “the 2010 final voter list... should rapidly be placed at the disposal of political parties and civil society (with the white, gray, and black lists) for their independent analysis.” National Democratic Institute, *Evaluation du Cadre Juridique et Politique des Elections en Côte d’Ivoire*, March 2014, p. 23. Unfortunately, this was not done.

Nationality Code. Obtaining a nationality certificate is now the precursor to obtaining a national ID card. Nevertheless, judges and courts can be susceptible to subjective, sometimes even arbitrary, reasoning and actions. To promote transparency and uniformity, the Ivorian Ministry of Justice should develop and publish clear guidelines on how judges are to address various evidentiary issues when determining whether an individual is an Ivorian national or not. The 2014 circular on “secure judicial certificates” which supersedes the 1962 Interministerial Circular addressing these issues²⁰⁷ is silent on evidentiary issues related to nationality certificates. Clear and authoritative guidance on the issuance of nationality certificates must therefore be developed. Once these are available, training workshops for judges will be helpful, as will ongoing review sessions for judges to exchange on challenges that arise in their determination procedures.

Civil society must also play an important role in increasing court monitoring to ensure that judges’ discretion on nationality is kept to a minimum and to make ongoing recommendations on how to ensure uniformity and transparency in the issuance of nationality certificates. The Ivorian government must also foresee a system whereby those who are denied nationality certificates should be automatically screened for statelessness and devise a path for them according to statelessness status, or another remedy towards acquisition of nationality for those concerned, to fulfill their legal obligations.

In light of the prominence courts will now play in nationality determination, it is worth reflecting on whether they are the most appropriate actor in the Ivorian context to do so. The expense and inaccessibility of courts deter individuals from seeking *jugements supplétifs*, let alone nationality certificates, perpetuating their undocumented status. To prevent this, the Ivorian government should consider reducing the costs associated with obtaining *jugements supplétifs* and nationality certificates, or promoting regular mobile court hearings to facilitate this process on an ongoing basis. Another approach would be to consider undertaking a special nationality campaign to reach the significant portion of its undocumented population.²⁰⁸ As Côte d’Ivoire goes forward in reflecting how to address its statelessness obligations, all options on how to overcome its historical legacy of having a restrictive, yet arbitrary, nationality system should be on the table.

5.7. Constructive acquisition and/or arbitrary deprivation of Ivorian nationality?

Is it possible that the crisis-recovery identification and voter registration process pursuant to the APO confirmed as Ivorian nationals some historical migrants or their descendants who might not have acquired Ivorian nationality according to the Nationality Code? For the purpose of the voter list in 2010, which formed the basis for the 2015 voter list without review, Ivorian nationality was confirmed based on historical databases, none of which applied the letter of the law in practice. For example, foreigners were still allowed to vote in the 1990 elections and despite rising tensions after the introduction of the *carte de séjour*, some “foreigners” still obtained national ID cards and participated in the 1995 elections. The same holds true regarding the green national ID cards distributed between November 1998 and January 2000 under Bédié. None of the historical databases used to determine nationality were compiled in an objective, non-discretionary manner relying on uniform legal standards or proof regarding a person’s Ivorian or non-Ivorian nationality. In that light, it is indeed possible that some people on the 2010 and 2015 voter list were issued Ivorian ID cards even though they – or their parents – might not have formally acquired Ivorian nationality pursuant to any official channel.

This raises a further question: if someone who is entitled to a country’s nationality by law but is denied that nationality in practice is stateless,²⁰⁹ can the converse be true?²¹⁰ To put it

²⁰⁷ *Note Circulaire, supra* note 97.

²⁰⁸ UNHCR, *supra* note 7, para. 59.

²⁰⁹ UNHCR, *supra* note 7, para. 24.

differently: is there a point where some people might have been treated by the State as Ivorian nationals, without having acquired it by law, so that it could be said that they *constructively* acquired Ivorian nationality?²¹¹ Is there a legitimate expectation that treatment as a national will continue, given that the person's circumstances have not changed in any way and no fraud has been committed? Concretely, would it be possible to accept that Houphouët-Boigny's regime effectively conferred nationality on some historical migrants and their descendants by issuing Ivorian identification documents and granting them equal rights as nationals without any basis in law? This would beg a corollary question: if it is accepted that some people constructively acquired Ivorian nationality in practice but were then subjected to discriminatory practices of the late 1990s and 2000s in which State authorities tore up, destroyed, or failed to issue Ivorian personal identification documentation to those who had previously possessed it, could this qualify as arbitrary deprivation of nationality?

These are complex issues without any clear answer in international or national law. A vexing problem with the universal right to nationality as enshrined in Article 15 of the Universal Declaration of Human Rights is that it is not enforceable on any particular State. How the international prohibition on arbitrary deprivation of nationality might come into play in the Ivorian context raises further questions about which other international human rights principles – such as due process, non-discrimination, the right to legal certainty, or Article 9 of the 1961 Statelessness Convention's prohibition on deprivation of nationality on racial, ethnic, religious or political grounds – might be relevant, particularly where someone who perceives himself or herself to be Ivorian but is not considered by the State to be an Ivorian national results in statelessness. The more rigorous the Ivorian system becomes in determining Ivorian nationality pursuant to its laws, the likelier it will be that such questions will arise. This underscores the imperative for the Ivorian government to develop transparent guidelines on how Ivorian nationality is determined in a comprehensive manner and to collaborate with its neighbors to resolve cases where nationality is in doubt.

5.8. Challenges in obtaining statelessness statistics

Proper identification of stateless persons, as well as groups at risk of statelessness, is the first and most fundamental step in devising a response to resolve statelessness in any country.²¹² This is a highly challenging task.²¹³

Since 2012, UNHCR has published the Ivorian government's projected estimation of 700,000 stateless persons or persons of undetermined nationality in Côte d'Ivoire. The government considers that this statistic represents a minimum estimate of those it considers "at risk of statelessness," but UNHCR's statistical reporting does not allow for the use of this term. A footnote explains how this number was reached as follows:

This figure includes: i) 300,000 Children abandoned at birth: Government estimate of individuals of unknown parentage who were abandoned as children and who are not considered as nationals under Ivorian law. ii) 400,000 Descendants of Immigrants:

²¹⁰ There is one allusion to a related scenario in paragraph 45 of the UNHCR *Handbook on Protection of Stateless Persons*: "For the purposes of the [1954 Statelessness Convention definition of stateless person,] conferrals of nationality under a non-automatic mechanism are to be considered valid even if there is no legal basis for such conferral." The *Handbook*, however, distinguishes this scenario "from one where a non-national is merely treated to the privileges of nationality." *Id.*, para. 29, footnote 49.

²¹¹ This suggestion is inspired by the common-law legal notion of construction, whereby the law sanctions as fact something which is a legal fiction.

²¹² UNHCR's increased emphasis on statelessness identification is in fulfillment of its mandate from its Executive Committee. UNHCR, *Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons*, 6 October 2006, No. 106 (LVII) - 2006, para. (b).

²¹³ UNHCR, *Guidance Document on Measuring Stateless Populations*, May 2011.

