

IVORY COAST: “THE FIGHT AGAINST IMPUNITY AT A CROSSROAD”

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



Introduction-----	4
I - A political situation still highly polarised-----	6
II - The fight against impunity: between political manipulation and genuine efforts-----	9
III - National reconciliation and the Dialogue, Truth and Reconciliation Commission-----	20
Conclusions-----	23
Recommendations-----	24

Introduction

Nearly three years after the electoral crisis that officially left close to 3000 dead¹, when Alassane Ouattara officially became the 5th president of Ivory Coast², the national and international judicial procedures are being accused of partiality, and political interests are blocking the reconciliation process. The economic situation is improving but is criticised for corruption that also affects the legal system, and for shambolic State structures.

This situation is jeopardising respect for human rights and public freedoms. Although there have been no major attacks for over a year and hence public safety has improved considerably with the removal of numerous road blocks for example, international and national human rights NGOs regularly point out State agents for seriously violating human rights (summary executions, acts of torture, degrading and inhumane treatment, arbitrary arrests, appalling detention conditions, etc.). Ivory Coast is trying to develop a legal system that shows greater respect for human rights, as indicated by the declaration made under Article 34.6 of the Protocol establishing the African Court, thus enabling individuals and NGOs to have direct access to the Court, and the draft law on human rights defenders that was adopted by the Ivorian Council of Ministers. But in actual fact, abuse and corruption are still common and in their daily life, the people still have to cope with the arbitrary whims and the corruption of the “*petit chef*” and the violent events of the past.

This situation is largely the result of continued political tension and polarization stemming from the post-electoral crisis and a double-standard in the fight against impunity for perpetrators of criminal acts. Up to now, both the international and national legal systems have been focusing on the perpetrators of crimes committed by members of the Gbagbo side. Since 2011 the Ivorian courts charged and imprisoned more than 130 people somehow connected to the former president, but in some cases the rights of the defence were seriously infringed³. On the winning side, the fighters in the *Forces Nouvelles* (FN) that became the Republican Forces of Ivory Coast (*Forces républicaines de Côte d’Ivoire* – FRCI) and their auxiliary militias who committed international crimes were guaranteed *de facto* immunity since only one of them – the warlord Amadé Ouéremi – has been arrested and accused before the Ivorian courts.⁴

At the end of 2012, the political authorities started a dialogue and appeasement process with the *Front populaire ivoirien* (FPI), the political party of Laurent Gbagbo. Key members of the ex-president’s movement were released on 20 December 2012, and 14 persons were released on 6 August 2013. The Ivorian government, on 20 September 2013, announced that Simone Gbagbo would be tried in the Ivorian courts, in Ivory Coast, and not in The Hague, as had been requested by the International Criminal Court (ICC); this also sent a positive signal to the FPI. Judging Simone Gbagbo in Ivory Coast will give the Ivorian judiciary and authorities a twofold responsibility: demonstrate their capacity to organise the trial of Simone Gbagbo and other pro-Gbagbo people with due respect for international standards of equity and impartiality, and show evidence of their determination to judge the FN/FRCI leaders and their militias who were responsible for criminal acts⁵, regardless of their present position or responsibilities. The fight against impunity in Ivory Coast has reached a crossroad. The success of the currently floundering national reconciliation process and the stability of the country in the coming years will depend on the effectiveness of this fight.

1. See FIDH reports at: http://fidh.org/en/africa/Cote-d-Ivoire_566/

2. He succeeded presidents Félix Houphouët-Boigny (1960-1993), Henri Konan Bédié (1993-1999), Robert Guei (1999-2000) and Laurent Gbagbo (2000-2010).

3. These figures apply to both the civil and military courts.

4. See <http://www.fidh.org/cote-d-ivoire-la-liberation-provisoire-de-14-detenus-souligne-les-besoins-13811> (in French).

5. Cf. conclusions of the Report of the National Investigation Commission (*Commission nationale d’enquête* - CNE).

This report summarises three years of fighting impunity in Ivory Coast using an original and unprecedented approach, that of the International Federation for Human Rights (FIDH) and its two member organisations in Ivory Coast, the Ivorian Movement for Human Rights (*Mouvement ivoirien des droits humains* - MIDH) and the Ivorian League of Human Rights (*Ligue ivoirienne des droits de l'Homme* - LIDHO), which have been accompanying victims of the post-electoral crisis and other serious crimes committed since 2011 in the country before the Ivorian courts. This report is based on seven joint FIDH-MIDH-LIDHO missions carried out between February 2011 and July 2013 plus information from FIDH member organisations working in the field.

Immediately after the post-electoral crisis, at the request of MIDH and LIDHO which many victims of grave human rights violations solicited for assistance in their efforts to obtain justice, FIDH, MIDH and LIDHO decided to file a civil party complaint during the court proceedings at the Abidjan Court of First Instance, together with 87 victims from all sides, to help them realise their right to justice, truth, and reparation.

This report also strives to review the present situation and analyse progress in the legal procedures, at a point in time when one of the procedures – the one on offences against the safety of the State – has been closed and the other investigations are well underway.

I - A political situation still highly polarised

The legislative elections held on 11 December 2011 confirmed the victory of President Alassane Ouattara's party, the Republicans' Rally (*Rassemblement des républicains* – RDR) which won 138 of the 253 seats in the parliamentary elections, in other words 54.54% of the open seats while the Democratic Party of Ivory Coast (*Parti démocratique de Côte d'Ivoire* – PDCI) the party of his ally the former president Henri Konan Bédié, won 86 (34%). The independent candidates took third place with 17 seats (6.72%).

The most significant feature of the elections was the low turnout (36.56%). This could have been a confirmation of the boycott strategy or a sign of a strong pro-Gbagbo opposition, but actually the situation was more complicated.

The participation rate was higher than in the 2000 legislative elections when it was around 33% according to the Minister of the Interior, Mr. Hamed Bakayoko, but it was significantly lower than in the November 2010 presidential elections when it reached a historic level of over 80%.

As the presidential election already showed, Ivory Coast is still politically polarised and needs to reconstruct its institutions as well as its economy and social cohesion after 15 years of political conflict, that centred on nationalistic and xenophobic issues, which has left the country in pieces. As expected, in the government reshuffle following the legislative elections of 2011 Guillaume Soro was removed from the government and, as the only candidate, was unanimously elected to the position of President of the National Assembly on 12 March 2012. President Ouattara took the defence portfolio – which he has kept in the Daniel Kablan Duncan government established on 22 November 2012 – thereby demonstrating his decision to assume personal responsibility for the armed forces, an especially sensitive and difficult dossier. Diplomatic sources said that this decision was a response to appeals from the international partners to have the president become directly involved and administer the security sector reform file, that was getting nowhere.

At the end of 2011 and the beginning of 2012, the government of the day tried to pull the political forces together in a political dialogue which, however, was essentially subordinated to the political party line of the *Front populaire ivoirien*. The FPI, haunted by the arrest of Laurent Gbagbo and his transfer to The Hague and sapped by internal strife, was unable to think beyond demands for the release or amnesty of its former leaders or to draw up a blueprint for social reform that could have led to discussions with the government on tangible reform measures. It hardly had the opportunity to do so since the Ivorian judicial and political authorities in 2012 were targeting the FPI and put it in the position of a victim, thus catering to the radical fringes of the party. Arrests, indictments, attacks etc. against the FPI leaders and supporters increased in 2012, lending credence to the opinion of certain Gbagbo supporters that the regime was authoritarian and sought to curtail their freedoms, especially their political freedom⁶.

6. See the FIDH, MIDH, LIDHO press release of 27 January 2012 « Côte d'Ivoire : les libertés de rassemblement et d'expression politique doivent être respectées », at the following link (in French): <http://www.fidh.org/Cote-d-Ivoire-la-liberte-de>

2013 : A political appeasement sequence

The last few weeks of 2012 showed signs of real appeasement, signs that were consolidated in 2013. Is a new era of political dialogue between the government and the FPI being born? Government actions since the end of 2012 are contributing to this impression.

