



Constitution of Côte d'Ivoire Mandates Popular Referendum On Changing Eligibility Requirements for Presidency

The Government of the Republic of Côte d'Ivoire (Ivory Coast) asked the international law firm DLA Piper Rudnick Gray Cary to analyze the question whether changes to Article 35 of the Ivorian Constitution – which sets forth eligibility criteria for the Presidency – must be submitted to the people of the country for approval in a national referendum. After reviewing the Constitution of Côte d'Ivoire and established legal precedents, the analysis concludes that **a referendum is required under these circumstances.**

The conclusion that a referendum is required is reinforced by a recent resolution of the European Parliament and previous declarations by United Nations Secretary General Kofi Annan. Language in the Report of Panel of Legal Experts, appointed by South African President Thabo Mbeki, also supports the conclusion that a referendum is required.

The firm's findings are summarized below.

- Article 35 of the Ivorian Constitution states that to be eligible for the Presidency, one must be of Ivorian origin and parentage. Following a direction in the Linas Marcoussis Accord, the National Assembly, in December 2004, unanimously approved a measure stating that only one parent must be Ivorian.
- Article 126 of the Constitution clearly states that an amendment concerning changes to presidential eligibility “necessarily” must be submitted to a popular referendum.
- The will of the Ivorian people must be given deference in approving the eligibility requirements for their president, as mandated by the Constitution.
- Some have called for the President to take emergency measures under Article 48 of the Constitution and suspend normal constitutional processes, thus negating the requirement for a referendum. The exercise of this extraordinary power is totally unjustified in this case, particularly when the Ivorian legislature is fully functioning and enacting legislation.
- The Constitution of Côte d'Ivoire was approved on July 24, 2000, in a nationwide referendum by a “Yes” vote of 86.5 percent, with more than 56 percent of the electorate participating. President Gbagbo is following the rule of law shaped by the people of Côte d'Ivoire when they approved the Constitution. Following its precepts, a national referendum on Presidential eligibility is required.

An executive summary of the legal memorandum is attached.



The Amendment of Article 35 of the Ivorian Constitution on Presidential
Eligibility Requires a Referendum Approved by the People of Côte d'Ivoire

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DLA Piper is registered in the United States of America as a foreign agent for the Government of Côte d'Ivoire and serves as counsel to the Government. Additional information is on file with the U.S. Department of Justice in Washington, D.C.

Executive Summary

This memorandum examines the recent debate over the proposed amendment to Article 35 of the Constitution of Côte d'Ivoire concerning the qualifications for candidates for President.

We conclude that Article 126 of the Constitution of Côte d'Ivoire clearly requires that an amendment concerning changes to presidential eligibility “necessarily” must be submitted to a popular referendum; moreover, we further conclude that President Laurent Gbagbo never committed at Accra III to exercise his extraordinary emergency powers under Article 48 of the Constitution of Côte d'Ivoire to change the eligibility requirements for the Office of the President through decree or legislative action. Instead, at Accra III and afterwards, the President committed to and did in fact follow the Ivorian constitutional mandate. He submitted the new Presidential eligibility criteria to the National Assembly for its approval. Thereafter, he requested the subsequent approval of a referendum allowing the will of the Ivorian people to be expressed on the proposed constitutional amendment on presidential eligibility as the Constitution's Article 126 requires.

This conclusion is consistent with the determination of the Panel of Legal Experts appointed by President Thabo Mbeki to examine compliance of the Government of Côte d'Ivoire with the Linas-Marcoussis Agreement.¹ Furthermore, the European Parliament in its February 24, 2005 resolution specifically called for a referendum on the amendment of Presidential eligibility criteria. Finally, this conclusion is also reinforced by various statements of the U.N. Secretary General Kofi Annan in which he has urged a referendum on the presidential eligibility question.

¹ As will be discussed in more detail in Section III(B) below, the Panel concluded that one cannot reasonably split hairs between the language of Linas-Marcoussis (“eligibility to the presidency”) and the language of Article 126 that requires a referendum on issues concerning “the election of the President.”

The action of submitting Presidential election eligibility criteria to a referendum, rather than by decree or legislative action, is rooted in President Gbagbo's responsibilities as Head of State under Article 34 of the Ivorian Constitution to assure that the laws of the nation are faithfully carried out.² Article 48 has never been heretofore invoked and, as we will discuss below, is inapplicable to the current situation in Côte d'Ivoire. This is because the nation's legislative bodies are in full session and have been regularly introducing and enacting a wide range of legislation to conform to the Linas-Marcoussis Agreement.

It would contravene principles of modern statehood and national sovereignty for outside political forces to compel the deprivation of constitutional safeguards of the Ivorian people to cast their votes on the standards for those who would aspire to become their President. Such a blanket disenfranchisement does not square with the rights vested in the voters of Côte d'Ivoire under various provisions of the Constitution when it comes to Presidential qualifications.³

President Gbagbo did not commit at Accra to bypass normal constitutional processes in determining Presidential election qualifications. He did not sign off on any such sweeping alteration of Presidential judgment and power.

Furthermore, any fair reading of Accra III amply supports this conclusion since two previous texts were merged into a final statement – the best evidence of the drafters' intent. That statement omitted any reference to Article 48 and, as a result, cannot be considered binding on President Gbagbo who, through his representatives, could not, and did not concur in prior drafts which mentioned Article 48.

² Article 34. The President of the Republic is the Head of State. He shall embody the national unity. He shall see that the Constitution is observed. He shall be the guarantor of national independence, the integrity of the territory, and the observance of international agreements and of treaties.

See, e.g., Articles 35, 124, 125, and 126.