Government estimate of individuals who themselves or whose parents or grandparents migrated to Côte d'Ivoire before or just after independence and who did not establish their nationality at independence or before the nationality law changed in 1972. The estimate is derived in part from the cases denied voter registration in 2010 because electoral authorities could not determine their nationality at the time.²¹⁴

It is in everyone's interests to candidly acknowledge that the figure of 700,000 persons who are stateless or of undetermined nationality is an estimate not backed by rigorous statistical analysis.²¹⁵

How can a better statistical view of the statelessness phenomenon in Côte d'Ivoire be achieved? For one, population censuses and statistical profiling surveys can play a role in better analyzing the potential scope and scale of statelessness in the country. But these methodologies are not without pitfalls. Censuses and surveys rely on self-identification. Here, a person might think that he or she is of a particular nationality, but might not be considered as a national from the perspective of the State concerned. To address the challenge of deriving statelessness-related data from population censuses, UNHCR has recommended that "consideration should be given to inclusion of questions which permit cross-checking of data based on self-identification of citizenship."²¹⁶

In relation to statelessness in Côte d'Ivoire, relevant proxy questions could involve cross-checking some of the following variables:

- What is the number of persons who self-identify as Ivorians and foreigners?
- What is the portion of those who identify themselves as foreigners who were born in Côte d'Ivoire versus their country of origin (whose nationality they claim)? What is the age distribution of this group?
- With respect to those identified as "non-Ivorians" born in Côte d'Ivoire:
 - How many were born to "foreign" parents also born in Côte d'Ivoire?
 - How many of them possess: birth certificates or *jugements supplétifs*; or some form of nationality documentation (such as a passport, nationality certificate, or national ID card from their stated country of origin, consular card, etc.)?
 - How long have they lived in Côte d'Ivoire? Do they have children? If so, are their children's births registered?
- With respect to those who self-identify as Ivorians:
 - How many of them possess: a birth certificate or *jugement supplétif*, national ID card, a nationality certificate, or a passport?

Côte d'Ivoire's 1998 housing and population census did not contain relevant proxy questions, although it revealed the age distribution and high number of those who self-identified as foreigners who were born in Côte d'Ivoire. As for the 2014 census, respondents were asked (as in prior censuses) their date and place of birth and their nationality, but were also asked for the first time to state whether their births have been registered in accordance with civil status procedures (distinguishing between whether this was done within the legal three-month deadline or whether

²¹⁴ UNHCR, *supra* note 3.

²¹⁵ Indeed since 2016, the Ministry of Justice refers to the 700,000 only as historic migrants thought to be at risk of statelessness, acknowledging that estimating the founding population size is complex. This point has been confirmed by the Ministry of Justice via correspondence in December 2016.

²¹⁶ UNHCR, *Measuring Statelessness through Population Census. Note by the Secretariat of the United Nations High Commissioner for Refugees*, 13 May 2008, ECE/CES/AC.6/2008/SP/5, para. 16.

done before a court to obtain a *jugement supplétif*).²¹⁷ The results revealed that that the births of 78.5% of the overall population have been registered.²¹⁸

No comprehensive initial mapping of a country's statelessness situation is complete without conducting in-depth consultations with stateless persons or those at risk of statelessness regarding their protection needs. These can take the form of what UNHCR calls a "participatory assessment," an exercise that is part and parcel of its protection work and has been described as being relevant to its statelessness mandate as follows: "Mainstreaming age, gender and diversity considerations requires the meaningful participation of girls, boys, women and men of all ages and backgrounds in the design, implementation, monitoring and evaluation of all UNHCR policies and operations so that these impact equitably on stateless persons and address all causes of statelessness."²¹⁹

In many respects, the Ivorian government and UNHCR have been able to highlight the importance of addressing statelessness in Côte d'Ivoire as a result of publishing the estimated figure of 700,000. Yet it is important to be cautious with statistics that have not been subject to rigorous qualitative and statistical analysis. Furthermore, the precise nature of how an individual or group is identified will influence how to speak about and measure the outcome of a response. Some responses are best qualified as efforts to prevent statelessness, or address the risk of statelessness, while others can be qualified as aiding in the reduction of statelessness, or resolving statelessness. Much more needs to be done with respect to better understanding how the causes of statelessness identified in this report apply to populations in Côte d'Ivoire so as to craft the most effective response to statelessness in the country.

6. Conclusion

This report has demonstrated how Côte d'Ivoire's nationality laws evolved to represent one of the most restrictive schemes for conferral of nationality in West Africa, but also that its nationality system – as implemented in laws and practical policies related to nationality, civil status, and identification – has essentially functioned quite arbitrarily since independence. Many historical migrants and their descendants born in Côte d'Ivoire have developed deep roots and ties to the country. A conundrum of the Ivorian context is that some were led to identify as Ivorians under Houphouët-Boigny's liberal immigration and integration policies, maybe even obtained Ivorian identification documentation, but without any legal foundation for acquiring Ivorian nationality.

The best way forward is to consider how to address two issues: developing an effective system to legally integrate long-standing migrants and their descendants into the Ivorian citizenry on the one hand, while reducing and preventing statelessness on the other. With respect to the first issue Côte d'Ivoire can consider various ways it can facilitate the acquisition of Ivorian nationality of longstanding immigrants and their descendants. One way would be to adopt legal rules espoused by other countries in the sub-region, such as the double *jus soli* provision whereby a child born in the country to parents also born there (regardless of nationality) automatically acquires nationality. Another approach would be to expand the simplified procedure for acquiring Ivorian nationality through declaration. This avenue could be extended beyond the original beneficiaries of the procedure as available between 1961 and 1973 to include those born in Côte d'Ivoire to foreigners after 1973 who remain resident in Côte d'Ivoire at majority. At the very least the Ivorian naturalization procedure must be galvanized and finally rendered effective, as was foreseen in the

²¹⁷ Comité National de Recensement, Institut National de la Statistique (Côte d'Ivoire), *Questionnaire : Recensement Général de la Population et de l'Habitat 2014* (on file with author).

²¹⁸ INS, *supra* note 2, p. 3. A further breakdown of the percentages with respect to national origin is not yet published.

²¹⁹ UNHCR, *supra* note 7, para. 21.

Linass-Marcoussis Agreement. This would require awareness-raising and public education for potential beneficiaries, as well as for prefectural authorities at the frontlines of receiving applications to transfer to the Ministry of Justice for treatment. The naturalization process should be rendered less discretionary and subject to transparent appeals.

With respect to addressing statelessness, as a new State party to the statelessness conventions, Côte d'Ivoire must begin a strategic process of ensuring the respect of its treaty obligations at the national level. This will involve: (1) undertaking legislative reform to ensure that Ivorian nationality law incorporates mandatory safeguards against statelessness that are currently absent from positive laws and procedures; (2) developing a legal framework for the protection of stateless persons in its territory with access to naturalization; (3) better identifying the scope and scale of the statelessness phenomenon in the country; and (4) undertaking the most appropriate measures to resolve statelessness and reduce the risks of statelessness among identified populations. Promptly resolving the issue of statelessness among children of unknown parents should be of utmost priority, by undertaking legislative reform to affirm their right to acquire Ivorian nationality and accompanying regulations and public-awareness efforts to ensure that this rule is implemented in practice as soon as possible and with retroactive effect.