On 17 December 2012, the Ivorian government and the opposition parties resumed the discussions that started during the first half of 2012 but were suspended for many long months. Discussions were held between the Ivorian Minister of the Interior Mr. Hamed Bakayoko and the opposition political parties, joined together in the Permanent Forum for Dialogue (Cadre permanent de dialogue – CPD). The Minister⁷ said: “the purpose of the dialogue is to iron out our differences. We plan to meet in smaller working groups to examine our problems.” Then Kabran Appiah the spokesman for the opposition parties in the CPD said: “discussions are always frank and very productive; we do not always agree on everything but we always end up with practical, tangible things. The aim is for us to be able to go to work and examine issues that we raised such as the recomposition of the Independent Electoral Commission (IEC) and funding for the political parties”⁸.

The most symbolic boost to the political process was unquestionably the 20 December 2012 interim release of nine persons close to Laurent Gbagbo in application of a decision by the Abidjan Investigative Chamber of the Court of Appeal, but this decision gave rise to the question of the independence of the Ivorian judiciary and its possible manipulation by the political powers. The following persons were released in December 2012: Gilbert Marie Aké N’gbo, Prime Minister and Head of Government, appointed by Laurent Gbagbo during the post-electoral crisis; Désiré Dallo and Christine Adjobi, former ministers in this government; Basile Mahan Gahé, trade union leader; Norbert Gnahoua Zibrabi, publication manager of two pro-Gbagbo daily newspapers; Maho Glofiéhi, head of militia groups in the west; Ibrahim Magassa, Franco-Ivorian businessman; Jean-Jacques Béchio, minister under Félix Houphouët-Boigny, and Commander Dua Kouassi, Gbagbo’s aide de camp. Most of them were held in Boundiali in the north, the others were held in Korhogo, Katiola and Abidjan.

Obtaining the release of the pro-Gbagbo prisoners was one of the main objectives of the opposition parties and the FPI. The position taken by the international partners of Ivory Coast to encourage acts of appeasement probably convinced the government to release the prisoners. In early December, Sylvain Miaka Oureto, the FPI acting president, met with the French president, François Hollande, before being received by the Senegalese president, Macky Sall who apparently served as the mediator between Alassane Ouattara and the pro-Gbagbo opposition.

For the FPI, the release of these prisoners was “a first step that gave us a sign of a promising future for peace” said Franck Bamba, the FPI National Secretary for Communication⁹. The former Ivorian President’s party tried to go further: “We think that reconciliation in Ivory Coast without President Gbagbo would be fake”. This position was repeated by Charles Blé Goudé, the leader of the Coalition of Young Patriots (Coalition des jeunes patriotes – COJEP) which was transformed into a political party. In December 2012, from somewhere in hiding, he asked the Abidjan authorities “to do a little more and adopt an amnesty law to free the political and military prisoners and to use all international diplomatic and political channels to obtain the release of President Gbagbo”¹⁰

7. Cf. <http://www.togosite.com/?q=node/2567>

8. Idem.

9. Cf. Interview on RFI on 21 December 2012 <http://www.rfi.fr/afrique/20121221-cote-ivoire-lberte-provisoire-pour-neuf-proches-laurent-gbagbo>

10. Cf. Interview on RFI on 23 December 2012 <http://www.rfi.fr/afrique/20121222-cote-ivoire-gbagbo-quatre-proches-retour-abidjan>

The fact that Charles Blé Goudé, the former student leader of FESCI and the Young Patriots nicknamed the “Street minister” during the Gbagbo presidency, was arrested in Ghana on 17 January 2013 created fear that the efforts to bring the opposition and the government closer together would come to an abrupt halt. Opinions are still divided about the Blé Goudé case. Since he was held in a secret location after being transferred from Ghana and had access to his lawyer in a place other than his place of detention (actually in the Abidjan Court of Justice), his supporters and human rights organisations regularly speak of the violations of his rights. The authorities claim that Charles Blé Goudé is being held in a “secure residence” for safety reasons. On 1 October 2013, a few days after the Minister of Justice apparently confirmed the existence of a confidential ICC warrant for the arrest of the former leader of the Young Patriots, the ICC judges decided to make the warrant public.

The Blé Goudé case, however, did not prevent the interim release, on 6 August 2013, of 14 prisoners who were in the former president’s “inner circle”, including his son Michel Gbagbo; the FPI president Pascal Affi N’Guessan; the FPI Vice President Aboudramane Sangaré, and Alcide Djédjé Gbagbo’s former diplomatic adviser and Minister of Foreign Affairs in a Gbagbo government that was not recognised during the post-electoral crisis.¹¹

The prisoner release was very important to the Gbagbo supporters who felt that this decision gave strength to a scenario that they truly wanted and felt was more and more feasible, i.e., amnesty for a certain number of pro-Gbagbo defendants after a trial and, in some cases, a conviction. Without expecting a blanket amnesty, that would imperil the fight against impunity in Ivory Coast and probably the long-term stability of the country, the August 2013 prisoner release was an important gesture by the government towards the FPI opposition, just at a time when the alliance between Alassane Ouattara’s RDR and Henri Konan Bédié’s PDCI was going through extremely tense times.

The thaw in the political relations between the present government and the opposition will be good news for Ivorian democracy if it paves the way to the establishment of a democratic base that can guarantee the rooting and functioning of the rule of law, a veritable national reconciliation process, and an effective fight against impunity for perpetrators of crimes of the past, even the recent past. Amnesty and impunity granted in the name of national reconciliation would inevitably plunge the country into a new round of violence. In so highly polarised a situation, impartial, fair justice for perpetrators of crimes, regardless of political side, is the only tool for building a peaceful future. But, what are the facts of the fight against impunity in Ivory Coast at present and what can the victims expect from it?

11. The 14 defendants who were released: Michel Gbagbo (Franco-Ivorian son of the ex-president), Pascal Affi N’Guessan, President of the *Front populaire ivoirien* (FPI, Gbagbo’s party); Aboudramane Sangaré (FPI Vice President); Alcide Djédjé (former diplomatic adviser to Laurent Gbagbo, Minister of Foreign Affairs in the post-electoral government); Martin Sokouri Bohui (ex-MP, national secretary in charge of elections at the FPI); Geneviève Bro-Grébé (President of *Femmes patriotes*); Philippe-Henri Dacoury-Tabley (ex-Governor of the Central Bank of West African States); Alphonse Douati (Deputy Secretary General of FPI, arrested on 18 August 2012); Moïse Lida Kouassi (Minister of Defence in the first Gbagbo governments, arrested in Togo on 6 June 2012 and extradited); Justin Koua (Interim National Secretary of the FPI Youth League, arrested on 7 June 2013); Narcisse Tea Kuyo; Séka Obodji; Colonel Konandi Kouakou; Nomel Djro. See the joint FIDH, MIDH, LIDHO press release of 9 August 2012, « Côte d’Ivoire : La libération provisoire de 14 détenus souligne les besoins impératifs d’une justice impartiale et équitable », <http://www.fidh.org/cote-d-ivoire-la-liberation-provisoire-de-14-detenus-souligne-les-besoins-13811>

II - The fight against impunity: between political manipulation and genuine efforts

Structuring the fight against impunity

Since January 2011 President Ouattara has often repeated his commitment to the fight against impunity and the prosecution of crimes committed during the post-electoral crisis in Ivory Coast, even after disclosure of the massacres committed by elements of his own troops, the FRCI, in particular in the city of Duékoué in March 2011.

A criminal law policy apparently was adopted during the year 2011: the key suspects of the most serious crimes committed during the post-electoral crisis were to be tried at the International Criminal Court (ICC), the other alleged perpetrators, by the Ivorian national courts. But in November 2011, when Laurent Gbagbo was transferred to ICC in the The Hague, the Ivorian authorities seemed to abruptly interrupt cooperation with ICC. The ICC investigation is still underway and two other warrants for arrest have been made public, including one dated 22 November 2012 issued against Simone Gbagbo who was not transferred to the ICC. The Ivorian authorities recently adopted the decision to prosecute Simone Gbagbo in Ivory Coast (See above). The other arrest warrant was issued against Charles Blé Goudé in 2011 and made public on 1 October 2013. Ivorian authorities have yet to decide whether or not Charles Blé Goudé will be transferred to the The Hague. No other arrest warrants have been announced publicly against anyone aligned with President Ouattara, despite the statement by the Prosecutor of the ICC, Mrs. Fatou Bensouda, who in July 2013, after discussions with the Ivorian Minister of Justice, re-confirmed that the ICC Office of the Prosecutor would investigate all parties involved. The decision to make public the arrest warrant issued in 2011 against Charles Blé Goudé has not seemed to contribute to striking a balance among political factions, as Charles Blé Goudé is the third person from the Gbagbo clan to be targeted.

Charges brought by the Ivorian courts, in particular against Gbagbo supporters, confirm the position expressed publicly by the authorities on their new strategy. With the exception of Laurent Gbagbo who will be tried in The Hague by the ICC, all persons believed responsible for serious violations of human rights shall fall within the exclusive jurisdiction of the Ivorian judiciary. This unwillingness to cooperate with the ICC is regrettable and contrary to the obligations set out in the Rome Statute and further underscores the need to establish an independent, equitable and impartial judicial process.

Cases before the International Criminal Court

The jurisdiction of the ICC in Ivory Coast, which became a party to the Rome Statute on 15 February 2013, dates back to 18 April 2003 when Ivory Coast, under the presidency of Laurent Gbagbo, accepted the jurisdiction of the Court (Declaration referring to article 12-3 of the Rome Statute, 18 April 2003¹²). On 14 December 2010, President Alassane Ouattara re-affirmed acceptance of ICC jurisdiction and yet again on 3 May 2011 (Letter reconfirming acceptance of the ICC jurisdiction dated 14 December 2010¹³).

After conducting a preliminary examination, the Prosecutor of the ICC concluded that there were reasonable grounds to believe that since 28 November 2010 crimes had been committed in the Republic of Ivory Coast which fall within the jurisdiction of the ICC.

On 19 May 2011, the Prosecutor informed the President of the Court of her intention to submit a request to the Pre-Trial Chamber in order to obtain authorisation to open an investigation on the situation in Ivory Coast for crimes committed since 28 November 2010.

On 3 October 2011, ICC Pre-Trial Chamber III, pursuant to article 15 of the Rome Statute, authorised the “opening of an investigation in Ivory Coast on crimes which fall within the jurisdiction of the Court committed since 28 November 2010. The investigation may also cover crimes that may be committed in the future, as provided for in paragraph 179 of the ICC Rules to the extent that they are committed in the context of the situation in the Ivory Coast¹⁴”. In its decision, Pre-Trial Chamber III requested the Prosecutor to present the Chamber, “within a month, with any additional information which the Prosecutor may have on crimes committed between 2002 and 2010 and which could fall within the jurisdiction of the Court” (See Rule 50(4) of the ICC Rules).

FIDH provided documents to the Office of the Prosecutor on crimes within the jurisdiction of the Court and on grave violations of human rights perpetrated by the various parties during this period in order to broaden the timeframe and the scope of the ICC investigation into the events that have taken place since 19 September 2002, as recommended by FIDH member organisations in Ivory Coast.

On 22 February 2012, Pre-Trial Chamber III (Decision ICC-02/11) decided to extend the investigation in Ivory Coast to include crimes within its jurisdiction since 19 September 2002, the date of the attempted overthrow of the Gbagbo regime by the *Forces nouvelles*.

On 11 April 2011, with the assistance of the UNOCI forces and the French “Licome” forces, Laurent Gbagbo was arrested and put under strict house arrest in Korhogo, a city in the north of the country. ICC case 02/11-01/11, “The Prosecution v Laurent Gbagbo” opened on 25 October 2011 with the Prosecution’s application for the issuance of a warrant of arrest. The arrest warrant issued by Pre-Trial Chamber III was delivered under seal on 23 November 2011 and was only made public on 30 November 2011, the day that the Ivorian authorities transferred Laurent Gbagbo to The Hague.

The arrest warrant issued against him states that, “Mr Gbagbo allegedly bears individual criminal responsibility, as indirect co-perpetrator, for four counts of crimes against humanity, namely a) murder, b) rape and other sexual violence, c) persecution and d) other inhumane acts, allegedly committed in the context of post-electoral violence in the territory of Ivory Coast between 16 December 2010 and 12 April 2011.”

12. <http://www.icc-cpi.int/NR/rdonlyres/CBE1F16B-5712-4452-87E7-4FDDE5DD70D9/279779/ICDE1.pdf>

13. <http://www.icc-cpi.int/NR/rdonlyres/498E8FEB-7A72-4005-A209-C14BA374804F/0/ReconCPI.pdf>

14. <http://www.icc-cpi.int/iccdocs/doc/doc1328750.pdf> §212 page 93ff and its annex with corrigenda, <http://www.icc-cpi.int/iccdocs/doc/doc1328751.pdf>

After Laurent Gbagbo was transferred to the ICC, the confirmation hearing originally scheduled for 18 June 2012 and rescheduled for 14 August 2012, was postponed pending receipt of the results of a medical examination on the fitness of Laurent Gbagbo to take part in the trial. On 2 November 2012 the Pre-Trial Chamber established that Laurent Gbagbo was fit to take part in the proceedings.

The confirmation hearing opened on 19 February 2013. Defence counsel for Laurent Gbagbo contested the admissibility of the case before the ICC, arguing that Laurent Gbagbo would be prosecuted in Ivorian courts, thus supplanting the ICC of its jurisdiction pursuant to the principle of complementarity. This argument was sharply refuted by the Office of The Prosecutor and the legal representatives of the victims on the grounds that the Ivorian authorities had clearly indicated that Laurent Gbagbo's prosecution would be entrusted to The Hague and that no legal proceedings had been initiated against Laurent Gbagbo in Ivory Coast for the offences being prosecuted by the ICC.

On 3 June 2013, the Pre-Trial Chamber adjourned the confirmation hearing, arguing that the Office of The Prosecutor had failed to provide sufficient evidence to establish that there were "substantial grounds to believe" (article 61-7 of the Rome Statute) that Laurent Gbagbo had committed the alleged crimes. The Chamber set a new series of deadlines for the Office of The Prosecutor to produce further evidence, the last deadline being 15 November 2013. At the end of this timeframe, the parties to the trial will be given time to make observations and present their arguments on new evidence. Subsequently, during the first quarter of 2014, the Pre-Trial Chamber will hand down its final decision regarding the confirmation of charges.

The FIDH and its member organisations in Ivory Coast point to FIDH recommendations on the need to strengthen the investigative capacity of the ICC Office of The Prosecutor. In a report published in December 2011¹⁵ the FIDH recommended that the Office of The Prosecutor, "take steps to build up the investigative capacity of the Office of The Prosecutor and guarantee that the ICC can fulfil its mandate, which consists of prosecuting the persons most responsible for the most serious crimes, regardless of their rank". This recommendation is most timely¹⁶. Furthermore, the decision of the Chamber underscores the need for the Office of The Prosecutor to receive the full cooperation of the Ivorian authorities to ensure that any and all useful information in the Laurent Gbagbo case be communicated to the ICC.

On 22 November 2012, the International Criminal Court unsealed an arrest warrant for four crimes against humanity issued against Simone Gbagbo. The warrant had been delivered sealed on 29 February 2012. Mrs. Gbagbo's transfer to The Hague was envisaged, but the Ivorian President quickly expressed his personal reservations, which ultimately became the official position on the case. On 20 September 2013, during an extraordinary meeting of the Council of Ministers, Ivorian authorities "decided to file a motion of inadmissibility and to stay the arrest warrant issued by the ICC on 29 February 2012 (...) concerning the request for the transfer of Mrs. Simone Gbagbo to The Hague"¹⁷.

On 1 October 2013, the representatives of the government of Ivory Coast filed an application with the ICC challenging the admissibility of "The Prosecutor vs Simone Gbagbo" case and requested to stay the transfer of Simone Gbagbo, pursuant to articles 17, 19 and 95 of the Rome Statute.

On 30 September 2013, ICC Pre-Trial Chamber I unsealed the arrest warrant issued against Charles Blé Goudé on 21 December 2011.

15. Cf. FIDH report "The Office of the Prosecutor of the ICC, 9 Years On", December 2011, available at : <http://fidh.org/en/international-justice/international-criminal-court-icc/The-Office-of-the-Prosecutor-of>

16. The Office of the Prosecutor has requested an additional 7 million euros to the 2014 budget, mainly to increase resources for investigations.