The twin issues of migrant integration and statelessness in Côte d'Ivoire are not just problems at the national level, but at the regional level as well. Any effective response to both will require efforts not only on a bilateral basis between Côte d'Ivoire and a number of its neighboring States, but also coordinated efforts at the regional level. What role can the concept of ECOWAS citizenship potentially play in filling the protection gaps related to migrant exclusion and statelessness? What measures can ECOWAS undertake to ensure that ECOWAS citizens' rights – such as those related to non-discrimination and due process of law – are respected? Regional progress on these questions, particularly through implementation of the measures undersigned in the Abidjan Declaration, is sure to aid Côte d'Ivoire in responding to statelessness, as well as in respecting the rights of foreigners within its borders. As the country with the largest statelessness problem in the region identified thus far and as one of the regional pioneers in acceding to the two statelessness conventions, Côte d'Ivoire has rightly assumed a leadership role in pushing the conversation forward at the regional level and must continue to do so.

This report has shed light on a number of other important lessons for the way forward. Côte d'Ivoire cannot proceed to make piecemeal addendums to its Nationality Code. Adopting countless amendments to its laws weakens their value by rendering their implementation complex. Rather, Côte d'Ivoire must embark on a comprehensive review, reform, and streamlining of its nationality system, encompassing the laws and implementing regulations pertaining to nationality, civil status and identification.

The bedrock for prevention and reduction of statelessness for Côte d'Ivoire and the region lies in an accessible and reliable civil status system. Investment in a comprehensive and systemic modernization of the country's civil status system is essential to contribute to the fight against statelessness while at the same time guaranteeing a fundamental tool for child protection and promoting other development and human security objectives.

How can Côte d'Ivoire avoid descending again into episodes of violence based on xenophobic and restrictive nationality-based rhetoric? Now is the time to begin a frank national discussion that embraces the complexity of the country's history pertaining to nationality, civil status and identification, sheds candid light on the disconnect between law and practice in these areas, and once and for all engages in a transparent elaboration of feasible rules for the Ivorian context that are endorsed in a democratic manner and implemented in accordance with the rule of law. Civic education and public participation in this process will be key.

7. Recommendations

A report of this scope reveals myriad insights into actions that can be taken to address statelessness. The recommendations here seek to offer guidance on priorities to begin resolving statelessness in Côte d'Ivoire.

7.1. To the Ivorian government

On a general level, taking into account Côte d'Ivoire's obligations as a State party to the statelessness conventions:

- Adopt, publish and implement a national action plan to resolve statelessness in Côte d'Ivoire.
- Conduct a complete review of Côte d'Ivoire's Nationality Code and pursue the adoption of amendments to bring this law in line with Côte d'Ivoire's obligations under the 1954 Convention relating to the Status of Stateless persons and the 1961 Convention on the Reduction of Statelessness. The highest priority should be legislative reform to provide for the conferral of Ivorian nationality to children of unknown parents and children born in Côte d'Ivoire who would otherwise be stateless.
- Convene a consultative process to explore and develop the best framework procedure for linking nationality confirmation – Ivorian or otherwise – with determining the statelessness status of individuals and groups in Côte d'Ivoire.
- Create a legal framework for the protection of stateless persons in its territory, including an official statelessness status for contemporary migrants who are stateless, with attendant rights, documentation, and a path to facilitated naturalization, pursuant to the 1954 Statelessness Convention.
- Conduct additional qualitative research on the profile of stateless persons and groups at risk of statelessness in Côte d'Ivoire, including through outreach to affected individuals and communities. Complement this with additional targeted quantitative surveys building on the most recent baseline data from the 2014 census and using proxy questions to better gauge the potential scale of the statelessness phenomenon in the country. Render public the results of all preliminary identification efforts to promote an objective and apolitical understanding of the phenomenon of statelessness in the country.

With respect to the acquisition of nationality by declaration program:

- Conduct an in-depth evaluation of the process and results of the special acquisition of nationality by declaration program. A particular focus should be on assessing how many stateless persons acquired Ivorian nationality through this program.
- Where individuals who came forward are determined not to qualify for Ivorian nationality by declaration, establish a procedure to assess whether they possess a foreign nationality or are stateless and when stateless, afford them a path to facilitated naturalization, pursuant to the 1954 Statelessness Convention.
- Revive and extend the acquisition of nationality by declaration program, but with important amendments. The relevant future laws should be revised to make absolutely clear that the scope of the beneficiaries of the program is to include the intended beneficiaries of the integrationist nationality policies in place under the 1961 Nationality Code until its amendment in 1972. Furthermore, any future procedure should clearly allow legal descendants of all categories of beneficiaries born in Côte d'Ivoire to acquire nationality through this program. Evidentiary rules should be relaxed to overcome challenges for those who do not have birth certificates or sufficient documentary proof of their habitual residence in Côte d'Ivoire at the time of independence. This could be done, for example, by devising a system for accepting testimonial and witness evidence. Finally, heightened

public-awareness efforts should accompany the future implementation of an extended program for acquisition of nationality by declaration.

With respect to comprehensive nationality law reform

- The comprehensive review of the Nationality Code should also seek to simplify and clarify all language and procedures and establish complete gender equality throughout the law.
- As a country of immigration and in light of the longstanding legal exclusion from nationality of historical migrants and their descendants in Côte d'Ivoire, consider measures that would effectively integrate foreigners, such as adopting a double *jus soli* provision, along the lines of other ECOWAS countries, or expanding the Nationality Code's possibility of acquisition of nationality by declaration for those born in Côte d'Ivoire after January 1973 and present in the country at majority.
- Reform the naturalization procedure to render it an effective avenue for acquisition of Ivorian nationality, through public awareness-raising; simplification and streamlining of procedures, and ensuring transparent and objective decision-making and impartial appeals procedures.

With respect to identification of Ivorian nationals:

- Render more accessible, including by reducing costs, the procedure for obtaining nationality certificates to as wide a segment of the population as possible.
- Revise and publish clear and transparent rules for judges to determine Ivorian nationality for the purpose of issuing nationality certificates.
- Inform individuals on the "gray list" from the 2009-2010 voter registration process of their status on that list. In addition to allowing them to participate in the ordinary identification process, designate a focal point or standing office within the National Identification Office (ONI) to be responsible for providing feedback and answering questions for those on the "gray list."
- Establish nationality determination commissions involving consular authorities of neighboring West African States to jointly assess, determine, and document the nationality status of individuals of undetermined nationality and at risk of statelessness.
- Once a process is developed for determining statelessness status pursuant to the 1954 Statelessness Convention, establish a link for courts and consulates to refer cases of migrant individuals they determine do not possess Ivorian nationality for additional statelessness screening and create referral mechanisms open to other governmental institutions, civil society, and international organizations, particularly UNHCR.

With respect to birth registration and civil status:

- Revitalize the modernization program of the civil status system. Design a holistic strategy for streamlining the procedures in the Civil Status Law to render civil status services more accessible with the view to improving birth registration rates.
- Adopt exceptional measures to facilitate the birth registration of Ivorian returnee children who were born in exile.

7.2. To UNHCR

- Pursue ongoing efforts to better identify the scope and scale of statelessness in Côte d'Ivoire building on this report. Essential in this process is conducting participatory assessments with stateless persons and groups at risk of statelessness to better understand their protection needs and advocate for and craft responses to their concerns.