17. Cf. press release by the Ivorian government after the extraordinary meeting of the Council of Ministers on 20 September 2013. See: http://www.gouv.ci/actualite_1.php?recordID=3863

Charles Blé Goudé apparently bears individual criminal responsibility as indirect co-perpetrator of four counts of crimes against humanity (murder, rape and other forms of sexual violence, persecution, and other inhumane acts) that were allegedly committed in the context of post-electoral violence in the territory of Ivory Coast, between 16 December 2010 and 12 April 2011. The conclusion of the Pre-Trial Chamber was that there were reasonable grounds to believe that immediately after the presidential elections in Ivory Coast, as of 28 November 2010, the pro-Gbagbo troops attacked the civilian population in Abidjan and in the west of the country, targeting civilians who they believed supported the opposition's candidate. There are allegations that these attacks were general and systematic and were committed over a long period of time in a vast geographic area, and that all followed a similar *modus operandi*. Furthermore the attacks apparently were often directed against specific ethnic and religious communities and caused a large number of victims.

However, to have truly impartial international justice, the ICC Office of The Prosecutor must investigate all the high-level persons allegedly responsible, regardless of their political alliance, so that the prosecutions can be conducted fairly.

In July 2013, during her visit to the Ivory Coast, Ms Fatou Bensouda publicly reiterated the determination of the ICC Office of The Prosecutor to investigate all sides. The FIDH, MIDH and LIDHO hope that these declarations will materialise, despite the budgetary restrictions of the ICC Office of The Prosecutor which could limit its capacity to carry out in-depth investigations.

The 1 October 2013 decision to make public the arrest warrant issued in 2011 against Charles Blé Goudé seems to illustrate the will of the ICC to make Ivorian authorities meet their responsibilities. This decision, which was rendered one week after the Ivorian Council of Ministers announced that Simone Gbagbo would be tried in the Ivory Coast, effectively signals to Ivorian authorities that if they wish to judge the persons responsible for the post-electoral crisis within the country, they must do so under conditions that meet all the requirements of the right to a fair trial and must render justice to the thousands of victims of this crisis.

Ivorian authorities apparently do not intend to transfer other alleged perpetrators to The Hague, for the time being. Some parties already claim that Ivorian authorities are manipulating the ICC and that, having eliminated the "Gbagbo problem", intend to apply fully the principle of complementarity by assuming the exclusive right to bring the other suspects to trial. According to their critics, this is being done in order to control the prosecution and to ensure impunity for the military leaders who they believe they cannot do without.

The current position of the Ivorian authorities generates high expectations regarding the fairness and impartiality of the ongoing national legal proceedings.

The State of Legal Proceedings in Ivory Coast

In June 2011, a ministerial order created a Special Investigative Unit to investigate crimes and offences committed after the results of the second round of the presidential elections were announced on 28 November 2010. At the time of its creation, this unit was composed of 7 magistrates (including 3 investigative judges), 20 judicial police officers and 6 registrars¹⁸. The unit was to take over all open judicial investigations on crimes committed during the post-electoral crisis, except for the cases which fall under the jurisdiction of the military court¹⁹. The FIDH, MIDH and LIDHO applauded the creation of the unit for two reasons: because it

18. See the Internet site of the *Cellule special d'enquête*: <http://justice-ci.org/cellule/76-personnel-et-cadre-de-travail.html>

19. The current report will not include cases handled by the military courts [pursuant to article 9 (Title II, First Chapter) of the Ivorian code of military procedures, cases only involving accused military personnel are turned over to the military courts] with the emblematic case being the trial of the persons who assassinated Colonel-Major Adama Dosso, in which 4 servicemen were convicted and sentenced to terms of up to 15 years in prison. The current report will only focus on investigations underway in the civil courts which FIDH, MIDH and LIDH lawyers can attend as representatives of the civil parties.

constituted the first step of a decision to fight impunity for crimes committed during the post-electoral period and because the inherent complexity of investigations into crimes of this nature requires an *ad hoc* response, such as the creation of a special unit completely devoted to fact-finding and establishing responsibility, which can serve as a single interlocutor for victims. The June 2011 ministerial order created the Special Investigative Unit for a period of 12 months. Fortunately it has operated longer than the period initially set and has been instructed to follow the proceedings on the post-electoral crisis through to completion.

The Prosecution, however, through a decision that was surprising in terms of the coherence of criminal prosecution policies, decided to initiate separate investigations, by differentiating types of crime (“attacks on state security”, “blood crimes” and “property crimes”) and the geographic areas, although all the investigations concerned the same alleged perpetrators.

An initial indictment dated 6 February 2012 led to six separate inquiries on 18 identified persons who were all “pro-Gabago” and on “any others”, of whom three (distinguished according to the place where the crimes were committed) were investigated for violent crimes (blood crimes), meaning serious crimes committed against the civilian population, genocide, attacks on individual freedoms, assassination, murder, rape, intentional bodily injury, death threats, assault and battery, tribalism, and xenophobia.

The investigation initiated for “attacks against the safety of the state”²⁰ covered the following violations: attacks, conspiracy and other offences against State, organised armed gangs, participation in an insurrectional movement, and disturbing public order. The case was closed and the Investigative Chamber of the Court of Appeal, in August 2013, referred the case to the Criminal court, but no date has been set for the trial.

The investigations on damage and destruction of property involved the following offences: pillage; destruction or degradation of perishable goods, merchandise and equipment; theft; gang theft; extortion of money; intentional destruction of tangible and intangible assets; complicity; collusion; conspiracy, and attempts to commit any of these offences. The investigations were assigned, correspondingly, to the three magistrates who belong to the Special Investigative Unit.

An initial indictment dated 6 November 2012, opened the way for a separate inquiry, on the basis of the report of the National Commission of Inquiry (*Commission Nationale d’Enquête*, NCI hereinafter), and its annex, on 12 identified persons and “all others” for charges that were identical to those in the six abovementioned investigations.

Pursuant to Decree no. 2011-176 of 20 July 2011, the President of the Republic established the National Commission of Inquiry (NCI) to carry out non-judicial investigations on violations of human rights and international humanitarian rights committed anywhere in the country during the post-electoral period, between 31 October 2010 through 15 May 2011.

The NCI was chaired by a magistrate, Ms Loma Cissé Matto, who was appointed Minister-Delegate to the Prime Minister and Minister of Justice in June 2012. The NCI spent several months investigating the crimes committed during the post-electoral period. The Commission’s report on the investigation (*The Report of the Investigation on Human Rights and International Humanitarian Rights Abuses between 31 October 2010 and 15 May 2011*) and its confidential annex were officially presented to President Ouattara on 8 August 2012 and led to the initiation of a separate judicial inquiry although the report described the events that occurred during this period (the “post-electoral crisis period”) which involved the suspected perpetrators already under investigation in the six purported “general” investigations.

20. FIDH, MIDH and LIDHO do not intervene in proceedings which involve attacks on the safety of the state and therefore do not have access to the related case files.

The report,²¹ much of which has been made public, suggests that members of the FRCI may be responsible for approximately 700 ascertained human rights violations and that ex-members of the *Forces de défense et de sécurité* (FDS) and members of the militia may be responsible for approximately 1200 crimes committed during this period. The annex to the report, which was not made public but was also transmitted to the courts, points to the persons responsible for crimes who were identified during the NCI investigation. The report draws the following conclusion:

“...As for the perpetrators, because of the mandate of the commission charged with the non-judicial investigation, it was not possible to determine their criminal responsibility. On the other hand, the list of alleged perpetrators of atrocities committed either by them directly or as a result of their position at the time of the atrocities is appended to this report.”

Considering the opacity of the ongoing prosecutions because of the large number of judicial inquiries on offences targeting the same alleged perpetrators, the lawyers of Simone Gbagbo submitted a request to merge all criminal investigations involving procedures against her, except for the investigation that stems from the NCI report, which contains no charges against her. In an order dated 15 February 2013, the Indictment Chamber of the Court of Appeal agreed to this request.

The Indictment Chamber of the Court of Appeal drew the appropriate legal conclusions and specified:

“In the interest of proper administration of justice, the facts being connected and indivisible, it would be appropriate to order the withdrawal of the judges in the 9th and 10th chambers and have the judge in the 8th chamber continue the investigation”.

Charles Blé Goudé, who was extradited on 18 January 2013 from Ghana where he had taken refuge, was finally indicted in a new investigation, which was initiated at that time and not in the investigations previously underway in which many people had already been indicted²².