- Continue to support the Ivorian government in its efforts to better map the statelessness phenomenon in the country, including through the potential undertaking of surveys focusing specifically on proxy questions relevant for identifying statelessness.
- Dialogue with the Ivorian government and provide support to its efforts to create and implement a national action plan on statelessness.
- Provide technical assistance throughout the legislative reform process, including the development of guidelines on Ivorian nationality determination and standardizing procedures for issuing nationality certificates.
- Review and evaluate the effectiveness of the government's special acquisition of nationality by declaration program with a particular focus on measuring its impact on the reduction of statelessness.
- Mainstream age, gender, and diversity considerations into all statelessness programming, with particular efforts to resolve with urgency the status of stateless children.
- Undertake a comprehensive stakeholder analysis of national and international actors engaging in programming and activities related to statelessness.
- Raise awareness on statelessness among the UN system, international organizations, the diplomatic community, and donors.
- Establish working relationships with the consular authorities of the most important migrant-sending ECOWAS States to engage in dialogue on how to improve their provision of nationality documentation to their nationals and their descendants in Côte d'Ivoire and provide support to the ECOWAS States in this process. Collaborate with the International Organization for Migration (IOM) in this regard.
- Broaden UNHCR's collaboration with and support for non-governmental and community-based organizations, including as partners on various projects, which could include outreach and awareness-raising on nationality and statelessness and individual legal assistance to obtain documentation required to establish nationality.
- Engage in greater public awareness-raising related to the phenomenon of statelessness in Côte d'Ivoire to demystify and depoliticize the issue in the public conscience.

7.3. To ECOWAS and ECOWAS Member States with nationals in Côte d'Ivoire²²⁰

- ECOWAS institutions should develop regional standards for the reduction and avoidance of statelessness and mechanisms for resolving the status of stateless ECOWAS citizens.
- ECOWAS Member States should collaborate with the Ivorian government in conducting nationality verification exercises to resolve the nationality status of individuals with ties to their States, including through the relaxation of evidentiary requirements where necessary.

7.4. To international organizations, the diplomatic community, and donors in Côte d'Ivoire

- Major institutional donors, such as the African Development Bank, World Bank, UNDP, and the European Commission, should build on investments made in the post-recovery process in the lead-up to the 2010-2011 elections to support systemic institutional reform and modernization of Côte d'Ivoire's civil status system as a measure not only to aid in the prevention and reduction of statelessness, but also to improve the birth registration rates as a foundational tool for child protection and integral to other development objectives.
- Coordinate and complement each other's programming and advocacy on improving the civil registration system, the identification and voter registration systems, and rule of law efforts with the view to reducing rates of those without personal identification documentation and preventing and reducing statelessness.

²²⁰ For additional detailed recommendations to ECOWAS regarding nationality and statelessness, see Manby, *supra* note 13.

- Support civil society and civic initiatives to reform the nationality system and address statelessness.

7.5. To Ivorian civil society

- Legal services NGOs should provide assistance to stateless persons and groups at risk of statelessness to obtain birth certificates or *jugements supplétifs*, national ID cards, or nationality certificates. Also assist historical and contemporary migrants in contacting consular authorities where relevant for obtaining nationality documentation.
- Civil society actors should increase monitoring of courts issuing nationality certificates to ensure that judges are adopting a uniform and transparent approach.
- Legal academics should deepen the analysis of the Nationality Code and other civil status and identification laws to contribute to discussions on comprehensive reform of Côte d'Ivoire's nationality system.

8. Annexes

8.1. ANNEX I: Historical Evolution of Côte d'Ivoire's Nationality Laws and Regulations

Côte d'Ivoire's nationality laws are amongst the most complex in Africa. This table provides a practical overview of the evolution of Côte d'Ivoire's nationality laws and regulations, highlighting key characteristics of the progressive reforms.

Date	Title of Law or Regulation	Key Characteristics
14.12.1961	Law No. 61-415 enacting the Ivorian Nationality Code	- Foundational law that defines Côte d'Ivoire's nationality rules and continues to provide the country's nationality framework to this day. - Divided into seven Titles: - Title I: presents general principles governing the law; - Title II: defines Ivorian "nationality by origin;" - Title III: establishes additional modes of acquisition of Ivorian nationality: - Acquisition of nationality as a matter of right: through adoption or marriage; - Acquisition of nationality by declaration; - Acquisition of nationality by decision of public authority (naturalization and reacquisition); - Title IV: defines rules pertaining to loss and deprivation of Ivorian nationality; - Title V: establishes procedural rules regarding acquisition or loss of Ivorian nationality; - Title VI: establishes the role of courts in nationality matters, as well as establishing nationality certificates issued by courts as the only legal form of proof of Ivorian nationality; - Title VII: discusses transitory provisions.
29.12.1961	Decree No. 61-425 of 29 December 1961 implementing the Ivorian Nationality Code	- Provides instructions on procedures for filing declarations related to renunciation, loss, or reacquisition of Ivorian nationality; - Designates competent jurisdiction of the Ministry of Justice for matters of naturalization and reacquisition of Ivorian nationality. - An Annex to the 1961 implementing decree provides official model formats which must be used for naturalization and reacquisition of nationality.
25.4.1962	Interministerial Circular No. 31/MJ/CA 3 of 25 April 1962	- Establishes the courts' territorial jurisdiction over the issuance of certificates of nationality and the responsibility of the Ministry of Justice over these certificates. - Annex B provides approximately a dozen official models of certificates of nationality that are the required official templates for nationality certificates. Pursuant to this law, the nationality certificates must indicate at the top of the document the precise legal mode according to which the titleholder possesses or has acquired Ivorian nationality.
7.10.1964	Law No. 64-381 of 7 October 1964	Amended Articles 11 and 21 of the 1961 Nationality Code in light of developments in related civil laws relating to a person's name, marital status, divorce and legal separation paternity and filiation, adoption, succession and inheritance matters.

21.12.1972	Law No. 72-852 of 21 December 1972 enacting amendments to the Ivorian Nationality Code	- The goals of the 1972 Law amending the 1961 Nationality Code were twofold. - First, it amended Articles 2, 6, 7, 11, 12, 30, 45, 49 and abrogated Article 47 and a section of Article 28 to harmonize the Nationality Code with relevant civil laws adopted since 1964 governing adoption, the rights of children born out of wedlock, and the laws pertaining to minors, as well as a new Judiciary Act that was adopted in 1964. - Most significantly, Article 6 was amended to distinguish between the right to acquire Ivorian nationality by origin of children born in or out of wedlock so that only children born in wedlock to an Ivorian parent or who undergo a process to establish filiation with an Ivorian parent can automatically acquire Ivorian nationality by origin. - Second, it abrogated Articles 17-23 thereby revoking the possibility of acquiring nationality by declaration; deleted second sentence of Article 9, eliminating the presumption of birth in Côte d'Ivoire of foundlings; and abrogated Article 10, terminating preferential treatment of children born in Côte d'Ivoire to diplomats.
17.12.2004	Law No. 2004-662 of 17 December 2004 modifying and completing Law No. 61-415 enacting the Ivorian Nationality Code as amended by Law No. 72-852 of 21 December 1972	- First law since 1972 to make direct amendments to the 1961 Nationality Code. - Amended Articles 12 and 27 to promote greater gender equality related to the acquisition of Ivorian nationality through marriage. - Amended Article 43 revising restrictions on naturalized citizens. - Amended Article 53 to create a new ground for loss of nationality.
17.12.2004	Law No. 2004-663 of 17 December 2004 regarding special naturalization provisions	- Codified the scope and procedures for the special and exceptional naturalization program that was foreseen through the Linas-Marcoussis Agreement of 2003. - For further information regarding the special naturalization program, see Annex II.
15.7.2005	Presidential Decision No. 2005-03/PR of 15 July 2005 on the Nationality Code	- Amended Article 12 of the Nationality Code to incorporate greater gender equality with respect to acquisition of Ivorian nationality through marriage. - Repealed revisions to Article 53 made in 2004 and restored the loss provision contained therein to its original form from 1961.
15.7.2005	Presidential Decision No. 2005-04 of 15 July 2005 regarding special naturalization provisions	- Amended Article 2 of Law 2004-663 on the special naturalization procedure to redefine the categories of beneficiaries of this program. - Maintained the naturalization procedures established in Law 2004-663, but called on the Council of Ministers to publish an implementing decree to finalize the procedural rules for this special naturalization program.
29.8.2005	Presidential Decision No. 2005-09/PR of 29 August 2005 on the Nationality Code	Further amended and refined Article 12 of the Nationality Code with respect to gender equality for acquisition of Ivorian nationality through marriage.
29.8.2005	Presidential Decision No. 2005-10/PR of 29 August 2005 regarding special naturalization provisions	Redefined the categories of beneficiaries of the special naturalization program in Article 2 of Law 2004-663 on the special naturalization procedure.