During the course of preliminary inquiry and that of the criminal investigation, investigators in the Special Investigative Unit listened to depositions from several thousand victims.

As for the charges, there are no official statistics on the number of persons charged in the cases handled by the Special Investigative Unit but, in July 2013, according to the information received by FIDH, MIDH, and LIDHO, there were 67 people charged with involvement in “blood crime” cases and 4 persons who were involved in the cases opened after communication of the NCI report. These figures do not include the national and international arrest warrants issued by the investigating judges in the Special Investigative Unit.

Actions by FIDH, LIDHO and MIDH

In May 2012 FIDH, LIDHO and MIDH filed for intervenor status as civil parties in order to assist the victims of the most serious crimes and enable them to have access to justice and obtain reparation in “blood crime” procedures for 75 victims from both camps. In the course of three FIDH Legal Action Group missions (October 2012, February and July 2013) the FIDH, LIDHO and MIDH lawyers were able to examine the case files; they added evidence to the files and assisted the victims during judicial police hearings.

21. Report of the National Commission of Inquiry (NCI), http://www.fidh.org/IMG/pdf/cne_resume_rapport_d_enquete.pdf

22. FIDH, MIDH and LIDHO have not yet filed as the civil party in this investigation and therefore do not have access to the case file.

FIDH, MIDH and LIDHO decided to become civil parties in the case alongside the victims they represent and whose testimonies they had collected. Since there are no texts in Ivorian criminal law on this subject, the three organisations put forth a “dynamic” interpretation of article 2 of the criminal code to enable the human rights NGOs – within the limits of their statutory aim – to file as civil parties in cases connected to grave violations of human rights. FIDH, MIDH and LIDHO feel that it is essential for such organisations, that have direct contact with the victims and have extensive experience in fighting impunity, to be able to intervene directly in a judicial proceeding.

In this regard and compliant with the submissions of the Prosecution, the decision rendered by the Senior Judge on 25 March 2013 to receive MIDH, LIDHO and FIDH as the civil party status is a major, noteworthy step forward that could enable the Ivorian human rights organisations to take legal actions in cases concerning the most serious violations of human rights.

In her order, Senior Judge Cissé considered the following:

“Since article 2 of the criminal procedure code recognises civil party status for private individuals and legal persons if they can provide evidence of personal harm due to the offence;

Since, there is no doubt that the FIDH, LIDHO and MIDH, by virtue of their statutory aims, have conducted actions to prevent and to fight against the most serious violations of human rights;

Since the offences of which Mrs. Gbagbo is accused, namely genocide, assassination, murder, crimes against the civilian population and war crimes, constitute grave violations of human rights;

Since, in conformity with their field of action, and within the framework of proceedings against Mrs. Gbagbo and all other persons allegedly involved, in acts which were the preparation or the perpetration of grave violations, these NGOs are organised to assist the alleged victims;

Consequently, the commission of these acts are prejudicial to the interests protected by these associations which, thus, rightfully can expect reparation from the identified perpetrators, co-perpetrators and accomplices;

Seeing that the interests that they defend are different from those of the assisted persons, there is no cause to determine if such persons are members of the association or if they have applied to the ICC to obtain reparation”.

Pursuant to this decision, in August 2013, FIDH, MIDH and LIDHO filed as civil parties in the investigations that had been opened on the basis of the NCI report.

Hence the international and Ivorian lawyers in the FIDH Legal Action Group were able to consult all the files of cases in which they stood as civil parties²³ and to take steps to liaise with the judges in order to contribute, on behalf of the civil parties, to making the inquiries more complete, the purpose being to ensure well-balanced proceedings and the establishment of individual criminal responsibility, with due respect for the rights of the defence.

FIDH, MIDH and LIDHO were thus able to contribute documents (sound, videos, testimonies compiled during investigative missions following the post-electoral crisis) to the case files,

23. One exception to these procedures is attacks against the safety of the State and the investigation of Charles Blé Goudé (See above).

to supplement the submissions provided in response to specific requests aimed at obtaining additional investigative acts and charges. The FIDH, MIDH and LIDHO lawyers also assisted the victims, for whom they stood as civil parties, during the hearings with the investigators of the Special Investigative Unit (in Duékoué in October 2012 and Abidjan in February 2013).

This in-depth legal activity led to an overall analysis of the procedures, which revealed major flaws.

The will to render fair, impartial justice not yet demonstrated

Although the legal process and the participation of numerous Ivorian victims has given the Ivorian population new hope in the national legal system, there can be no denying that the legal proceedings launched by the Special Investigative Unit are very unbalanced since they are nearly all directed at the pro-Gbagbo camp, and not at the other side.

The present investigation is also seriously flawed in their inquiries, which impede the manifestation of truth and the possibility for the roles of each of the alleged perpetrators to be clearly identified, the purpose being to hold fair, equitable trials.

Prosecution that only targets one camp

The current criminal proceedings policy remains almost exclusively led against the pro-Gbagbo. In contrast, the atrocities committed by the forces that supported or are supporting still the “pro-Ouattara camp” (*Forces nouvelles* later became the FRCI) and their auxiliary militia (particularly the Dozos), are today the subject of a single charge. However, at the end of thousands of interviews conducted by investigators of the Special Investigative Unit, for both the preliminary hearing and the investigative phase, the investigating judges have several consistent witness testimonies that implicate the FRCI sometimes specifically and in great detail, for crimes falling within the scope of their referral. However, these interviews were not exploited even though they might constitute solid bases for charges. Similarly, the NCI report sheds light on the alleged responsibility of supporters of Alassane Ouattara who have to this day not been prosecuted.

Moreover, the information gathered by the human rights NGOs (FIDH, also Amnesty International and Human Rights Watch) are unanimous on the fact of the perpetration of war crimes and crimes against humanity by the FN/FRCI during the post-electoral crisis, in particular during the taking of Duékoué on 27-28 March 2011.

Thus, to date, Amade Oueremi – arrested on May 2013 – is the only one charged from the FRCI camp (or auxiliary militia) even though the Appendix of NCI report examines the responsibility of some of them, at least in terms of “the position they occupied” at the time.

In the absence of more numerous charges and effective investigations conducted on the responsibilities incurred, the ongoing judicial inquiries within the Special Investigative Unit remain purely theoretical as regards the involvement of the FRCI.

Another worrying sign of the lack of will of the Ivorian political and judicial authorities to rebalance the prosecution by charging the alleged perpetrators of the FRCI and their allies can be found in the fragmentation of judicial inquiries that does not facilitate the conduct of thorough investigations into the post-electoral violence that would have elucidated the mechanisms at work during the crisis, the magnitude of the crimes, and the reality of the criminal enterprise triggered by these events.

Similarly, there was the opening of separate proceedings following the delivery of the NCI report to the judiciary, although if it would have been more than logical – from a judicial point of view –

that this report contribute to the investigations already underway. Indeed, since the report contained elements incriminating members of the FRCI, might serve as a basis for new charges. However, it should be emphasised that, in its appendices, the NCI report mentions the “direct involvement” of the perpetrators from the “pro Gbagbo” clan, while in the case of perpetrators identified as belonging to the former FRCI, the report simply lists their names and the position they held at the time.

The last example of this fragmentation of proceedings was the opening of a separate judicial inquiry against Charles Blé Goudé, even though he was targeted in the initial indictment of 6 February 2012

To overcome this lack of transparency in the proceedings, during the July 2013 judicial mission, FIDH, MIDH and LIDHO filed an injunction application to combine the so-called NCI procedure with the procedures that were grouped following the application by the defence of Simone Gbagbo (see above)²⁴. The civil parties represented by FIDH, MIDH and LIDHO are still waiting to be heard before the Indictment Chamber of the Court of Appeal so that it can decide on this application.

This fragmentation of the proceedings, although mitigated by the partial consolidation of the procedures ordered on 15 February 2013 by the Indictment Chamber of the Court of Appeal, is regrettable from the point of view of the rights of the defence and of the victims, both of whom expect the Ivorian judiciary to provide a credible, efficient, independent and impartial legal system. Moreover, this fragmentation has the effect of creating a different tempo in the cases, a few of which have already been closed (investigation on the facts of violations against state security, for example), others still ongoing, with an uneven degree of progress.