31.5.2006	Decree No. 2006-76 of 31 May 2006 enacting implementing measures of Law No. 2004-663 of 17 December 2004 regarding special naturalization procedures as modified by Presidential Decisions No. 2005-04/PR of 15.7.2005 and No. 2005-10/PR of 29.8.2005	- Article 1 clarified the categories of beneficiaries of the special naturalization program. - Further established the role of Courts of First Instance in receiving naturalization applications at a local level to transfer to the Ministry of Justice for review prior to approval or rejection by the President. - Established a number of restrictions that would apply to individuals who would acquire Ivorian nationality through naturalization pursuant to this special program.
13.9.2013	Law No. 2013-653 of 13 September 2013 regarding particular provisions on acquisition of nationality by declaration	- Established a special and temporary procedure for acquisition of nationality by declaration. - Revived the goals of the Linas-Marcoussis naturalization program to solve the problem of historical migrants who were entitled by law to acquire Ivorian nationality pursuant to Articles 17-23 and 105 of the 1961 Nationality Code, but failed to do so in the prescribed time limits for those programs. - For further discussion of this special program, see Annex II.
13.9.2013	Law No. 2013-654 of 13 September 2013 amending Articles 12, 13, 14 and 16 of Law No. 61-415 enacting the Ivorian Nationality Code as amended by Laws No. 72-852 of 21.12.72, No. 2004-662 of 17.12.2004 and Presidential Decisions No. 2005-03/PR of 15.7.2005 and No. 2005-09/PR of 29.8.2005	- Amended Article 12 of the Nationality Code, providing for the automatic acquisition of nationality through marriage on equal terms for foreign men and women marrying an Ivorian national at the time of celebrating a marriage before civil registrars. - Amended Articles 13, 14 and 16 to use the gender-neutral term for spouse (<i>conjoint</i>) and harmonize rules accordingly to achieve gender equality in these provisions.

Legend
Laws and regulations pertaining to the Linas-Marcoussis special naturalization program.
Laws and regulations pertaining to the special acquisition of nationality by declaration program.

8.2. ANNEX II: Special Naturalization Procedure Pursuant to Linas-Marcoussis (2004-2007) and Special Acquisition of Nationality by Declaration Program (2014-2016)

Côte d'Ivoire established two special procedures for acquisition of Ivorian nationality in the last decade. These were in response to the reality that historical migrants who came to Côte d'Ivoire prior to independence and their descendants born in Côte d'Ivoire did not acquire Ivorian nationality through the available avenues between 1961 and 1973, namely, acquisition of nationality by declaration pursuant to Articles 17-23 of the 1961 Nationality Code and the one-year special naturalization provision contained in Article 105 of the 1961 Nationality Code that expired in 1962. The discussion below demonstrates the pitfalls of *ad hoc* law-making, in other words, the frequent amendments to the laws and implementing regulations for both the naturalization and declaration programs have created confusion as to who qualifies as a beneficiary and has dampened their potential effect.

Special Naturalization Program (2004 – 2007)

The first program was adopted pursuant to the Linas-Marcoussis Agreement. Law No. 2004-663 of 17 December 2004 created the “special and exceptional” naturalization program; two presidential decisions were adopted in 2005 that modified the program; and an implementing decree was finally published in 2006, which established a one-year deadline through 2007 for the validity of the program. According to the Ministry of Justice’s records, between 2005 and 2007, 540 naturalization decrees were signed, granting Ivorian nationality by naturalization to 773 adult petitioners and 557 minor children.

The table below summarizes the relevant provisions of the legal evolution of the Linas-Marcoussis naturalization program, highlighting the scope of beneficiaries, the relevant procedures, and commenting on the potential legal effect of naturalization.

Most importantly, this table demonstrates how Ivorian lawmakers, and the President in his lawmaking capacity, struggled to define those who should benefit from this program. The intention had been to include the former beneficiaries of Articles 17-23 and Article 105 of the 1961 Nationality Code, which were abrogated when 1972 amendments took effect on 25 January 1973 or which expired in 1962 respectively. After several incomplete formulations, Article 1 of Decree No. 2006-76 properly articulated the full scope of intended beneficiaries.

Special Naturalization Program (2004 – 2007)			
Date	Title of Law or Regulation	Summary of Relevant Provisions	
17.12.2004	Law No. 2004-663 of 17 December 2004 regarding special naturalization provisions	Beneficiaries	<i>“Article 2 – Are concerned by the present law:</i> (1) <i>Persons aged less than 21 years old on the day of 20 December 1961 and born in Côte d’Ivoire to foreign parents;</i> (2) <i>Persons who had their habitual residence without interruption in Côte d’Ivoire prior to 7 August 1960.”</i>
		Procedures	• Submit an application to naturalize addressed to the President of the Republic on ordinary paper mentioning the person’s nationality of origin that he or she renounces, accompanied by two ID photos, a full copy of the person’s birth certificate or proof of late birth registration (<i>jugement supplétif</i>), all documents proving residence in Côte d’Ivoire and those attesting to any acquired qualifications or titles, along with a criminal record check. • Furthermore, an applicant would need to submit an affidavit of an administrative investigation established in the village or town of residence