The promises of a large “post-electoral crisis”, trial during which the responsibilities of all parties in the crisis would be examined, seem very distant, and made all the more so as the prosecution seems to be moving towards a strategy of opening separate proceedings if new cases of responsibility were to emerge, which would further undermine the transparency of the proceedings.

More in-depth investigations

FIDH, MIDH and LIDHO noted that the work to investigate and establish facts remain inadequate for the time being.

Significant gaps remain in the investigations carried out previously on alleged perpetrators from both the pro-Gbagbo and the pro-Ouattara camp. As proof, the file does not contain any flowcharts, which would provide an assessment of the forces present thus giving a clear idea of the chain of command and criminal responsibility. Neither was there any interaction with the investigations conducted by the military courts, whereas these investigations would likely have been of interest to the investigating judges of the Special Investigative Unit (the military authorities did not respond to the request formulated on this subject dated 26 July 2012, by the judge in charge of the case related to the NCI report). Similarly, hundreds of documents recovered by the investigating judges during a search of the premises of the presidential residence have not yet been exploited. Furthermore, a vast undertaking of exhuming victims of the post-electoral crisis was undertaken in April 2013, the results of which have not yet been used. Finally, there is no consistency in the choice of persons charged, either in terms of their hierarchical position or magnitude of the crimes that can be attributed to them.

Within this framework, it seems largely premature to anticipate the closure of the legal proceedings for “blood crimes”, i.e. for grave violations of human rights perpetrated.

24. In August 2013, FIDH, MIDH and LIDHO submitted a Request to be decided upon by the judges, concerning the transfer of the procedures to a single investigation office, with a view to grouping them.

This statement should, however, be tempered by pointing out that interesting steps in light of ongoing investigations have been taken by the investigating judge Losseni Cissé: an application for information was sent to the military courts, particularly for flowcharts of the units that participated in the events of the post-electoral crisis; or still, in the NCI file, an application for all the minutes of hearings established by the Commission during its investigation was made with the NCI. If such applications, which to date have yet to receive a response, were extended to all the ongoing investigations, they could help significantly substantiate the case files.

Generally, it is essential that the resources allocated to the unit continue to allow quality work so that investigations can be extensive and the testimonies of victims exploited, which can lead to exemplary trials, both for the accused and the victims. As such, FIDH, MIDH and LIDHO noted with great concern that two of the magistrates who were part of the Special Investigative Unit, Mr. Losséni Cissé and Mr. Mamadou Koné, were transferred to other positions during the summer 2013. New investigating judges were appointed to the 9th and 10th chambers but, at the end of September 2013, they had not yet taken up their position. Thus, to date, only one investigative judge was still assigned to the Unit, even though the request to appoint judges to hear the injunction motion filed by the lawyers on behalf of the three organisations had not been implemented.

The victims represented by FIDH, MIDH and LIDHO expect the Ivorian judiciary to hold trials within a reasonable time, but not to the detriment of an extensive investigation which is the only way to ensure a fair trial and disclose the judicial truth about serious crimes committed during the post-electoral crisis.

Legal inquiries opened on the attack of the Nahibly camp during the summer of 2012 and the discovery of a mass grave in Duékoué, another challenge in the fight against impunity

On 20 July 2012, the Nahibly internally displaced persons camp (IDP), located at the outskirts of Duékoué, was attacked by some young Malinkés, supervised and supported by members of the *Forces républicaine de Côte d'Ivoire* (FRCI) and traditional Dozo hunters. Seven people were found dead (shot or burned) inside the camp.

The attack was an act of retaliation for the murder of four people in the Kokoman district the Malinké part of the town, by a band of militia / bandits who used the IDP camp as a sanctuary for cover.

The investigations led by FIDH, MIDH and LIDHO showed that the number of victims had been a lot higher than the seven persons found dead in the camp, and that this attack was probably motivated by politico-ethnic reasons inherited from the post-electoral crisis.

The Nahibly Camp brought together the displaced, mainly Guérés (a people believed to be supporters of the Laurent Gbagbo camp), survivors of the Carrefour district massacre of 28 March 2011, perpetrated by the FRCI, the Dozos and their militia during the capture of the town and displaced persons from villages in the region. Assimilated with pro-Gbagbo militia, the military authorities of the town consider the young Guérés boys as part of the militia and the Guérés in general as a “hostile” population. The camp also seemed to be the fallback position of a group of bandits or even militiamen. This being the case, the area’s FRCI leaders felt it their duty to destroy the camp²⁵.

25. For more information on this case, see note published by FIDH, MIDH and LIDHO in March 2013, « Ivory Coast, Attack on Nahibly Camp: an Opportunity for Justice to Triumph » at the following address: <http://www.fidh.org/en/africa/Cote-d-Ivoire,566/Ivory-Coast-little-judicial-progress-made-on-the-case-of-the-attack-of-13109>

On 11 and 12 October 2012, a mass grave was discovered in the Togueï district of Duékoué. In the presence of the assistant prosecutor of the Court of First Instance of Man, six bodies were discovered in a well on the periphery of the town. These six men apparently were summarily executed by elements of the FRCI following the attack on the Nahibly Camp.

Two different legal proceedings were opened in the wake of these events: a first investigation for the Nahibly Camp attack, and a second one for the discovery of the mass grave, both of which were entrusted to the same investigating judge of the Court of First Instance of Man. In December 2012, FIDH, MIDH and LIDHO filed as civil parties for five victims in these two cases and filed an application for them to be joined since they involved related events.

Since then, significant progress has been made in this case: on 21 March 2013, several mass graves were formally identified by the investigating judge, thus demonstrating a willingness for the investigation to move forward.

FIDH, MIDH and LIDHO acknowledged publicly these steps forward, but here again, a lot remains to be done. The exhumation of the mass graves that FIDH, MIDH and LIDHO called for in March 2013 would be a sign of progress and would reflect a political will to push the fight against impunity in Ivory Coast forward, even if progress in this investigation would not lead to a fair balance in the prosecution of the post-electoral crisis cases.

III - The Dialogue, Truth and Reconciliation Commission: the missed opportunity

As for the crimes of the past (pre-2011), a Dialogue, Truth and Reconciliation Commission (CDVR) was established in 2011 for a period of two years. After this period, its results seem very weak: manipulation for political purposes, lack of a clear strategy, weak investigations, bloated administration, crucial lack of resources, lack of information on victims and support from civil society, etc. Since they were not able to talk about what they lived through, the Ivoirians seemed to reconcile in the name of “normalisation” alone. However, the story of the political violence in the country and the experience of victims of successive politically repressive regimes deserve to be heard and studied. It is important to look at the past to understand what led the country into a ten-year war (2002-2011).

What commission for what reconciliation?

Since April 2011, President Ouattara made reconciliation a major focus of his first proclaimed political orientations. To suggest the main facets of the future commission, Alassane Ouattara had appealed to wise elders, like South Africa’s Desmond Tutu, Ghana’s Kofi Annan and Ireland’s Mary Robinson who were invited to Abidjan on 1 and 2 May 2011 to provide him with food for thoughts. Thus Mgr. Desmond Tutu told journalists who met with him on 2 May: “We’ve encouraged everyone to ensure that the reconciliation process is not done in haste. We don’t want that in this fervor, this desire for reconciliation that things go too fast.”

Alassane Ouattara told the newspaper *La Croix* at the end of April 2011 that the reconciliation was a central issue of his presidency. South Africa would be his model. “We will draw inspiration without copying it. We will adapt it to the reality of the Ivory Coast,” he explained.

The South African Truth and Reconciliation Commission, created in 1995, gave a voice to the victims of apartheid, but also to their torturers. In exchange for a public confession of crimes committed, the Commission chaired by Mgr. Desmond Tutu and composed of members of all of South Africa’s political bodies could grant complete amnesty to those responsible for the atrocities. Twenty-six countries set up truth and reconciliation commissions in different contexts and with different mandates, including especially, Argentina, Chile, Peru, Guatemala, Sierra Leone, Morocco, East Timor, and Togo.

In Ivory Coast, the question that was asked very early was that of the place of justice in the Ivorian reconciliation process. The preponderance of the South African model raised fears of amnesty measures risking, in the name of reconciliation and inter-community dialogue, to perpetuate the impunity of the perpetrators of violations of human rights. They were, however, in part, at the root of the radicalisation of the “Gbagbo system” and the protest of the election of Alassane Ouattara, because of their feeling of omnipotence generated by a regime that protected its flock.