			done by traditional authorities. • Anyone convicted of a crime or unable to provide documentary proof would not be eligible to apply. • Competent authorities would have three months to organize an individual's file to submit to the President. • The President would either sign a naturalization decree, providing a copy to the Ministry of Justice for filing, or reject an application, which would be notified to the concerned individual and also filed with the Ministry of Justice. • The provisions of this special law were to be valid for 12 months from the time of adoption of an implementing decree.
		Effect of Naturalization	• Anyone naturalized according to this special procedure would be subject to the restrictions (<i>incapacités</i>) foreseen in Article 43 of the Nationality Code.
15.7.2005	Presidential Decision No. 2005-04/PR of 15 July 2005 regarding special naturalization provisions	Beneficiaries	<i>"Article 2 – Are concerned by the present decision: Former beneficiaries of Articles 17 to 23 of Law No. 61-415 of 14 December 1961 establishing the Nationality Code as modified by Law No. 72-852 of 21 December 1972 and Law No. 2004-662 of 17 December 2004, who did not exercise their right of option in the prescribed time limits; and persons residing in Côte d'Ivoire prior to 7 August 1960 and who did not exercise their right of option in the prescribed time limits."</i>
		Procedures	• Maintained the naturalization procedures established in Law 2004-663, but called on the Council of Ministers to publish an implementing decree to finalize the procedural rules for this special naturalization program.
		Effect of Naturalization	• Anyone naturalized according to this special procedure would be subject to the restrictions (<i>incapacités</i>) foreseen in Article 43 of the Nationality Code.
29.8.2005	Presidential Decision No. 2005-10/PR of 29 August 2005 regarding special naturalization provisions	Beneficiaries	<i>"Article 2 – Are concerned by the present decision former beneficiaries of Articles 17 to 23 of Law No. 61-415 of 14 December 1961 establishing the Nationality Code, who did not exercise their right of option in the prescribed time limits. Beneficiaries of Law No. 2004-663 of 17 December 2004 can also benefit from these same exceptional measures of naturalization."</i>
		Procedures	• Maintained the procedures for submitting an application to naturalize, with the exception that an applicant would no longer be required to submit an affidavit of an administrative investigation done before the traditional chiefs of the villages or towns of residence.
		Effect of Naturalization	• Determined that all persons who would naturalize pursuant to this procedure would possess all the rights prescribed by the Nationality Code, deleting reference to the restrictions established in Article 43 of that law.

31.5.2006	Decree No. 2006-76 of 31 May 2006 enacting implementing measures of Law No. 2004-663 of 17 December 2004 regarding special naturalization procedures as modified by Presidential Decisions No. 2005-04/PR of 15.7.2005 and No. 2005-10/PR of 29.8.2005	Beneficiaries	<i>“Article 1 – Those benefiting from Law No. 2004-663 of 17 December 2004 establishing special provisions on naturalization as modified by Decisions No. 2005-04/PR of 15 July 2005 and 2005-10/PR of 29 August 2005 are those persons born in Côte d’Ivoire to foreign parents fulfilling one of the following conditions:</i> <i>1 - were less than 21 years old on the date of 20 December 1961;</i> <i>2 - were born between 20 December 1961 and 25 January 1973.</i> <i>Also benefitting from this law are foreigners who had their habitual residence without interruption in Côte d’Ivoire prior to 7 August 1960.”</i>
		Procedures	- Established the role of Courts of First Instance in receiving naturalization applications at a local level to transfer to the Ministry of Justice for review prior to approval or rejection by the President. - Established a one-year deadline for the special naturalization program.
		Effect of Naturalization	- Clarified that any person who was naturalized pursuant to this provision would be subject to a number of restrictions, i.e. naturalized persons would not be able to serve in a function or elected mandate for which Ivorian nationality is required for a period of 10 years; would not be able to vote for a period of five years where Ivorian nationality is required to be registered on the voter rolls; would not be able to be named to a public function designated by the State, become a member of the legal bar, occupy a ministerial office or exercise a liberal profession regulated by a national order for five years. - Naturalized persons could be subject to any other limitations adopted by subsequent special law, although someone who rendered exceptional services to Côte d’Ivoire could be exempted from any or all limitations either as specified in the naturalization decree or a subsequent decree. - In adopting these restrictions on naturalized persons, the implementing decree endorsed the position taken on this point in Law No. 2004-663 and casted aside the conflicting stance taken in Decision 2005-10/PR.

Acquisition of Nationality by Declaration Program (2014 – 2016)

Côte d’Ivoire adopted a second special nationality-related program, which incorporated several lessons from the experience with the Linas-Marcoussis program. For one, this second program elected to promote acquisition of Ivorian nationality by declaration, rather than naturalization. This is a (somewhat) more straightforward procedure and acquisition of nationality by declaration occurs as a matter of right when a person fulfills the relevant criteria, rather than being a matter of executive discretion, like naturalization. Second, those who acquire Ivorian nationality by declaration are not subject to the restrictions (*incapacités*) foreseen in Article 43 of the Nationality Code. Rather, they accrue all rights as Ivorian nationals upon acquisition of nationality by declaration. This fulfills the original intention of the 1961 Nationality Code. Finally, the lawmakers in 2013 benefitted from prior trial-and-error in defining the scope of the beneficiaries of the program. That said, ongoing problems and ambiguities persisted with respect to which legal descendants

of beneficiaries can also fall within the program. The table below highlights the relevant provisions of the legal framework on the acquisition of nationality by declaration program.

Acquisition of Nationality by Declaration Program (2014 – 2016)			
Date	Title of Law or Regulation	Summary of Relevant Provisions	
13.09.2013	Law No. 2013-653 of 13 September 2013 establishing specific provisions for acquisition of nationality by declaration	Beneficiaries	<i>“Article 2 – Benefitting from the provisions of the present law are the persons who fall within one of the following categories:</i> <i>- Persons born in Côte d’Ivoire to foreign parents and aged less than 21 years of age on the date of 20 December 1961;</i> <i>- Persons having had their habitual residence without interruption in Côte d’Ivoire prior to 7 August 1960 and their children born in Côte d’Ivoire;</i> <i>- Persons born in Côte d’Ivoire to foreign parents between 20 December 1961 and 25 January 1973 and their children.”</i>
		Procedures	Articles 3 – 7 establish the basic procedures: • A specific application form must be deposited before the public prosecutor’s office of an individual’s local jurisdiction to be registered with the Ministry of Justice, who will have six months to rule on the request; • Favorable decisions will result in the issuance by the Ministry of Justice of an administrative nationality certificate (distinct from a nationality certificate issued by court, which serves as authoritative proof of nationality); • In the case of rejected applications, the applicant can appeal to the Ministry of Justice within two months and ultimately to the President, who exercises final discretionary power over the matter.
19.12.2013	Decree No. 2013-848 of 19 December 2013 establishing implementing measures for Law No. 2013-653	Beneficiaries	<i>“Article 1 – Are beneficiaries of the provisions of Law No. 2013-653 of 13 September 2013 as follows:</i> <i>- Persons born in Côte d’Ivoire to foreign parents and aged less than 21 years old at the date of 20 December 1961;</i> <i>- Persons having had habitual residence without interruption in Côte d’Ivoire prior to 7 August 1960;</i> <i>- Persons born in Côte d’Ivoire to foreign parents between 20 December 1961 and 25 January 1973.</i> <i>Also benefitting from the provisions of the aforementioned law are descendants of the persons mentioned in the preceding paragraphs.”</i>
		Procedures	• Expands the number of public officials who are qualified to receive requests for acquisition of nationality by declaration to include the following: regional public prosecutors, their sub-regional substitutes, prefectures and sub-prefectures. • Concerned individuals must also provide two identification photos, two certified copies of their birth certificate or <i>jugement supplétif</i>; all documents proving habitual residence of the

			proposed declarant in Côte d'Ivoire (for the second category of beneficiaries), and parental authorization, should the applicant be a minor. The prefectures and sub-prefectures are to transfer files of those requesting to acquire nationality by declaration to their local courts, who then transfer them to the closest Court of First Instance to forward to the Ministry of Justice for treatment.
		Effect of acquisition of nationality by declaration	Article 8 confirms that those who acquire nationality by declaration pursuant to this procedure acquire all rights that attach to Ivorian nationality from the date the nationality certificate is registered with the Ministry of Justice.
27.03.2014	Interministerial Circular No. 06 MJDHLP/MEMIS of 27 March 2014	Beneficiaries	<i>"Chapter I – By virtue of Article 2 [of Law No. 2013-653] the persons benefitting from nationality by declaration are as follows:</i> <i>- Persons born in Côte d'Ivoire to foreign parents aged less than 21 years on the date of 20 December 1961;</i> <i>- Persons having had habitual residence without interruption in Côte d'Ivoire prior to 7 August 1960;</i> <i>- Persons born in Côte d'Ivoire to foreign parents between 20 December 1961 and 25 January 1973.</i> <i>Additionally, descendants of persons identified in the first category also benefit from the provisions of the law [citing Article 1, Line 2 of Decree No. 2013-848].</i> <i>Note that only children born in Côte d'Ivoire are concerned by the above-mentioned provisions.</i> <i>Right-holders [ayants-droit] of deceased persons also enter into the abovementioned categories."</i>
		Procedures	Same as above.
01.09.2014	Interministerial Order No. 189/ MJDHLP/MEMIS		Modified Interministerial Circular No. 06. Established the first open period for submitting applications to acquire nationality by declaration from 1 April to 30 September 2014.
15.12.2014	Interministerial Order No. 612/ MEMIS/MJDHLP		Modified prior circulars. Established the second open period for submitting applications from 1 December 2014 to 30 April 2015.
25.06.2015	Interministerial Order No. 322/ MEMIS/MJDHLP		Modified prior circulars. Established the third open period for submitting applications from 1 July to 30 October 2015.
01.12.2014	Interministerial Order No. 724/ MEMIS/MJDHLP		Modified prior circulars. Established the fourth (and final) open period for submitting applications from 1 December 2015 to 24 January 2016.

By January 2016, 123,810 people had applied to acquire nationality by declaration, with 11,762 administrative nationality certificates issued by 30 November 2016, and the remaining files pending review or delivery of their nationality certificate. These figures demonstrate that this program has been more successful than the Linas-Marcoussis naturalization program. However, it has not progressed without challenges. First, the above table shows that Law No. 2013-653; Decree No. 2013-848, and Interministerial Circular No. 06 MJDHLP/MEMIS of March 2014 each adopted a different definition of which legal descendants of beneficiaries fall within this program. This has produced a dampening effect in light of the confusion it has sowed. Observational field visits as the declaration program was underway in 2014 also revealed numerous ambiguities and inconsistencies with respect to documentary proof required by courts, prefectures, and sub-

prefectures for this program. Finally, as discussed in Section 5.1.2 it is unlikely that many stateless persons and those most at risk of statelessness will be able to acquire nationality by declaration in light of the program's requirement to proffer a birth certificate.

8.3. ANNEX III: Evolution of Legal Framework on Identification of Ivorian Nationals and Foreigners

Under Ivorian law, a nationality certificate is the only document that proves Ivorian nationality, but a national identification (ID) card is required for all administrative matters vis-à-vis public authorities. The foundational identification law of 1962 placed authority with police officers and administrative sub-prefectural officials to issue national ID cards. Furthermore, the law left it in their discretion to determine whether they instinctively accepted a person's Ivorian nationality, or questioned a person's nationality to require presentation of a nationality certificate. This system began to change in 1990. After the rise of *Ivoirité*, two laws in 1998 and 2000 changed course, requiring the presentation of a nationality certificate among other documents to obtain a national ID card. National ID cards (of a green color) were issued pursuant to this law requiring presentation of nationality certificates between November 1998 and January 2000. The coup of December 1999 brought the production of national ID cards to a halt and the identification system remained dysfunctional for a decade. For example, a 2002 law reintroduced a high level of discretion on the part of identification agents to distinguish between "Ivorians by origin" and others who acquired Ivorian nationality, but this law was never implemented in practice. The Ouagadougou Political Agreement of 2007 called for the eventual creation of an "ordinary identification process" which would systematically require presenting a birth certificate and nationality certificate, but agreed in the interim to the political compromise of issuing new national ID cards on the basis of birth certificates alone for the purpose of the 2010 elections. The ordinary identification process foreseen by the APO has been underway since July 2014, requiring nationality certificates to obtain national ID cards. The table below provides a practical overview of the evolution of Côte d'Ivoire's laws and regulations governing the identification of Ivorian nationals and foreigners.

Date	Title of Law or Regulation	Commentary
20.2.1962	Law No. 62-64 of 20 February 1962 enacting the National Identity Card	- Established that all Ivorian nationals 15 years or older can establish their identity vis-à-vis public authorities only with a "National Identity Card" (CNI). - CNI to be valid for 10 years. - Modalities for issuance of CNI to be set by decree.
13.06.1962	Circular No. 1138 of 13 June 1962	Created identity cards for foreigners present in Côte d'Ivoire.
10.3.1967	Decree No. 67-86 of 10 March 1967, establishing implementing measures for Law No 62-64	- Required all those who apply to obtain a CNI to produce a birth certificate to establish identity. - Did not require that all individuals present a nationality certificate to prove identity; rather, this was at the discretion of identification agents only "where it appears necessary to identify the nationality of the applicant" (Article 5).
23.5.1990	Decree No. 90-370 of 23 May 1990 (modified Decree No. 67-86 of 1967)	- Created the "<i>Projet Sécurité</i>" (Security Project) to digitize ID documents with more security measures. - In October 1990, the Security Project began issuing residency permits (<i>cartes de séjour</i>) for foreigners and new national ID cards to Ivorians, which were printed on green paper and laminated pursuant to specific instructions. - This second generation of CNIs came to be known as "<i>cartes d'identité vertes</i>" or green ID cards, also referred to as "<i>cartes d'identité Bédié</i>" to distinguish them from the first generation of yellow-colored ID cards, also known as the "<i>carte d'identité Houphouët</i>."
29.5.1990	Law No. 90-437 of 29 May 1990 relative to the Entry and Stay of Foreigners in Côte d'Ivoire	- Article 1 defined foreigners as all individuals who are not Ivorian nationals, whether they have a foreign nationality or no nationality (are stateless). - Article 6 required that all foreigners present in Côte d'Ivoire longer than three months possess a <i>carte de séjour</i>