Especially since this reconciliation initiative was not unprecedented in Ivory Coast. In 2001 an attempt had been made: from 9 October to 18 December 2001, a Reconciliation Forum had been established to put an end to the sociopolitical tensions. Chaired by the former Prime Minister Seydou Elimane Diarra, the Forum listened to political and religious leaders. It turned into a parade of personalities each verbalising the reasons for his acts and choices without acknowledging his mistakes, his faults and his responsibility. In other words, practically useless. Eight months later, the rebellion by the *Forces nouvelles* (FN) launched an offensive from the north of the country in an attempt to take the capital, Abidjan.

The chair of the CDVR: between political deal and presidential stepping stone

The reconciliation process of 2011 was supposed to avoid the pitfall of 2001. That has not been the case. From 1 May 2011, i.e. less than three weeks after the arrest of Laurent Gbagbo, President Ouattara announced that Charles Konan Banny, former Prime Minister and baron of the PDCI, would chair a Dialogue, Truth and Reconciliation Commission (CDVR) whose mandate was adopted by ordinance two and a half months later.²⁶ Faced with the impossibility of giving the Prime Minister post to the PDCI, as agreed before the 2010-2011 contested elections, did a political agreement allowed Charles Konan Banny to become the president of the CDVR?

Within a few months, he managed to turn nearly everyone against him. First and foremost he was a politician. He declared to the FIDH mission that since May 2011 his role as chair of the CDVR made him a “man independent of political powers” and that he would be accountable for his mandate only to the Ivorian people, thus referring to his barely concealed presidential ambitions. On 21 September 2013, he announced to the press, not surprisingly, that «Ouattara has failed, I am a candidate,»²⁷ thereby confirming the role of the CDVR as his political springboard for the last two years.

A reconciliation process lacking in substance

The results from these two years of bustling activity at the CDVR remain very weak. After months of consultation, the first activities were launched: hearings before the president and public prayers for the victims of the post-electoral crisis. Regional and local commissions were established, advisors were recruited, the chair of the CDVR appeared in the media, but the action programme was left pending. However, the ordinance on the creation of the CDVR was specific: “to seek the truth and determine responsibility for the country’s past and recent sociopolitical events”, “listen to the victims” and “obtain the acknowledgement of the facts by the perpetrators of the alleged violations and subsequent forgiveness”.

It was not until late 2012 that national consultations were planned, and then implemented in 2013. However, we are still waiting for the results. Nearly two years after elapsed since the CDVR started its work. The question is: what were consultations all about? Did they concern the mandate, the composition, or the investigation period?

Furthermore, the investigations announced a few months ago have not yet started whereas the legal mandate of the CDVR has expired.

26. Ordinance No. 2011-167 of 13 July 2011 on the creation, attribution, organisation and functioning of the Dialogue, Truth and Reconciliation Commission.

27. « Le patriote » (close to the government) of 23 September 2013, <http://fr.starafrika.com/actualites/charles-konan-banny-candidat-a-la-presidentielle-de-2015-annonce-la-presse-ivoirienne.html>

To use Togo as an example, the national consultations were conducted in 2008 to make people aware of, and to ask them about, the mandate, composition and the role of justice in a national reconciliation process within a context of recurrent political violence and great mutual distrust. This unique experience (it was the first time that national consultations preceded the establishment of a truth commission) that the FIDH and its member organisation in Togo, the Togolese League of Human Rights (LTDH) helped to initiate with the Office of the United Nations High Commissioner for Human Rights, the Togolese authorities, political parties and civil society, led to the creation of the Commission.²⁸ National consultations had thus served to inform and consult the people before starting the process of establishing the Truth, Justice and Reconciliation Commission (CVJR), its mandate and composition. In Ivory Coast the process was initiated in reverse: it began with the appointment of the Chair of the CDVR, the formal establishment of the commission, the constitution of its teams, and the conduct of some traditional reconciliation and mediation actions before consulting the people and commencing investigations. In a context of extreme political polarization and distrust, prior consultation of the people would probably have led to a less politicized process.

Thus, the mandate, composition and the current work of the CDVR made it impossible to envisage a clear and consistent process of transitional justice. In the absence of fair and impartial justice, it does not address the need for justice for victims of all sides, as required for real reconciliation. The CDVR seems to have come to a dead-end. The only possible way out would be to resume national consultations to define the mandate, composition and the role of the judiciary in relation to the Commission and what the people expect from it. Based on the existing and reorganised structure, the CDVR would thus have the following mandates: receive complaints from victims and hear them, investigate their allegations, hold hearings (some of which may be public and publicised), make recommendations for individual and collective reparations, and use constitutional, legislative, administrative and recorded reforms to provide guarantees of non-repetition of violations of human rights and thus protect the State against authoritarian abuses of power and the consequences of the manipulated use of repressive powers on its citizens.²⁹

28. See particularly <http://www.fidh.org/Togo-la-Commission-verite-justice> ; <http://www.fidh.org/Quelle-commission-verite-pour-le> ; <http://www.fidh.org/Reflechir-avec-les-Togolais-a-la>

29. On reconstructive justice, see particularly <http://www.ihej.org/une-justice-reconstitutive-pour-surmonter-les-crimes-de-masse/>

Conclusion

The fight against impunity in the Ivory Coast is at a crossroad. The Ivorian authorities are now faced with an opportunity to shed light on the crimes of the past and to meet the judiciary expectations of the Ivorian victims, the only process that can guarantee the establishment of true democratic process in this country.

By joining with the Ivorian victims in these proceedings, and as civil parties, FIDH, MIDH and LIDHO decided to support the national judiciary, to which the victims of the post-electoral crisis turned primarily. Even if it is necessary to emphasise that the first acts performed are encouraging, and may restore the confidence of the Ivorian people in the judiciary, it is clear that the lack of political will to fight against impunity for all crimes makes the current process resemble a victors' justice, which to date is reluctant to ensure that crimes inherent in any judicial process are not repeated, and to guarantee that all Ivorian victims may enjoy their right to justice, truth and reparation.

Recommendations

FIDH, MIDH and LIDHO recommend

To the Ivorian authorities:

- Guarantee, under all circumstances, that the Special Investigative Unit can carry out impartial and independent investigations into crimes perpetrated during the post-electoral crisis;
- Provide the Special Investigative Unit with the resources required to conduct its investigations successfully, the purpose being to guarantee that in-depth investigations can be carried out as part of a judicial investigation opened by the Ivorian courts;
- Guarantee that legal proceedings can be brought against all alleged perpetrators of the most serious crimes, regardless of the side to which they belonged during the post-electoral crisis;
- Guarantee that investigative acts and legal proceedings can be brought against the alleged suspects of the Nahibly attack and the Togueï mass grave;
- Guarantee the rights of the defence and satisfactory detention conditions for all persons being prosecuted as part of legal proceedings against international crimes in Ivory Coast;
- Reconsider the composition, the action programme, and if necessary, the mandate of the Dialogue, Truth and Reconciliation Commission in order to consolidate a national reconciliation process based on consultations with the population, what the victims have to say, the search for truth and effective investigations, appropriate reparation and guarantees of non-repetition;
- Promote national, democratic dialogue with strict respect for the fair, impartial fight against impunity, especially excluding all amnesty for the most serious crimes;
- Maintain cooperation with the ICC in investigations and cases opened on the situation in Ivory Coast;
- Adapt Ivorian domestic law to the provisions of the Rome Statute.

To the Prosecutor of the International Criminal Court:

- Continue the ICC investigation in Ivory Coast so that the ICC will be able to prosecute other persons who had major responsibility in the crimes committed during the post-electoral crisis, in particular the alleged FN/FRCI perpetrators and their auxiliary militia;
- Promote positive dialogue with the Ivorian authorities, from the angle of complementary between the national and international justice processes.

To the United Nations Operation in Ivory Coast (UNOCI)

- Continue to assist the Ivorian authorities in the process to fight impunity and establish the rule of law, especially by introducing reforms to the security sector and providing logistic support for the exhumation of bodies of victims of the post-electoral crisis and the Nahibly/Togueï attack, and by ensuring the safety of premises and the actors in the fight against impunity, i.e. judges, victims, witnesses, NGOs, journalists, etc;

- Support the national reconciliation process reform in order to establish a national process that guarantees the four pillars of transitional justice;
- Continue providing support for the civil society, especially in its efforts to fight against impunity and for national reconciliation.

To the international community:

- Continue to support Ivory Coast in its efforts at post-electoral reconstruction and the consolidation of social cohesion and peace.

Annex

Non-comprehensive list of persons encountered during FIDH, MIDH and LIDHO missions:

- H.E. Alassane Ouattara, President of the Republic
- Ms Dominique Ouattara, First Lady
- Mr Jeannot Ahoussou Kouadio, former Prime Minister, Head of Government, Keeper of the Seals, Minister of Justice
- Mr Guillaume Soro, President of the National Assembly and former Prime Minister
- Mr Hamed Bakayoko, Minister of State, Minister of the Interior
- Mr Gnénéma Mamadou Coulibaly, Keeper of the Seals, Minister of Justice, Human Rights and Public Freedoms
- Ms Loma Cissé Matto, Ex-Minister-Delegate to the Prime Minister, Keeper of the Seals, Minister of Justice, responsible for Justice
- Mr Charles Konan Bany, President of the Commission on Dialogue, Truth and Reconciliation
- Mr Sylvain Miaki Oureto, interim President of the *Front populaire ivoirien* (FPI)
- Mr Laurent Akoun, Secretary General of the *Front populaire ivoirien* (FPI)
- Mr Mamadou Koulibaly, President of the LIDER (*Liberté et démocratie pour la République*) party, former President of the National Assembly, former interim President of the *Front populaire ivoirien*
- Mr Eugène Djué, nicknamed “le maréchal”, *Union des patriotes pour la libération totale* and former Secretary General of FESCI
- Mr Mamadou Diane, Advisor to the President of the Republic for Human Rights and Humanitarian Rights
- Mr Simplicie K. Koffi, Former State Prosecutor at the Abidjan Court of First Instance
- Mr Fodjo Kadjo Abo, Director of the Office of the Minister of Justice
- Mr Sidik Aboubacar Diarrassouba, Director of Human Rights Protection, ex-head of the Office of the Minister of Human Rights and Public Freedoms
- Mr Gberibè Ouattara, Prosecutor at the Daloa Court of Appeals
- Capitain Losseni Dosso, Deputy Government Commissioner, Military Court
- Ms Makouéni Delphine Cissé, Magistrate, former senior examining magistrate of the Abidjan Court of First Instance and the Special Investigative Unit
- Mr Losseni Cissé, Magistrat, former examining magistrate in the Special Investigative Unit
- Lieutenant Daouda Koné nicknamed “Commandant Konda”, former FRCI commander from Duékoué
- Mr Bernard Diezion Dibé, former deputy from Duékoué Commune
- Mr Jean Gervais Tcheide, former Vice President of the *Guiglio Conseil général*
- Mr Josph Diet Bohon, former deputy from Duékoué

- Mr Alcide Djédjé, Minister of Foreign Affairs in the post-electoral government of Laurent Gbagbo
- H.E. Georges Serre, French Ambassador to Ivory Coast
- H.E. Jean-Marc Simon, Former French Ambassador to Ivory Coast
- H.E. Thierry de Saint Maurice, Ambassador, Head of the Delegation of the European Union in Ivory Coast
- Mr Y. J Choi, Ancien Former Head of Mission and Special Representative of the Secretary General, UNOCI
- Mr Bert Koenders, Former Head of Mission and Special Representative of the Secretary General,
- Mr Guillaume Ngueffa, Deputy Director, Human Rights Section of UNOCI
- Mr Bruno Pozzi, First Secretary, Head of Political and Economic Section, European Union Delegation in Ivory Coast
- Ms Gigja Sorensen, Political Attachée, European Union Delegation in Ivory Coast
- Ms Vania Bonalberti, Attachée, Chargée des programmes Gouvernance, Délégation de l'Union européenne en Côte d'Ivoire / Head of Governance Programmes, European Union Delegation in Ivory Coast
- Mr Peter Huyghebaert, Ambassador of Belgium

Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.



This publication was realised with the support of Humanity United. The statements made in this publication are solely those of FIDH, LIDHO and MIDH.



Mouvement Ivoirien des Droits Humains

THE IVORIAN MOVEMENT FOR HUMAN RIGHTS (MIDH)

NGO promoting, protecting and defending human rights in Ivory Coast.

Creation and Objectives MIDH is an apolitical and non-confessional organisation created on 8 October 2000 in a political context that saw the military junta in power after the coup d'État of 24 December 2009. This regime established violence, intimidation, arbitrary arrests and the manipulation of the judiciary as a system of government.

MIDH proposes to « democratize » the issue of human rights by making its principles and guarantee mechanisms available to all socio-professional groups of society. MIDH is committed to ensuring the promotion and protection of the rights recognized by the law, making new rights known and ensuring their promotion and protection.

Interaction with international NGOs

MIDH holds observer status with the African Commission for Human and Peoples' Rights (ACHPR). The MIDH is also a member organisation of the International Federation for Human Rights (FIDH), the Inter-African Union for Human Rights (UIDH)

and the World Organisation against Torture (OMCT). MIDH also works in partnership with other human rights' international organisations such as Human Rights Watch and Amnesty International, France.

Priority programmes

Reducing cases of human rights' violations and widening the areas of freedoms;

Defending rights wherever they are violated or threatened;

Fighting against all forms of discrimination, in particular racial, ethnic, religious, sexual and political discrimination.

MIDH is aware that the rule of impunity poses a threat to a socially balanced society, and thus considers the eradication of this phenomenon a top priority of its struggle.

Means of action

Investigation, information gathering, declarations, denunciation, public conferences, legal action, assistance to victims.

Office: + (225) 22 41 06 61 / Fax: + (225) 22 41 74 85

Cell: + (225) 67 20 75 34

Email: siege_midh@yahoo.fr



THE IVORIAN LEAGUE OF HUMAN RIGHTS (LIDHO)

This Ivorian League of Human Rights (LIDHO) was created on 21 March 1987, when Ivory Coast had been ruled for nearly 30 years by a single party and mindset. Recognized for its public utility in Ivory Coast, LIDHO is a non-partisan, apolitical, non-confessional and non-profit organisation. Its independence and objectivity are a guarantee of credibility.

A mandate: the protection of all rights

LIDHO is a national NGO defending all civil, political, economic, social and cultural rights as enshrined in the Universal Declaration of Human Rights. It places its actions in the legal and political field to strengthen international instruments of human rights' protection and ensure their implementation.

Actions in favour of human rights

LIDHO regularly organises trainings to strengthen the intervention capacities of its members on various themes as well as on international instruments and mechanisms of human rights' protection. LIDHO carries out investigations and denunciations of human rights' violations (press releases, letters and reports),

and also works for the justiciability of rights: bringing proceedings before relevant jurisdiction or mechanism; lobbying, urgent appeals, sensitization actions towards the media, mobilisation of the national and international community etc. The League also assists victims and populations by providing advice and guidance through its specialists' commissions. All these actions contribute to making effective enjoyment of rights a reality. For instance, LIDHO made proposals that were taken into account in the amendment of the Ivory Coast Constitution in August 2000. These amendments contributed to upholding human rights in the Preamble of the Constitution and have the First Chapter of the Constitution entirely devoted to human rights. Lastly, LIDHO works together with national and international, public and private structures to ensure the effective enjoyment of their rights by all citizens.

Abidjan-Cocody, Cité des arts, 323 logements, immeuble F1, 1st floor, apartment 14 / P.O. BOX : 08 BP 2056 Abidjan 08

Tel: (+225) 22 44 35 01 / Fax : (+225) 22 44 39 15

Email : infos@lidho.org / lidhosiege@yahoo.fr

<http://lidho.org>

FIDH - International Federation for Human Rights

17, passage de la Main-d'Or - 75011 Paris - France

CCP Paris: 76 76 Z

Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80

www.fidh.org

Director of the publication: Karim Lahidji

Editor: Antoine Bernard

Author: Florent Geel

Coordination: Clémence Bectarte

Design: CTB

FIDH represents 178 human rights organisations on 5 continents



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

fidh

Find information concerning FIDH's 178 member organisations on www.fidh.org