		issued pursuant to this law, which serves as a legal ID card.
29.5.1990	Decree No. 90-347 of 29 May 1990 implementing Law No. 90-437	Article 2 specified that all foreign residency permits must be renewed every one to two years depending on a foreigner's country of origin (i.e., ECOWAS Member State citizens were to renew their residency permit every two years).
04.08.1998	Law No. 98-488 of 4 August 1998 relative to the Identification of Persons and Entry and Stay of Foreigners in Côte d'Ivoire	- First law that combined rules for identification of Ivorian nationals alongside those for foreigners. - For nationals: confirmed role of CNI for identification of Ivorian nationals; announces that all ID cards issued pursuant to Law No. 62-64 and implementing decree would no longer be valid after 1 January 2000. - For foreigners: Created a new scheme of foreign residency permits to distinguish the country of origin as follows: "ECOWAS resident cards" (<i>carte de résident CEDEAO</i>); "Resident cards" (<i>carte de résident</i>) for non-ECOWAS nationals; and "Special resident cards" (<i>carte de résident spécial</i>) for those from countries with reciprocity agreements. - Set the rate for ECOWAS resident cards (and those who benefit from reciprocity agreements) at 15,000 CFA Francs, and the fees for non-ECOWAS resident cards at 150,000 CFA Francs.
12.08.1998	Decree No. 98-471 of 12 August 1998 (further modified Decree No. 67-86 of 1967)	- For the first time, this decree made it a categorical requirement that all persons submitting a first-time request to obtain an Ivorian ID card submit as documentary proof not only a copy of a birth certificate or <i>jugement supplétif</i>, but also a certificate of residence, a nationality certificate specifically delivered by a competent judge where the individual is requesting a national ID card, and copies of the national ID cards of the person's parents (or at least one of them) or a copy of a parent's naturalization decree where relevant. - Signalled Bédié's objective of exerting stringent control over the Ivorian background and origins of those requesting and obtaining CNIs.
12.08.1998	Decree No. 98-472 of 12 August 1998 amending Law No. 90-437	Made minor amendments to the procedures for foreigners to obtain a foreign residence permit.
2000		- Production of second-generation ID cards came to a halt with the coup of December 1999. - In 2000, General Robert Guéï created a new body responsible for identification called the <i>Centre National d'Identification Sécuritaire</i> (National Center on Secure Identification, or CNIS). - General Guéï also signed a series of ordinances that allowed for informal administrative certificates, or receipts, for individuals requesting CNIs or foreigner resident cards to temporarily replace formal ID documents otherwise required by law. - In practice, the CNIS never issued CNIs due to the political crisis. 2000 marked the beginning of an era of informal and highly discretionary identification of nationals and foreigners.
31.05.2000	Decree No. 2000-419 of 31	Suspended Decree No. 98-471 and created a two-year

	May 2000 establishing implementing measures for Law No 62-64	temporary identification program based on highly discretionary and nativist principles. • As a baseline, anyone wishing to obtain a national ID card must submit a complete file including: birth certificate; ID cards of at least one parent or a naturalization decree if relevant; and a nationality certificate among other documents. • Those who did not possess a birth certificate or proof of the Ivorian nationality of one of their parents could go to their village of birth or their “village of origin” to obtain a national ID card by appearing before mobile identification teams with two witnesses attesting to their identity and nationality to obtain a national ID card. • This system was never implemented in practice.
15.02.2001	Decree No. 2001-103 of 15 February 2001 creating the National Identification Office	• Replaced the CNIS with a new institution, the <i>Office Nationale d'Identification</i> (ONI), or National Identification Office. • ONI was granted responsibility over a wide range of tasks, including delivering identity documents to nationals and foreigners; reorganizing and managing the civil status system, and tracking immigration and emigration of populations. • Note that the grant of responsibility to the ONI to oversee the civil status system contradicts the Civil Status Law, which places supervisory authority over civil status matters in the court system (Article 12, Civil Status Law).
03.01.2002	Law No. 2002-03 of 3 January 2002 relative to the Identification of Persons and to the Stay of Foreigners in Côte d'Ivoire and abrogating Law No. 98-448	• For Ivorian nationals: confirmed that Ivorians are to obtain national ID cards according to procedures established by decree. • For foreigners: reinstated the use of the term “residency cards” (<i>carte de séjour</i>) for all foreigners, including ECOWAS citizens. • Tensions and resentments concerning the <i>cartes de séjour</i> were a major preoccupation in the political negotiations at Linas-Marcoussis. One of the annexes to that agreement called for the immediate suppression of these residency cards.
13.06.2002	Decree No. 2002-331 of 13 June 2002 establishing conditions for obtaining national ID cards and their format requirements	• Replaced proof requirements established by Decree No. 2000-419. • Eliminated requirement to produce nationality certificates and allowed identification agents to distinguish between: • “Ivorians of origin,” who would only need to proffer a birth certificate and a green national ID card <i>if they had one</i> to obtain a CNI; and • “adopted Ivorians,” which does not refer to adopted children, but rather to those who acquired Ivorian nationality through naturalization, who were required to produce a naturalization decree to obtain a CNI; those or who acquired Ivorian nationality through marriage, who were required to produce proof of marriage pursuant to civil status laws. • Created a new national ID card of an orange color to distinguish it from the yellow cards under Houphouët-Boigny and the green cards since Bédié's time.

03.05.2004	Law No. 2004-303 of 3 May 2004 amending Law No. 2002-03	- For nationals: confirmed that Ivorian nationals are to possess national ID cards pursuant to conditions established by decree. - For foreigners: pursuant to the Linas-Marcoussis agreement, this law eliminated the notion of <i>cartes de séjour</i> for ECOWAS citizens and required <i>cartes de résident</i> for ECOWAS Member States, while retaining the notion of <i>cartes de séjour</i> for non-ECOWAS foreign nationals.
15.07.2005	Presidential decision No. 2005-05/PR of 15 July 2005 relative to the Identification of Persons and Stay of Foreigners in Côte d'Ivoire	- For nationals: confirmed Ivorian nationals are to possess national ID cards pursuant to conditions established by decree. - For foreigners: endorsed the scheme adopted in the 2004 law and required a <i>carte de résident</i> for ECOWAS nationals and a <i>carte de séjour</i> for non-ECOWAS foreign nationals.
08.11.2007	Presidential Ordinance No. 2007-604 of 8 November 2007 suppressing the <i>Carte de Séjour</i> Residency Permit	- Eliminated the <i>carte de séjour</i> residency permit scheme. - Confirmed that nationals of ECOWAS Member States living in Côte d'Ivoire only need to possess identification documents issued by their countries of origin or their consular representation. - Other foreigners are to acquire resident permits (<i>cartes de résident</i>) if their stay in Côte d'Ivoire is longer than three months.
20.12.2007	Decree No. 2007-647 of 20 December 2007 establishing conditions for obtaining national ID cards and their format requirements	- Pursuant to the Ouagadougou Political Agreement, created two programs for identification of Ivorian nationals: - Foresaw the eventual implementation of an "ordinary identification process" pursuant to which individuals are to present a birth certificate and a nationality certificate to obtain a national ID card; this ordinary identification process has been launched in July 2014 (see below); and - Established the a temporary procedure for identifying Ivorian nationals for the voter list, pursuant to which individuals only needed to present a birth certificate in order to receive an ID card and a voter card.
19.09.2010	Decree No. 2010-238 authorizing the issuance of national ID cards to Ivorian nationals on the final voter list	Authorized the issuance of national ID cards to the 5,725,720 individuals who were confirmed as Ivorian nationals eligible to vote in the forthcoming elections.
04.06.2014	Decree No. 2014-319 of 4 June 2014 establishing conditions for obtaining national ID cards and their format requirements	- Abrogated Decree No. 2007-647. - Endorsed the ordinary identification process going forward, pursuant to which individuals must present a birth certificate and a nationality certificate to obtain a national ID card.

Legend

Laws and regulations pertaining to the identification of Ivorian nationals.

Laws and regulations pertaining to the identification of foreigners.

Laws and regulations that combine rules related to the identification of both Ivorian nationals and foreigners.

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